

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3219 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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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?

BABUPURI SHIVPURI GOSWAMI

Versus

DY.COLLECTOR MEHSANA

Appearance:

Mr. P.K.Jani for MR PRAVIN P PANCHAL for Petitioner

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/04/99

ORAL JUDGEMENT

Rule. At the instance of the learned counsel for the petitioner, this matter is taken up for final hearing today.

The petitioner is a trustee of Ganpati temple, situated on Rajmahel road, Mahesana. The trust has total area of land admeasuring 1547.47 sq.mtrs. including the temple. The City Survey Superintendent, Mahesana passed the order dated 8th February, 1999 that

the trust has unauthorisedly encroached upon excess land of the Government admeasuring 156 sq.mtrs. The City Survey Superintendent therefore, directed the petitioner to remove the encroachment upon westernside of the land bearing survey no. 3931 bearing tikka no.153 admeasuring 155.57 sq.mtrs. within seven days from the receipt of the notice/order. The petitioner was also further directed to pay an amount of Rs. 250/- as fine and an amount of Rs.1493.50 ps. as mesne profits for all this period and in case the encroachment is not removed within stipulated period, the same will be removed at the costs of the Government and expenditure incurred for doing so will be recovered from the petitioner. Therefore, the petitioner filed RTS Appeal no.10 of 1999 before District Collector, Mahesana in which the Deputy Collector, Mahesana by his order dated 17th April, 1999 stayed the operation of the order dated 8th February, 1999 of the City Survey Superintendent and directed the case to be heard for final hearing on 6th May, 1999.

2. The learned counsel for the petitioner informed this Court that the stay has been extended till today and the matter has been adjourned for final hearing today before the Deputy Collector, Mahesana.

3. By means of this petition, the petitioner has sought for quashing the proceedings for removal of encroachment alleged to have been made by the petitioner as stated above.

4. The learned counsel for the petitioner submitted that the petitioner has filed an application dated 5th March, 1999 before the City Survey Superintendent for measuring the land, but without considering that application and without measuring the area on which disputed encroachment is said to have been made, the City Survey Superintendent has passed the impugned[order for removal of the encroachment in dispute. The petitioner is also claiming this land on the basis of the gift deed dated 9th October, 1911 executed by Guru Shri Niranjandas and the area was shown in the gift as 1 vigha and 14 gunthas out of of which 5 gunthas has already been taken over by the Municipality for widening the road. He further submitted that the disputed construction has been made on the land within 1 vigha and five gunthas of land. It has not been constructed on the government property. Hence, measurements of this land are necessary for the decision, but the authority has not taken measurements and has passed the impugned order for removing the encroachment.

4. Considering the facts and circumstances of the case, this petition is taken up for final hearing today at the admission stage. In view of the above position, this petition deserves to be allowed.

5. Accordingly, this petition is finally disposed of with a direction to the Deputy Collector, Mahesana to get the entire land of the petitioner trust measured in order to know whether the alleged encroachment is on the Government land or on the trust property. After getting the land measured, the Deputy Collector, Mahesana will decide the appeal before whom the above appeal is already pending for final decision. The Deputy Collector, Mahesana is directed to decide the appeal of the petitioner after getting the land of the trust measured and determine as to whether the disputed encroachment is made on the Government property. The Deputy Collector is directed to decide the above appeal within three months from the date of presentation of the certified copy of this order and till such decision is taken, the alleged encroachment made by the petitioner will not be removed.

It is also informed by the learned advocate for the petitioner that the Deputy Collector has already fixed the appeal for final hearing on 29.4.99 i.e. today. In case the appeal is decided today, the decision in the appeal will not be implemented. The Deputy Collector, Mahesana is directed to decide the appeal in light of the aforesaid observations. Rule is made absolute accordingly.

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