

(1996) 05 GUJ CK 0011

In the Gujarat High Court

Case No : Civil Revision Application No. 22 of 1996

Daulatshinhji Savanthsinhji Solanki and Others

APPELLANT

Vs

Executive Engineer, Himatnagar and Others

RESPONDENT

Date of Decision : 08-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 21, 38, 38(2)

Citation : AIR 1997 Guj 64

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : A.M. Raval, for the Appellant; Govt. Pleader and Vasuben P. Shah, for the Respondent

Judgement

S.D. Shah, J.—Rule. Mr. Kamal Mehta, learned AGP waives service of Rule of Respondent Nos. 1 and 2. Respondent No. 3 is ordered to be deleted. With the consent of the learned advocates appearing for the parties, the matter is finally heard and decided.

2. The petitioners -- original plaintiffs are aggrieved by concurrent judgments and orders of two Courts below at interlocutory stage, the two Courts have refused to grant injunction in terms of prayer contained in Exhibit 5 of Regular Civil Suit No. 177 of 1993. The plaintiffs sued for declaration and permanent injunction inter alia contending that they were the owners and occupiers of agricultural lands bearing Survey Nos. 8, 111, 114, 115, 116, 109, 108 and 165 situated at the outskirts of village Vasana. It was their case that there was already an existing road from village Vasana to Kadodra which was situated on the western side of the aforesaid parcels of land. It was their case that however the Executive Engineer and the State of Gujarat wanted to lay another road with a view to obliging defendant No. 3 and the new proposed road was likely to affect the agricultural lands of the plaintiffs and that without their consent and without acquiring their lands, the Executive Engineer and the State of Gujarat

have started putting up construction of the proposed road. Therefore, they applied for temporary injunction restraining the defendants from putting up or constructing any new road on their parcels of land or from putting up any construction for the purposes of making the road. The learned trial judge directed the defendants to maintain status quo but after hearing both the parties by order dated 5th May, 1995 dismissed the application for injunction holding that the plaintiffs have failed to prove prima facie case and that it was open to the defendants to acquire the land for the proposed road and to construct the road thereafter.

3. Being aggrieved by the aforesaid Judgment and order of the trial Court passed below Exhibit 5, the petitioner plaintiff preferred Civil Appeal From Order No. 64 of 1994 in the Court of Joint District Judge, Sabarkantha who by the judgment and order dated 30th December, 1995 dismissed the appeal of the plaintiffs and confirmed the order of the trial Court whereby the trial Court vacated the direction to maintain status quo. The further direction issued by the trial Court that the defendants can acquire the land and can thereafter put up construction of road was also vacated by the lower appellate Court and the appeal of the plaintiffs thus was dismissed.

4. During the course of the hearing of this Civil Revision Application before this Court, affidavit-in-rely was filed by Deputy Executive Engineer --- R.C. Chauhan along with which number of documents were produced including the alignment plan of the proposed road as well as the existing road. The plan is prepared by Roads and Buildings Department of the State of Gujarat and is correct as per the measurement. Another map is also produced which would show the alignment plan prepared by Superintending Engineer. RRB Circle, Gandhinagar. The proposed road is going to be approximately of the width of 33 feet. As per the subsequent alignment plan, sanctioned alignment is shown in red colour lines and proposed alignment is shown in blue or purple colour line. The blue or purple colour line is also sanctioned alignment lines though it must be noted that initially there was proposal to lay the alignment as shown by green colour line. The Government has accepted the laying of road on the red colour and purple colour line and from the affidavit-in-reply it becomes clear that the total length of the road is 4.850 Kms. passing through Vasana causeway, out of which 0/0 to 2/375 portion is completed upto V.T. Surface. The further road from C.H. 3/725 to 4/850 is passing through the private land and those persons have not given their private land for construction of road from CH 3/725 to 4/850 Kms. and some of the owners instituted the suit. It is also pointed out that under the Rural Road Project of the State of Gujarat, where the objective is to provide access to rural masses to the Highways and to the urban; areas. The aforesaid road was required to be completed on priority basis. It was pointed out that substantial work of the, road is completed and because of the order of maintenance of status quo granted by the trial Court and continued under the order of the learned single Judge of this Court, such an essential road to provide access to rural areas is lying incomplete and with escalation of price of concrete, tar and other

materials which are required for the purpose of constructing a road, it would become impossible for the Government to meet the escalation and to complete the road within the budget sanctioned for the said road. From the blue portion boundaries which are shown in the map, the road is to be started and upto the end of the red portion the pucca road is already laid. It was also pointed out to the Court that in fact substantial portion of the road shown by the blue or purple line is Nalia or Nalla land vesting in the Government which is of the width of around 33 feet or of as a lesser area.

5. The petitioner plaintiff disputed this situation and contended that in fact there is no nalia or nalla land and that the land is of the ownership of the respective plaintiff.

6. This Court therefore vide its order dated 14th March, 1996 issued following directions:

"In view of the dispute between the parties as regards ownership of nalla or nalia land as shown in the Blue Colour in the map at page 70 beginning from Survey Nos. 8, 165, 104, 107, 108, 109 and 110. the District Inspector of Land Revenue Record, Himatnagar is directed to take the measurement of the respective fields, to tally them with the measurement in the 7/12 record and to determine the width of nalia land and to find out as to whether nalia land or any portion thereof forms any part of survey No. or is the" ownership of any of the plaintiffs or that nalia land is the individual land not belonging to any of the plaintiffs. Such enquiry shall be conducted by District Inspector of Land Revenue Record, Himatnagar on or before 5th of April, 1996 in the presence of the plaintiff or anyone of them if possible by giving them the notice to remain present and the outcome of such enquiry and report is directed to be produced before this Court on 8th of April, 1996. Office is directed to treat this matter as part heard and place the same before this Court on 8th of April, 1996. S.O. 8th of April, 1996."

7. Pursuant to the aforesaid direction, D.M. Vanker, Record Keeper, District Inspector, Land Record, Himatnagar, Sabarkantha, has filed the affidavit and has stated that there is Government owned 33 feet wide Nalla which is 975 meters long and which is passing through survey Nos. 109, 108, 165, 110 and 8. It is also stated by him that he has gone through the village map and from such map it is found that there exists a nalla and such nalla is the Government land. He has based thereon, prepared a map and has shown the nalla land in question. Such affidavit is disputed by the plaintiffs by filing reply and by placing reliance upon some letter addressed by District Inspector dated 22nd December, 1995. The said letter appears to have been written by District Inspector without verifying the original record and in the affidavit filed by District Inspector, Land Record, the entire position is explained. The map which is prepared by the aforesaid Officer undoubtedly go to show that there exists a nalla land of different width and such nalla is passing through survey Nos. 8, 104, and survey No. 106 beyond which there is river Hatmati. It is the case of the respondents defendants that in fact they want to put up construction of the road on this very

nalla land and that any order of injunction would cause irreparable injury to the defendants which cannot be compensated in terms of money because with the passage of time there would be escalation of prices of the material for construction of laying road for which finance is already sanctioned, and ultimately by continuance of injunction the object of welfare scheme would be frustrated. Beyond Hatmati river, they have further shown the proposed road which would pass through Survey Nos. 109 and 110 which is yet not acquired by the Government but for which the proceedings may be afoot at any time.

8. It is in the aforesaid fact situation that the case is required to be viewed and it is required to be decided as to whether in its revisional jurisdiction, this Court would exercise its power when two Courts have concurrently refused injunction by permitting the defendants to lay the road over nalla land.

9. It is now well accepted that right to life guaranteed by Article 21 of the Constitution of India, in its wider expansion, also includes the right of the rural people to have easy access to their rural areas in all season's including monsoon. The access to village or the homestead to all rural people is found to be so essential that in absence of permissible access to the village, village people are very often marooned and cut off from the other part of the District or the State during heavy showers or so long as lying areas are over flooded. The rural masses in such situation or in such seasons are passing through untold miseries, very often not even getting the essential articles like food and water for their bare sustenance for days and months together. It is a matter of concern for all and yet trite knowledge that slowly and gradually rural masses have in the search of better living and earning, or life with physical comforts and luxuries started exodus to urban areas. The inundation of villages in which India was once living and perturbing rise in urban population with no future oriented and scientific planning has given rise to un-surmountable problems such as neglect of agricultural operations, apathy of and hatred for rural life and exploitation of rural masses by few influential and moneyed people after luring or enticing them to cities with hopes of good fortune and thereafter rendering them to a stage of bonded labour or eternal toiling tenants of the earth. On the other hand those who have, rushed to urban areas have to satisfy themselves by putting up in small zuggis or hutments with no essential amenities of life and have to rest content with subhuman or animal existence. If this exodus of village people or rural masses to the urban areas is to be stopped or discouraged and if urban areas are to be protected against over flooding by or rural people, living amenities of rural masses shall have to be improved. If rural people do not have access to their villages or if other persons from outside cannot have access to their villages when the villages are marooned or over flooded by rainy water or flood water and when there are no roads by which people can reach the State Highway, they are compelled to live the life of animal existence. In large number of villages basic necessities for life like drinking water, power supply and staple diet are not available. For drinking water women folk have to walk for miles together where Government tanker obliges to come at least once or twice a

week. No easy access to the village is the excuse given by politicians. It is in this context that easy access to villages is regarded as part and parcel of right to life for rural citizens because after passage of more than 48 years of the democracy and Independence of the country, the helpless and hapless life of rural masses even today remain confined and crippled to their villages which have not known and are not likely, nay not supposed to know that their mother land is claiming to take a fast and developing stride towards 21st century. To obviate their difficulties and to achieve the objective underlying Article 21 of the Constitution of India, the State Government has evolved or started the project known as "Rural Road Project" and if under such project, a road is to be laid or constructed, injunctive orders from the Courts of law should be a rarity as it frustrates an initial step, though belatedly taken towards fulfilment of most cherished right to life.

10. It would be worth quoting at this stage what the Apex Court said in widening the horizon of Article 21 in the context of social justice in the case of Consumer Education and Research center and others Vs. Union of India and others, , Paras 22, 24, 20 and 21) observed :

"The jurisprudence of personhood or philosophy of the right of life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are corner stones of social democracy. The concept of "social justice" is thus an integral part of "justice" in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of

social, economic and political equality, which is the legitimate expectation.

In a developing society like ours steeped with unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven the practical content of "life". Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results."

11. In *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, the Apex Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. Access to road was held to be an access to life itself in that State. The State was State of Himachal Pradesh which is in the hills and without workable roads, no communication was possible. While extending the concept of "right to life" as guaranteed by Articles 21 of the Constitution of India and in the background of Article 38(2) of the Constitution, the Apex Court held that Right to life embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. If viewed and understood in the aforesaid perspective all distant; remote and interior rural areas to every State must have easy access to their villages through roads which would provide them opportunity to have access to other developed part of the State, to have communication which would further ensure and promote the richness and fullness of life. A clear obligation flows from Article 38(2) of the Constitution which unmistakably desires and expects that the State shall, in particular, endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas. Denial of access to roads would demobilise" the rural masses to their villages and would undoubtedly deny to them equal facilities and opportunities which are available to urban few, India lives in villages despite undesirable exodus of rural masses to urban areas and therefore if the State Government consistent with its constitutional obligation envisaged, and implemented its "Rural Road Project", the Courts of law cannot and should not blindly injunct the entire project.

12. In fact it should not be issued even in cases where prima facie case is made out as the irreparable loss which is likely to be caused to the Government and to the rural masses is so enormous and tremendous that no degree of moulding the

relief subsequently by the Court would be a "panacea for the miseries which injunctive wound will leave. The Courts of law therefore should be slow in granting injunction against public project which are meant for the interest of the public at large as against the private proprietary interest or otherwise of few individuals. The proprietary interest of few individuals can always be provided for by suitable order of a Court of law but the enormous rise in the price or escalating of price in constructing the road at the end of the litigation which may last decade or two decades, would not only frustrate the object, but would in substance compel the rural masses to live in the situation in which they had been for decades living with no access to the State Highways or other ways from which they can undertake to and fro journey to their villages. It was in the aforesaid context itself that His Lordship Justice Mr. K. Ramaswamy in the case of Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, while considering the provisions of Order 39, Rule I of the CPC held that plaintiff seeking injunction must show a prima facie case, triable issue and balance of convenience for granting the injunction. However, in cases of public injunction, whereby public project is to be enjoined, special care is required to be taken by the Courts of law. The distinction between a private law injunction and a public law injunction is recognised in the English Law and now more particularly by His Lordships Justice Mr. K. Ramaswamy in the case of Mahadeo Savlaram Shelke (AIR 1995 SCW 1439) (supra). It is held that ordinarily Court of law should be loath or slow to grant injunction when a public project for the beneficial interest of the public at large is sought to be delayed or prevented by an order of injunction, the damage from such injunction would cause to the public at large as well as to a Government is a paramount factor to be considered and between the two conflicting interests, interest of public at large and the interest of few individuals, it is the interest of public at large which must prevail over the interest of few individuals. A Court of law shall have also to keep in mind that if entire public project is enjoined or prevented till enquiry is made into the prima facie case by Courts of law which work at snail speed or tortoise speed, enormous loss may be caused to the public scheme as well as to the beneficiaries. In the case before the Apex Court, the building was acquired under Land Acquisition Act for public purpose of widening the road to remove traffic congestion, compensation was awarded and paid to the owner and possession was taken and handed over to the Municipal Corporation. Thereafter, the appellant entered into leave and licence agreements with the Corporation and after the expiry of the said period, obtained order of injunction against the Corporation. Showing its displeasure against grant of interim injunction by the appellate Court, the Supreme Court in the aforesaid case observed that injunction normally is asked for but must not be for and granted to the public authorities or the respondents from proceeding with the execution of or implementation of any scheme of public utility or contracts granted for execution thereof, public interest is, therefore, one of the paramount and relevant considerations in either granting or refusing to grant ad interim injunction. In the case before the Supreme Court public purpose of removing traffic congestion was

sought to be served by acquiring the building for widening the road. By orders of injunction, for 24 years the public purpose was delayed. As a consequence execution of the project has been delayed and the cost of construction has mounted. The Courts in such cases where injunctions are to be granted should necessarily consider the effect on public purpose thereof and must also suitably mould the relief.

13. In the aforesaid settled legal position, in my opinion, two, Courts below were justified in refusing injunction in favour of the petitioners plaintiffs. The respondents defendants are therefore permitted to lay road or construct road upto the catchment area of Hatmati River through survey number 105 and 109 upto 104, 105 and 106. For laying further road through Survey Nos. 109 and 110, the respondents shall follow the procedure of law, namely, that of acquisition of land and shall thereafter be at liberty to lay the road.

14. In the result, this Civil Revision Application partially succeeds to the aforesaid extent only. Rest of the order passed by two Courts below is confirmed. No costs.