

(2022) 07 GUJ CK 0002

In the Gujarat High Court

Case No : R/Special Civil Application No. 16063 Of 2019

Chirag Ambubhai Patel

APPELLANT

Vs

Taluka Development Officer

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 227
Gujarat Panchayats Act, 1993 — Section 99, 259

Citation : (2022) 07 GUJ CK 0002

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Dhruv K Dave, Pushpadatta Vyas, Sejal K Mandavia, Jyoti Bhatt

Final Decision : Disposed Of

Judgement

Dr.A. P. Thaker, J

1. By way of filing this petition under Article 14 and Article 226 read with Article 227 of the Constitution of India, the petitioner has sought for following relief:

"A. Your Lordships be pleased to issue a writ of mandamus by directing the respondent No.1 to follow an order on 12.4.2018 and quash an order of the respondent No.5 on 22.07.2019 and confirm an order on 12.04.2018;

B. Your Lordships be pleased to issue a writ of certiorari by passing appropriate orders and thereby confirm an order on 12.04.2018 by the Taluka Development Officer and thereby quash and set aside an order on 05.05.2018 and 01.06.2018 by the Taluka Development Officer, Olpad, Dist. : Surat;

C. Pending admission and final hearing of the present SCA, Your Lordships be pleased to stay an order on 22.07.2019 being JP/PS/Anita/ Appeal No. 07 of 2018/ Vashi District Panchayat, Surat and confirm an order on 12.04.2018 and further quash and set aside an order on 05.05.2018 and 01.06.2018;

D. To Grant ad-interim ex-parte relief in terms of Para-5(C);

E. For such other and further reliefs as the nature and circumstances of the case may require.”

2. As the issue involved in the matter is in a narrow compass, with the consent of the parties, the matter has been heard finally at admission stage.

3. The facts which arise from the petition is that there was work of new drainage line being constructed in the vicinity whereupon there was some objections raised and by suo-motu action order was passed by the Appellate Committee dated 22.07.2019. It is contended that the Taluka Development Officer (T.D.O) vide its communication dated 1.6.2018 issued clarification, observing that the drainage line has to be laid in a street between two Falias . It is the contention of the petitioner that the entire exercise taken out by the appellate authority and the T.D.O is without jurisdiction and, therefore, they should be set-aside.

4. The petition has been objected by respondent Nos. 4 by filing affidavit-in-reply, contending that the petitioner has no locus to file the present petition and the authority, after considering all the aspects, including visiting site and after considering the facts and the objections raised by all the sides, has directed for completion of work of essential nature and the order of the authority is proper one. He has prayed to dismiss the petition.

5. Heard Mr. Dhruv K. Dave, learned advocate for the petitioner, Mr. Pushpadatta Vyas, learned advocate for respondent No.4, Ms. Sejal Mandavia, learned advocate for respondent Nos. 1 and 5 and Ms. Jyoti Bhatt, learned AGP for the respondent State at length.

6. Mr. Dhruv Dave, learned advocate for the petitioner has vehemently submitted the same facts which are narrated in the Memo of Petition and has prayed to allow the present petition and to direct the authority to lay the drainage line as per the earlier decision of the Panchayat. He has also submitted that the T.D.O or the District Panchayat has no authority to interfere with the essential work entrusted with the Gram Panchayat under the provisions of Panchayat Act under Section 99 and Schedule-1 of the Act. He has submitted that so far as the communication of T.D.O dated 1.6.2018 is concerned, the petitioner was not heard. He has prayed to allow the present petition.

7. Per contra, Ms. Sejal Mandavia, learned advocate for the respondent Nos. 1 and 5 has submitted that the order at Page-17 by the Appellate Authority is a reasonable order and it was passed after taking into consideration the various objections raised by both the sides and the same has not been challenged by anybody before the appropriate authority in past. She has prayed to dismiss the petition.

8. Mr. Pushpadatta Vyas, learned advocate for respondent No.4 has also submitted that there is no substance in the petition and the order passed by the appellate Committee is appropriate and has not been challenged and what the petitioner is challenging is the communication of the T.D.O prior to the passing of

the impugned order and has prayed to dismiss the petition.

9. Ms. Jyoti Bhatt, learned AGP for the respondent State has also submitted that since the order of the Appellate Authority has not been challenged before appropriate Forum, and the alleged communication was prior to the passing of this order, no grievance can be raised by the petitioner and, therefore, petition be dismissed with costs.

10. In rejoinder, Mr. Dave, learned advocate for the petitioner has submitted that as per Section 259 of the Panchayat Act, the State Government can take action. He has submitted that when the essential work of laying drainage line was within the purview of the jurisdiction of the Panchayat, neither the T.D.O nor appellate authority has any jurisdiction to interfere with such work and, therefore, the Resolution of the Panchayat be implemented.

10.1 Section 99 of the Panchayat Act reads as under:

"99. Administrative powers of panchayats:- Subject to the provisions of this Act, it shall be the duty of each panchayat to make in the area within its jurisdiction, and so far as the fund at its disposal will allow, reasonable provisions, in regard to all or any of the matters specified in Schedule I".

SCHEDULE I

MATTERS IN RESPECT OF WHICH IT IS THE DUTY OF VILLAGE PANCHAYATS TO MAKE PROVISION

1. In the sphere of sanitation and health -

c. sanitation, conservancy, the prevention and abatement of nuisance;

d. xxx xxx

e. xxx xxx xxx xxx

r. cleaning public streets places and sewers, and all spaces not being private property, which are open to the enjoyment of the public, whether such places are vested in the panchayat or not, removing the noxious vegetation, and abating all public nuisances.

10.2 Section 259 of the Panchayat Act reads as under:

"259. State Government may call for proceedings.- The State Government may call for and examine the record of proceeding of any panchayat or of any committee thereof or of any officer for the purpose of satisfying itself as to the legality or propriety or any order passed and may revise or modify the order as it shall deem just".

11. Having considered the submissions by all the sides, coupled with the material placed on record, it clearly transpires that for laying down the drainage line in the vicinity there was some dispute between the two communities and,

therefore, as per the Report of the Sarpanch, work was not completed and the higher authority has taken suo-motu action. Thereafter, considering the objections raised by both the sides and after visiting the site, solution of the problem on the basis of consensus, has been sought for and ultimately the appellate authority has passed the impugned order whereby grievance of both the sides seems to have been put at rest.

12. Now, so far as the contention of the petitioner of hearing him before issuing communication by T.D.O dated 1.6.2018 is concerned, it is pertinent to note that after that communication, the impugned order by the appellate authority, has been passed. Therefore, there is no question of any hearing being afforded to the petitioner. Further, as observed in the order at Page-17 by the appellate authority, grievance of all the concerned has been taken into consideration. It appears that for some personal reasons, the petitioner has tried to stall the entire proceedings of laying down drainage in the vicinity. Be that as it may be. However, the fact remains that the impugned order of the appellate authority has not been challenged before appropriate authority by anybody. Further, the impugned order of the appellate authority cannot be said to be perverse one, rather, it is passed after hearing all the sides and for resolving the grievance between the parties.

13. So far as the submission regarding the authority of the Panchayat to do the work as enumerated in Schedule-I read with Section 99 is concerned, it is pertinent to note that in the present case, since there was a dispute between residence of two Falias regarding laying of drainage line and as reported by the Sarpanch that work could not be initiated and completed, it was necessary for the higher authority i.e. T.D.O as well as District Panchayat to take appropriate action for resolution of such dispute under the facts and circumstances of this case. Therefore, submission of learned advocate for the petitioner regarding authority of Panchayat under Section 99 read with Schedule-I is devoid of merits.

14. In view of the above, the present petition is devoid of any merits and deserves to be dismissed and accordingly the same is dismissed. No order as to costs.

The petition stands disposed of accordingly