

(1982) 11 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 2955 of 1982

Bharvad Deva Sukha and Others

APPELLANT

Vs

The Government of Gujarat and Others

RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Gujarta Panchayats Act, 1961 — Section 168

Gujarta Panchayats Act, 1962 — Section 168, 168(1)

Citation : AIR 1983 Guj 165 : (1983) 1 GLR 335

Hon'ble Judges : S.L. Talati, J

Bench : Single Bench

Advocate : J.D. Ajmera, for the Appellant; C.K. Takwani, for Purnanand and Co. and P.M. Raval, for the Respondent

Final Decision : Allowed

Judgement

S.L. Talati, J.—The petitioners are the residents of village Sayala of Surendranagar District and they challenged the order passed by the Mamlatdar, dated 21-6-1982 and produced at Annexure "B". The order is purported to have been passed in accordance with Section 168 of the Gujarat Panchayats Act, 1961. It appears that the State Government had issued a notification u/s 168 of the Gujarat Panchayats Act, 1961 and in accordance with that notification Section 168 of the Act was extended to Sayala gram panchayat area. That notification is produced at Annexure "A". Now that, therefore, the State Government which had the power to issue such notification had issued the notification and, therefore, the Mamlatdar got the power u/s 168 of the Act and in exercise of that power it appears that the Mamlatdar, Sayala passed an order dated 21-6-1982 after recording the evidence.

2. Having gone through the order it clearly appears that the Mamlatdar recorded the finding that the total number of cattle in Sayala was 2031 and for those cattle 812 acres of land was necessary. There is a further finding that a Sayala village gauchar land area was 1186 acres. Therefore, a clear finding was given

that the land was sufficient for the cattle belonging to the residents of village Sayala. Under, these circumstances the Mamlatdar was required to act u/s 168 (1) (ii) of the Act. We may here reproduce the relevant portion of Section 168 of the Gujarat Panchayats Act, 1961:--

"168. (1) If in any local area to which the State Government may, by notification in the Official Gazette, apply this section, a Mamlat-dar or Mahalkari is satisfied--

(i) that the grazing land set apart for the use of cattle of one or more villages in the taluka, or mahal under his jurisdiction is insufficient for the cattle belonging to the permanent residents of such village or villages;

(ii) that the crops or grass standing on any agricultural land or grazing land so set apart are likely to be damaged by cattle belonging to persons who are not residents of such village or villages and who own more than twenty head of cattle, he may--

(a) in any case referred to in Clause (1) direct any such resident owner, by special or general order, to remove or cause to be removed all or any dry or useless cattle belonging to him to such place or places within the State and within such period as may be specified in the order, and

(b) in any case referred to in Clause (ii) direct any such non resident owner, by special or general order, to remove or cause to be removed all or any of the cattle to such place or places within the State and within such period as may be specified in the order."

Reading Section 168 it clearly appears that the two type of cases are contemplated. The first type of case is the case where the land is insufficient for the cattle belonging to the permanent resident of the village. In that case the Mamlatdar had the power which is specified in Section 168 (1) (a) of the Act and that power is to direct the resident-owner to remove the dry or useless cattle to such place or places within the State and within the period to be specified in the order. Now in this particular case such an eventuality could not arise as the land found was sufficient. The second type of contingency which is contemplated by Section 168 of the Act is a contingency where non-resident-owner damaged the crops or grass standing on any agri-cultural land or grazing land so set apart by the cattle belonging to them and they own more than 20 heads of cattle, in such an eventuality action u/s 168 (1) (b) is contemplated as the Mamlatdar has the power to direct such non-resident owner to remove all or any of his cattle to such place within such period specified in that order. Now that, therefore, the order which is required to be passed is against the non-resident of the village. Again such non-resident must own more than 20 heads of cattle. When both these conditions are satisfied the order which could be passed is that such non-resident may be asked to remove his cattle to a place specified within the State. When one reads this order one does not find that the order is passed against the non-resident. It is nowhere stated that non-resident owns 20 heads of cattle. Again the persons are not asked to remove cattle to a specified place. The order only

states that the persons should not move their cattle on particular highways. Such an order is not contemplated u/s 168 of the Gujarat Panchayats Act, 1961. Under these circumstances the order passed is set aside. The petition, therefore, is allowed and the order passed by the Mamlatdar on 21-6-1982 is set aside. Rule is made absolute with no order as to costs.