

Gujarat High Court

Special Civil Application No. ... vs Bidada Gram Panchayat & 3 on 19 March, 2015

C/SCA/11064/2014

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 11064 of 2014

With

SPECIAL CIVIL APPLICATION NO. 4825 of 2015

With

SPECIAL CIVIL APPLICATION NO. 4871 of 2015

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DHARAMSHI MEGHJI SAVLA...Petitioner(s)

Versus

BIDADA GRAM PANCHAYAT & 3...Respondent(s)

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Appearance:

MR MEHUL S SHAH, ADVOCATE in SCA No.11064/2014,

MR SHALIN MEHTA, SENIOR COUNSEL WITH MR VAIBHAV A. VYAS in

SCA No.4825/2015,

MR RAMNANDAN SINGH, ADVOCATE for the Petitioners

for the Petitioner(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 4

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 1 - 3

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

Date : 19/03/2015

COMMON ORAL ORDER

1. So far as Special Civil Application No.4825 of 2015 and Special Civil Application No.4871 of 2015 are concerned, request for permission for urgent circulation of the said two petitions was made on the ground that the respondent authorities have, on strength of the order dated C/SCA/11064/2014 ORDER 11.3.2015 in Special Civil Application No.11064 of 2014, started demolishing the construction/houses of the petitioners which, according to the respondents, are constructed by way of encroachment over gaucher land. It was claimed that many persons have not encroached over gaucher land, however, even such constructions are being demolished and since the process of demolishing is in progress, permission for urgent circulation may be granted.

2. Having regard to the said submission, request for circulation of the petitions was granted and accordingly, the petitions are placed before the Court for appropriate orders.

3. In respect of Special Civil Application No.4825 of 2015, Mr. Mehta, learned senior counsel has appeared with Mr. Vyas, learned advocate for the petitioner and Mr. Singh has appeared for the

petitioners in Special Civil C/SCA/11064/2014 ORDER Application No.4871 of 2015.

4. Mr. Munshaw, learned advocate has appeared for the respondents in Special Civil Application No.11064 of 2014. He submitted that copies of the said two petitions, i.e. Special Civil Application Nos.4825/2015 and 4871/2015 are not provided to him.

5. Learned advocates for the petitioners would provide copies of the said petitions to Mr. Munshaw, learned advocate for the respondents.

6. The order dated 11.3.2015 is passed in Special Civil Application No.11064 of 2014. In the said petition, the petitioner has prayed, inter alia, that:

"8(a) A writ of mandamus or any other appropriate writ, order of direction may kindly be issued directing the Respondents to forthwith decide and to act the matter of the applications and notices at Annexures 'A', 'C', 'D', 'E' and 'H' herein, as prayed for, and to remove the C/SCA/11064/2014 ORDER encroachments and unauthorised constructions over the land of Respondent No.1 - Panchayat and also nearby the property in question of the Petitioner without any delay."

7. In the said petition, the respondent authority has filed affidavit dated 13.2.2015. In the said affidavit, the respondent authority has averred that:

"3. The Deponent submits that thereafter as per the record several notices were issued from time to time to other encroachers between 1998 to 2013. The deponent submits that she is elected as Sarpanch of Bidada Gram Panchayat on 16/01/2012 and has issued notices to number of encroachers on 08/02/2013 and 11/05/2013. It is stated that as on today there are 260 encroachments on gaucher land while 407 encroachments on gamthal land. It is submitted that Gram Panchayat passed a Resolution No.34 in its meeting dated 01/12/2014 firstly for removal of encroachments on Ring Road and it is resolved that firstly notices are to be issued to those encroachers who are on surrounding Ring Road and thereafter rest of the encroachers. It is stated that accordingly in all 101 encroachers are issued notices on 30/01/2015. The deponent submits that some of the encroachers have responded to the said notice so far.

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5. The deponent submits that thereafter further actions would be taken for removal of rest of the encroachments. It is stated that considering huge number of encroachments, some more time would be required to clear the encroachments raised on gaucher land as well as gamthal land. At this stage, the deponent craves leave to state that there is a Complex known as Dharamsinh Complex on Hajipir Road and consists in all 7 shops. The deponent craves leave to add that all the 7 occupants were issued notices on 30/01/2015. In response to the said notices, it is

separately replied by them that there are shops and complex actually belonging to Mr. Dharamsinh Meghji Savla and they are the tenants. The deponent apprehends that the said shopping complex is constructed on public property perhaps by the present petitioner himself. It is pertinent to note that the petitioner herein had in past addressed a letter dated 02/12/2013 to the respondent No.1 complaining of encroachment and pollution opposite to the said Dharamsinh Complex. The Deponent submits that in view of the registration of 7 shops of Dharamsinh Complex in encroachment register of Village Bidada at No.800 to 806 and replies to notices tendered by said 7 occupants of the shops of Dharamsinh Complex, the deponent herein has to make further inquiry about the owner of superstructure and method & manner of encroachments on public property."

8. It was in light of the assertions made in C/SCA/11064/2014 ORDER paragraph No.3 of the said affidavit dated 13.2.2015 in Special Civil Application No.11064 of 2014 that the said order dated 11.3.2015 came to be passed.

9. In the said affidavit, the respondent has expressly mentioned that 'it is stated that as on today there are 260 encroachments on gaucher land while 407 encroachments on gamthal land'.

10. The said assertions give out that about 260 persons have encroached over gaucher land.

11. Having regard to the said assertions in the reply affidavit, which is not disputed/denied, the Court passed order dated 11.3.2015 so as to ensure that the encroachments over the gaucher land are removed without any delay.

12. When the authorities started action in view of the order, these petitions are taken out and C/SCA/11064/2014 ORDER it is alleged that the respondents have started the actions of demolition without issuing notices and without ascertaining as to whether all constructions which are being demolished are over gaucher lands or over the lands which are not put up on gaucher lands. It is also claimed that in cases of several petitioners, the lands have been allotted by the panchayat itself.

13. The panchayat should not and cannot allot gaucher land to anyone. Even if gaucher land is, as alleged by the petitioners, allotted by the panchayat, such allotment would be illegal and unauthorised. Encroachments over gaucher land ought to be removed.

14. From the affidavit made by the respondents in Special Civil Application No.11064 of 2014, the Court has noticed that according to the respondents, the notices were issued, however, the concerned persons did not take note of the C/SCA/11064/2014 ORDER said notices and continued their occupation over the gaucher land.

15. Since today the grievance is made that in the process of demolishing even those constructions who are not over gaucher land but are on land other than gaucher land and in most of such cases, the lands are allotted by the panchayat, following order is passed in furtherance of the said order dated 11.3.2015.

16. The respondent panchayat will display the list of 260 persons who have encroached upon gaucher land at the Office of the Panchayat on 20.3.2015.

17. The panchayat will also display another / separate list of 407 encroachers, who, according to the panchayat, have encroached over gamthal land.

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18. The said list may also be displayed at

Panchayat's Office as well as at the respective survey numbers tomorrow, i.e. on 20.3.2015.

19. The list will also contain Notice/Intimation to the concerned persons to take note of the fact that according to the panchayat, the construction put up by them are over gaucher land and that they have encroached over gaucher land and similar process shall be followed for gamthal land. The survey numbers of the said lands may also be mentioned and intimation to remove the encroachment should be mentioned in such intimation with further clarification that in event of failure to remove the encroachment, the panchayat will take action.

20. So far as the persons who, according to the respondent panchayat, have encroached over the land other than gaucher land, in their cases, the actions may be taken in phased manner after C/SCA/11064/2014 ORDER verification of the claim regarding allotment of land by the panchayat and after the action in respect of gaucher land is completed and after appropriate intimation to such persons (i.e. persons have encroached over land other than gaucher land) may be given with intimation about time before which the encroachment should be removed and the time after which the respondent authorities will initiate action for removing encroachment over the gaucher land.

21. So far as the encroachment over gaucher land is concerned, as mentioned earlier, the time for removing encroachment over gaucher land, as aforesaid, is extended until 25.3.2015 so that aforesaid process can be completed and the concerned persons can get time/opportunity to remove the construction and/or their belongings and that, therefore, the respondent panchayat will, as aforesaid, display the list of the said persons with necessary intimation as mentioned C/SCA/11064/2014 ORDER above at the office of the respondent panchayat as well as at the respective survey numbers.

22. After displaying the said notice, further action for removing the encroachment over gaucher land may be undertaken.

23. It is further clarified that it will be open to the concerned persons to approach the respondent authority, within one week with necessary material to demonstrate that they have not encroached over gaucher land and to demonstrate that the land in question is not gaucher land and it was allotted by the panchayat. Further action to be taken after such verification. However, action in

respect of gaucher land may proceed after following the process of declaring the names of the persons and survey numbers. The panchayat will verify and ensure that the lands are, as per the record, gaucher land.

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24. It is further clarified that the petitioner in Special Civil Application No.11064 of 2014 is concerned, Mr. Shah, learned advocate for the petitioner submitted that premises of the petitioner is demolished, however, according to the petitioner, the said construction was not on gaucher land or gamthal land.

25. Mr. Shah, learned advocate for the petitioner further submitted that since the construction was not an encroachment on gaucher land or gamthal land, now status quo as regards the land in question, may be maintained.

26. In that view of the matter, it is clarified that the respondent shall maintain status quo as regards the land in question over which the petitioner had put up the construction, i.e. alleged encroachment.

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27. Today, learned advocates for the petitioners in above-mentioned petitions and the applicants in Civil Application No.3488 of 2015, submitted that several persons, who have been allotted land by panchayat and are not in occupation of gaucher land, are also affected by the demolition drive undertaken by the respondents and that there are several persons who have not encroached over gaucher land, however, action in respect of their constructions are also being taken.

28. Mr. Munshaw, learned advocate for the respondents submitted that the respondents are taking action in respect of gaucher land.

29. For the said purpose, time to take action in respect of gaucher land is extended for further two days, i.e. till 25.3.2015.

30. The petitions to be listed on 27.3.2015.

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31. The respondent panchayat will take action in respect of the gamthal land in phased manner and after removing of encroachment over gaucher land.

Direct Service is permitted today.

(K.M.THAKER, J.) Bharat