

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 6964 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

ZALA GHANSHYAMSINH BHIMSINH & 1....Petitioner(s)

Versus

STATE OF GUJARAT & 5....Respondent(s)

Appearance:

MR DASHRATH CHAUHAN, ADVOCATE for the Petitioner(s) No. 1 - 2

MS JYOTI BHATT, ASSTT GOVT PLEADER for Respondent Nos.1,2 & 6

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 3 - 5

RULE SERVED for the Respondent(s) No. 2 - 6

CORAM: HONOURABLE MR.JUSTICE C.L. SONI

Date : 31/07/2015

ORAL JUDGMENT

1. By the present petition filed under Article 226 of the Constitution of India, the petitioners have prayed to quash and set aside the notice dated 30.5.2009 and also sought direction against the respondents to decide their representations dated 25.8.2008 and 9.6.2009 to regularize their constructions.

2. It is the case of the petitioners that the construction of the houses of the petitioners is not causing hindrance to anybody and on their houses, the Gram Panchayat has been collecting taxes from them. It is further case of the petitioners that their representations seeking regularization of their constructions have not been decided though it is permissible to regularize such constructions.

3. The petition is opposed by respondent No.4- Taluka Development Officer stating that the petitioners have made encroachment on the road of the village by putting construction of residential houses and such constructions have been causing lot of problems to the village people. It is further stated that the petitioners are not belonging to weaker or downtrodden society and encroachment made by them is against the public at large.

4. Learned advocate Mr. Chauhan for the petitioners submitted that the construction of the houses of the petitioners has been standing since many years and in respect of their houses, the Gram Panchayat has been recovering taxes from them. Mr. Chauhan submitted that the petitioners have made representations to the Gram Panchayat to regularize such constructions but instead of regularizing the constructions, the petitioners are issued notice under Section 105 of the Gujarat Panchayat Act, 1993 ('the Act'). Mr. Chauhan submitted that the petitioners though tendered reply to such notice pointing out that the constructions of their houses have not been causing any hindrance to anybody and such constructions could be regularised by the Gram Panchayat or even the Taluka Development Officer, still the reply of the petitioners has not been considered and no action for regularization of the constructions of the petitioners has been taken.

5. Learned advocate Munshaw appearing for respondent Nos.3 to

5 and learned Assistant Government Pleader Ms. Bhatt for respondent Nos.1,2 and 6 submitted that the petitioners have encroached upon the Panchayat land and encroachments of the petitioners have been causing lot of problem to the village people, and therefore, the petitioners are issued notice under Section 105 of the Act, to which the petitioners have replied however before the reply of the petitioners could be considered and before further action under the Act and the Rules could be taken, the petitioners approached this Court by filing the present petition.

6. Having heard learned advocates for the parties, it appears that in respect of the constructions of the residential houses of the petitioners in the limits of Village Panchayat, the Panchayat has already initiated action under Section 105 of the Act by issuing impugned notices to the petitioners. Such notices at Annexure-C onwards are replied by the petitioners through their advocate stating that in respect of the constructions made by the petitioners, an application for regularization was made, however, since no reply was given by the Panchayat to such application for regularization within a period of one month, the constructions of the houses of the petitioners could be deemed to have been regularized. It is further stated by the petitioners in their reply that the constructions of their houses are not on gaucher land but are on Gamtal land and for such construction on Gamtal land, the Panchayat has been collecting taxes from them.

7. It appears that after the above-said reply, before the Panchayat could take further action in connection with the impugned notices issued under Section 105 of the Act, the petitioners have approached this Court by filing the present petition. In the present petition, the Court has granted interim protection. Thus, no further action based on the impugned notices could be taken by the Panchayat.

8. The Court finds that when action under Section 105 of the Act was initiated against the petitioners by issuing impugned notices and when the petitioners have submitted their reply to the impugned notices, it is for the Panchayat to consider the reply submitted by the petitioners and to finalize the action initiated under Section 105 of the Act.

9. In above such view of the matter, no relief as claimed for the in the present petition could be granted at this stage. It is always open to the petitioners to raise all contentions available under law before the Panchayat.

10. For the reasons stated above, the petition is disposed of with direction to Chavlaj Govindada Group Gram panchayat to finalize the action initiated against the petitioners by the impugned notices after considering the reply submitted by the petitioners at Annexure-G and in accordance with law within a period of *THREE MONTHS* from the date of receipt of this order. It will be open to the petitioners to raise all contentions available under law before the Panchayat in the process of finalizing the action by the Panchayat under Section 105 of the Act. Rule discharged. Interim relief, stands vacated.

11. However, it is directed that till the Panchayat finalizes the action, as directed above, the Panchayat shall maintain the status-quo as regards the constructions of the petitioners.

Sd/-
(C.L.SONI, J.)

Omkar