

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7720 of 1988

Date of decision: 29-8-97

For Approval and Signature

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

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter 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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RANJANGAURI DURGASHANKAR JANI SINCE DECEASED THROUGH HEIRS

Versus

STATE OF GUJARAT  
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Appearance:

MR YS MANKAD for Petitioners

Mrs. Siddhi Talati for Respondent No. 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/08/97

ORAL JUDGEMENT

The petitioner, since deceased, had filed this special civil application before this Hon'ble Court under Article 226 of the Constitution of India praying for direction to the respondents to stop demolishing the premises viz., No.1020 in which 'Ranjana Lodging & Boarding' business is being carried on at Nakhatrana, Kachch. The petitioner claims that she is a tenant in the said premises and she is in possession thereof since 1963-64. In support of her possession on the said date the petitioner made reference to the licence granted to her under the Bombay Police Act, as public eating house in the year 1964. She also made reference to certain other documents including licence granted under the Prevention of Food Adulteration Act. Rest of the documents are of the year 1988. Grievance of the petitioner is that on 17th November, 1988 suddenly the respondents came to the premises of 'Ranjana Lodge' along with the labourers of Demolition Squad and Police force and under the orders of the respondents began to demolish the premises. The petitioner objected to this, but they continued the demolition as stated in para 2 of the petition. On 18th November, 1988 the respondents demolished part of the stone railing on the terrace and began breaking down the slab of RCC roof over those rooms.

2. It is unfortunate that even such a matter has been taken by the respondents very casually and lightly. Reply has not been filed and as a consequence thereof the Court has to accept whatever averments have been made in this Spl. C.A. by the petitioner to be correct. However, Mrs. Siddhi Talati, learned counsel appearing for the respondents orally contended that the land was acquired way back in the year 1955 for public purposes. But I do not find anything on record in support of this contention. It is a question of fact, and more so a question of issuance of notification under sections 4 and 6 of the Land Acquisition Act to be published in the official Gazette. But nothing has been produced on record. Be that as it may. The fact is that demolition activity has been started against the petitioner without any notice and without affording an opportunity of hearing. The fact that the petitioner is in possession of the premises since 1964 and carrying on her business of 'Ranjana Lodge' is not in dispute. Even if it is taken that land was acquired in the year 1955, then the impugned action has been taken after more than 33 years and as such it could have been done only in accordance with law, which required at least giving full opportunity of hearing, making submissions and establishing her case

to the petitioner. In view of this fact, the activity taken out by the respondents cannot be allowed to stand. Action of the respondents in taking of demolishing activities in respect of the premises is wholly arbitrary and unjust. However, this judgment will not come in the way of the respondents to proceed against the petitioner in accordance with law.

3. Rule made absolute in the aforesaid terms. No order as to costs.

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