

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15857 of 2004

and

SPECIAL CIVIL APPLICATION No 15887 of 2004

and

SPECIAL CIVIL APPLICATION No 15888 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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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 concerned : NO  
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

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SANJAY RAJNIKANT DESAI

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 15857 of 2004  
MR RS SANJANWALA for Petitioner No. 1  
MS MANISHA SHAH AGP for Respondent No. 1-4  
MR JB PARDIWALA for Respondent No. 5  
MR HRIDAY BUCH for Respondent No. 6
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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/12/2004

ORAL JUDGEMENT

1. RULE. Ms.Manisha Shah learned AGP waives service of rule on behalf of respondents no.1 to 4, Mr.A P Patel learned advocate for Mr.J B Pardiwala waives service of rule on behalf of respondent no.5 and Mr.H C Buch learned advocate waives service of rule on behalf of respondent no.6. With the consent of learned counsel for the parties, the matter is disposed of today.

2. The petitioner by way of these petitions has challenged the action of respondent no.5 of cancelling the "Ijara" (lease rights) granted by respondent no.6 Panchayat in favour of the petitioner in due exercise of the powers conferred upon it by the Gujarat Panchayats Act, 1993 (for short, "the Act").

3. A Lake situated within the limits of respondent no.6 Panchayat was used for fishing activities and for the said purpose fishing rights were given by respondent no.6. Accordingly, auction was held and the petitioner herein, being the highest bidder, a contract for a period of two years was awarded to him. Pursuant to the awarding of the said contract, the petitioner had started fishing activities in the said Lake.

4. To the utter shock of the petitioner, a news item appeared in a Gujarati daily that the power to farm out fishing rights was vested in the District Development Officer by Government Resolution dated 15/07/2003 and that several Panchayats had arbitrarily farmed out fishing rights in breach of the said Government Resolution. Thereafter, respondent no.6 herein, having found that the "Ijara" was granted in breach of the Government Resolution dated 15/07/2003, cancelled the lease rights of the petitioner. Hence, these petitions.

6. I have heard learned counsel for the parties and have perused the relevant documents on record. Having gone through the order dated 25/11/2004 passed by respondent no.5 - District Development Officer, (for short, "the D.D.O."), it is clear that the D.D.O. has not issued any Notice and has merely relied on the Government Resolution dated 15/07/2003 (In the order passed by the D.D.O the date of the Government Resolution is wrongly mentioned as 15/07/2004) for cancelling the lease rights of the petitioner. The reasonings given by the D.D.O are that pursuant to the Government Resolution dated 15/07/2003, the competent authority for issuing contract was the D.D.O. and that some of the Gram

Panchayats had arbitrarily issued contracts for the purpose of fishing.

7. From the impugned order, it is clear that the D.D.O. has not issued any Notice to the petitioner before cancelling the petitioner's lease rights. Without entering into the controversy as to whether the Gram Panchayats shall have the right to grant lease or not, the order passed by the D.D.O. is required to be quashed and set aside only on the ground that some rights were created by respondents no.5 & 6 in favour of the petitioner. Therefore, it is clear that the petitioner was required to be heard before cancelling the contract in question. But, the same has not been done. Hence, the order is in clear violation of the principles of natural justice and the same is required to be quashed and set aside.

8. Mr.A P Patel learned advocate appearing for Mr.J B Pardiwala for respondent no.5 has submitted that respondent no.5 will hear the petitioner and will decide the matter afresh after issuing Notice to him.

9. In the result, the order dated 25/11/2004 passed by respondent no.5, District Development Officer, Valsad, is quashed and set aside. Respondent no.5, District Development Officer, Valsad, shall decide the matter afresh after issuing Notice to the petitioner. However, it is made clear that this Court has not entered into the merits of the matter and has not examined the fact as to whether the Government Resolution dated 15/07/2003 will apply on the facts of the case on hand or not. It will be open for the petitioner to raise all the contentions before the D.D.O. and the D.D.O. shall deal with the same in accordance with law. If the petitioner requests the D.D.O. for grant of time for approaching the higher forum, the D.D.O. shall consider the said request positively.

10. For the foregoing reasons, these petitions are allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. Jhaveri, J.)

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