

(1978) 12 GUJ CK 0012
In the Gujarat High Court

Ambaben Bavabhai Jadav

APPELLANT

Vs

V.V. Ramsubarao and Another

RESPONDENT

Date of Decision : 22-12-1978

Acts Referred:

Citation : (1979) 1 GLR 766

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by a lady citizen, challenging the order, Annexure C, passed by the Collector, Bulsar on 14-5-75, which came to be confirmed by the Special Secretary of the Government of Gujarat by his order, Annexure D, dated 17-11-75 in the revisional proceedings before the Government.

2. A few facts require to be stated. There was an agricultural piece of land forming part of Section No. 51/1 situated in the sim of village Dehali of Umbargaon Taluka. The petitioner also owns the adjacent Section No. 48, which is utilised for the purpose of agriculture. For putting up some structures in the parcel of land forming part of Section No. 51/1, the petitioner had sought permission from the Taluka Development Officer, Bulsar. The said permission was for N.A. use. The permission appears to have been sought on 6-4-70 as could be gathered from the Collector's order Annexure C, though the petitioner asserted that the permission was sought for on 31-1-68. For want of any definite material in this regard, the statement of the Collector in the order Annexure C that the application for permission was made on 6-4-70 is accepted.

3. After giving the application for converting the agricultural land into N.A. land, the petitioner land-lady did not wait and went ahead with the construction. In the year 1974, the revenue authorities took from her an undertaking in the form of agreement, Annexure E, whereby she agreed that as and when called upon to remove the allegedly offending structures, she would do so. Soon after the said agreement was taken from her, she was called upon to make payment for

regularising those offending structures, offending the so-called Ribbon Development Rules. She was called upon to pay Rs. 6000/- being 50% of the composition fees and Rs. 421/- by way of penalty for using the agricultural land for N.A. purposes without the requisite permission. She was given a notice to show cause why the structure in so far as it offended the alleged Ribbon Development Rules should not be pulled down because of her unwillingness to pay the amount of Rs. 6421/-, against the payment of which the relaxation from the operation of the said Ribbon Development Rules was thought to be granted. Ultimately the order came to be passed by the Collector on 14-5-75. It is Annexure C to the petition. The petitioner filed a revision application u/s 211 of the Land Revenue Code to the Govt., but the Collector's order came to be confirmed.

4. The orders, Annexures C and D, are challenged in this petition as the orders passed without any application of mind. I have gone through the orders and I am constrained to comment that the petitioner's grievance against these orders based on the alleged non-application of mind is well-founded. Before passing the order, Annexure C, the petitioner was served with the notice, Annexure A dated 21/24-3-75. Neither in this notice nor in the order, Annexure C, it is set out as to what the Ribbon Development Rules are of which year they are, they are issued by whom and under what authority and under what provision of law or under what authority of law the Collector had called upon her to pay up 50% of the cost of construction. It is high time that all the public functionaries including the Collectors and Special Secretaries note that they, as public authorities, have got only those powers, which are conferred on them by law. Whenever they try to deprive a citizen of his money or property, they must be clear in their conception as to under what provision of law citizens are liable to be deprived of their money or property. In other words, a public officer must be able to point his finger to some specific provision of law or rules or authority under the law. They must specify the Ribbon Development Rules of which year they are and what specific provision of those Ribbon Development Rules is violated. In this case, the following things are left in a nebulous position:

(a) After taking the agreement, Annexure E, from the petitioner, what prompted the authorities to call upon her to pay 50% of the amount of costs of the allegedly offending structure is not known;

(b) No provision of law is shown under which 50% of the amount of the cost of construction can be recovered (incidentally I may state that Mr. Christie, the learned Asstt. Govt. Pleader appearing for the State and the Collector was not able to pinpoint any provisions of law under which this sort of 50% of the cost of construction could be levied as composition fees)

(c) It is not clear whether the railway track is covered by the alleged Ribbon Development Rules (Mr. Christie had shown me the Ribbon Development Rules from the Government Gazette Part I p. 328 dated 30-3-67, but I could not find that Railway track is to be treated as the highway or any sort of way). The

Collector should have, therefore, shown under what specific provision of the alleged Ribbon Development Rules, the allegedly offending structure was liable to be removed;

(d) If any distance is to be maintained under some authority of law from the railway track, the Collector and the Special Secretary have not taken into account the fact that between the railway track and the petitioner's compound wall, the railway authorities themselves have put up their structures and it will be relevant for the Collector to examine the impact of this factor also.

5. Mr. R.N. Shah, the learned advocate for the petitioner had at this stage declared that the revenue authorities had called upon the petitioner to get a no objection certificate from the railway administration and that she had already equipped herself with it. As the matter is being remanded by me for re-examination of the question, it will be open to the petitioner to bring this additional factor also to the notice of the Collector concerned. In above view of the matter, the orders, Annexures C and D are required to be set aside and the matter stands remanded to the Collector, Bulsar for his fresh decision, after giving an adequate opportunity to the petitioner to have her say regarding the specific allegations in respect of the alleged violation of any provisions of law or order having the force of law and the provisions under which the intended action could betaken. The petition is thus allowed. The orders, Annexures C and D, are set aside, Rule is accordingly made absolute with no order as to costs.