

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5246 of 1996

with

SPECIAL CIVIL APPLICATION No 5408 of 1996

to

SPECIAL CIVIL APPLICATION No 5421 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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? : NO

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MANSURI YASINBHAI BHIKHABHAI

Versus

EXECUTIVE ENGINEER

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Appearance: (In all the special civil applications)

MR PK JANI for Petitioners

MS MANISHA LAVKUMAR, AGP, for Respondent No. 1

None present for Respondent No. 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/2000

ORAL JUDGEMENT

1. The special civil application No.5246 of 1996 was jointly filed by 15 petitioners but on the objection of the Court, other petitioners i.e. the petitioner No.2 to 14 therein have filed separate petitions being special civil application No.5408 of 1996 to 5421 of 1996, which were admitted on 9-12-1996. The order of this court of that date, reads as under:

Mr. M.R. Anand, Id. Government Pleader  
appearing for respondent No.1 under the instructions from Mr. J.I. Patel, Deputy Executive Engineer, Roads and Buildings, Sub-Division, Mehsana makes a statement that the petitioner/s shall not be dispossessed of the disputed place of business where shop/cabin of the petitioner/s exists/exist, without following due procedure of law and without hearing the petitioner/s. None appears for the respondent No.2- Panchayat. In that view of the matter, following order is passed:-

Rule.

Heard with regard to interim relief. In view of the aforesaid statement made on behalf of the respondent No.1, nothing is required to be done at this stage. However, it would be open to the petitioner/s to move an appropriate Civil Application for obtaining interim relief in case either of the respondents seek to take possession of the disputed land/property in question without following due process of law.

2. It appears that this petition i.e. the special civil application No.5246 of 1996 was not placed on Board on that date and it was left out and admission thereof could not be made. This matter is identical to other matters and it deserves to be admitted and accordingly, it is admitted. Rule in special civil application No.5246 of 1996. However, in view of the order which I propose to pass in these matters, it is not necessary to send notice of rule to respondent No.2. Otherwise also, the respondent No.2 has not taken any action against the petitioners. Only the action of respondent No.1 is under challenge in these special civil application.

3. Learned counsel for the petitioners submitted that the land in dispute over which the shops/cabins of

the petitioners are there belongs to the Gram Panchayat concerned. The Gram Panchayat concerned has regularised there possession on the land long back and the petitioners are regularly paying rent to the Gram Panchayat. It is submitted that in 1970 the Gram Panchayat initiated action against the petitioners against their unauthorised occupation of the land but later in point of time that occupation was regularised and the Gram Panchayat started to realise from the petitioners the rent which the petitioners are paying. Shri Jani submits that this land does not belong to the State Government and the action of the respondent No.1 to call upon the petitioners to remove the construction put by them and clear the land in dispute is wholly without any authority of law.

4. The counsel for the respondent No.1 raised a preliminary objection that these petitions filed by the petitioners against show cause notice are not maintainable. It has next been contended that the petitioners are free to raise their objections against this show cause notice before the authority, the respondent No.1, and only after any adverse decision is given, there could have been some semblance of justification with them to challenge the same before appropriate redressal forum available. It has been contended that the petitioners are ranked trespassers on the land of the Government. They have no right to continue there. It has further been contended that when construction has been put by violating the ribbon rules, rightly the respondent No.1 has given notice to the petitioners for demolition of the same.

5. In rejoinder, Shri Jani, learned counsel for the petitioners contended that when the respondent No.1 has no jurisdiction to issue this notice as the land does not belong to the State Government, the petitioners have rightly approached to this Court. In his submissions, the respondent No.1 has failed to show any title over the land of the State Government. So far as the other contentions raised by the learned counsel for the respondent No.1 is concerned, Shri Jani submitted that reply to the show cause notice has been filed by some of the petitioners and there the decision has not been taken.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. On being put by the Court, learned counsel for the petitioners has failed to show any notification under

which the land in dispute has been ordered to be vested in the Gram Panchayat. The petitioners only on the basis of what the Gram Panchayat has taken action in favour of them to regularise their possession and charging of rent, have raised a contention that this land belongs to the Gram Panchayat. However, this is not the stage where this point has to be finally decided i.e. whether the land belongs to the Gram Panchayat or the State Government, as these proceedings are not appropriate proceedings. It is a highly disputed question of fact and only on adjudication thereof, final decision can be given by the authority concerned.

8. I fail to see any justification in the approach of the petitioners to ask the State Government to show the title. When notice has been given, the petitioners have to file their objections and in support of their objections, they have to file documentary evidence or evidence on affidavit and then the authority has to decide the same. This style of approaching on the show cause notice by the petitioners by filing the special civil applications, deserves to be deprecated. This approach of the petitioners in a matter where only show cause notice has been given to them is difficult to appreciate. In the facts of this case, i.e. the disputed question of fact re. title of land whether of the Gram Panchayat or the State Government it is difficult to accept that the respondent has no jurisdiction to issue show cause notice. The writ petition against the show cause notice is not maintainable and if any reference in this respect is necessary then it fruitfully may have to the decision of the Apex Court in the case of Executive Engineer, B.S.H.B. vs. Ramesh Kumar Singh reported in 1996 (1) SCC 327. After the statement made by the counsel for the State Government in the Court on 9-12-1996, the petitioners should have felt content and satisfied and they should have approached to the authority to decide the matter on show cause notice. After this order dated 9-12-1996, it is not the case of the petitioners that any step has been taken by either of the respondents to take possession from them of the disputed land. When the Government advocate made a statement that the petitioners shall not be dispossessed of the disputed place of business, where these shops/cabins of the petitioners exist without following due process of law and without hearing the petitioners, the matter stood concluded then and there.

9. As a result of the aforesaid discussion, all these special civil applications are dismissed. Rule discharged. However, no order as to costs. The

respondent No.1 if it decides to dispossess the petitioners from the disputed place of business where the shops/cabins of the petitioners exist, it shall abide by the statement as made by the Government Advocate in the matter on 9-12-1996 which is reproduced above in the judgment.

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