

(2019) 08 GUJ CK 0039
In the Gujarat High Court
Case No : R/Writ Petition (Pil) No. 181 Of 2016

Deepakumar Babubhai Dhimar And Others	APPELLANT
Vs	
State Of Gujarat And Others	RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Citation : (2019) 08 GUJ CK 0039

Hon'ble Judges : S.R. Brahmbhatt, J;A.P. Thaker, J

Bench : Division Bench

Advocate : P.M. Lakhan, R.P. Lakhani, Utkarsh Sharma, Dhaval D. Vyas, H.S. Munshaw, Sejal K. Mandavia

Final Decision : Disposed Of

Judgement

S.R. Brahmbhatt, J

1. Heard learned counsels appearing for the parties.
2. The present Public Interest Litigation is taken out by the public spirited citizens with following prayers:

(a) Issue a writ of mandamus or any other appropriate writ order or direction directing the concerned Respondents to take immediate action for removal of illegal and unauthorized construction made upon the government land under the disguise of construction of ST Bus Depo with shopping mall under PPP at Village Kadod, Taluka: Bardoli, District: Surat and also direct the said respondent to remove the construction of shopping centre constructed on the land bearing city survey No 156 and property No 985 at Village Kadod, Taluka: Bardoli, District: Surat which is made contrary to the earlier rejection order of the very Gram Panchayat.

(b) Direct the Respondent No 1-3 authorities to take the appropriate action against the erring president of District Panchayat Surat and the Sarpanch, Deputy Sarpanch and Talati mantry of Kadod Gram Panchaya, Taluka: Bardoli,

District: Surat for various illegalities, irregularities misappropriation of fund and misuse of power and position done by them. The Respondent No 1-3 authorities be directed to submit the action taken report before this Hon'ble High Court within stipulated time as may be fixed by this Hon'ble High Court.

(c) During the pendency and upto final disposal of this petition as interim relief the Respondents be directed not to carry out any further construction of any shopping centre or shopping mall with ST Bus Depo either on the land bearing city survey No 1562 property No 985 or on the Govt. Land situated at Bhindi Bazar at Village kadod, Taluka: Bardoli, District: Surat.

(d) Ad interim relief in terms of paragraph 11 (c) be granted;

(e) To pass any other appropriate and just order/s;"

3. Learned counsel appearing for the petitioner invited Court's attention to the annexures and the averments to indicate that the concerned sarpanch at the relevant point of time evinced scant regard of law and the procedure. He started construction work without waiting for proper sanction from the concerned authority namely D.D.O. and others.

4. Learned Counsel Ms. Mandavia, who represents Panchyat, respondent nos. 6 and 8, invited Court's attention to page 139 and paragraphs 4 onwards to indicate that now nothing survive in the matter and the petitioners' grievances have been taken care of as the legal proceedings were taken up and they have been brought to its logical conclusion.

5. Shri Lakhani, learned counsel appearing for the petitioner submitted that let there be a statement from Gram Panchayat that henceforth they would abide by the law and would not put up any construction without due permission.

6. This Court is of the view that the major grievance was qua the shopping center's construction and the following paragraphs from the Affidavit of Gram Panchayat, page 139 onwards, deserves to be set out hereinbelow for ready reference:

"4. It is denied that we are misusing our powers and position in connivance with other respondents including Gujarat State Road Transport Corporation. The main grievance of the petitioners are with regard to S.T. Depot and the shops being constructed by the Gram Panchayat and other grievances which are mentioned in the application dated 12-9-2013 which is at ANN.B. The application at ANN.B. has been given by the members of the Gram Panchayat to the Hon'ble the then Chief Minister. It is not correct to say that the authorities have not taken any action but pursuant to that application the authorities have taken any action but pursuant to that application the authorities have taken action u/s.57(1) of the Gujarat Panchayat Act. The petitioners have annexed all the orders alongwith the petition and therefore, I am not producing the same again, but the\show-cause notice was given u/s. 57(1) of the Gujarat Panchayat Act, to me as well as Deputy Sarpanch of Kadod Gram Panchayat. After hearing the parties on

5-12-2015 (ANN.P), the District Development Officer has removed me from the post of Sarpanch and Shri Bipinbhai Patel from the post of Deputy Sarpanch, against which we both have filed Appeal before the Development Commissioner, Gujarat State. After taking into consideration all the facts, the State of Gujarat has passed order on 19-4-2016 and our Appeal is partly allowed and the matter was remanded back to the District Development Officer for fresh consideration. Meanwhile, myself as well as Deputy Sarpanch were given charge of Sarpanch as the order removing us from the post of Sarpanch and Dy. Sarpanch has been set aside by the Development Commissioner. After we took the charge, again the District Development Officer has issued show-cause notice on 28-4-2016 calling upon us as to why action u/s.57(1) should not be taken against us. Thereafter the District Development Officer has heard me as well as Deputy Sarpanch in detail and found that the explanation given by us on 20-6-2015 has been accepted. The Hon'ble High Court's decision has been discussed by the District Development Officer and it is held that from 22-2-2015 the construction of shopping Centre has already been stopped and till today no further construction work has been carried out. Not only that but whatever Resolutions No. 192(2) and 192(3) which were passed by the village panchayat on 25-9-2014 with regard to construction of Shopping Centre unanimously. It means that when a Resolution is passed by all the members of the Panchayat, only Sarpanch and Deputy Sarpanch cannot be held liable. Beside this, the important fact is this that we have not used any amount from fund of village Panchayat, nor we have demanded for government grant. Whatever work is done, was from the amount of donations. Looking all theses facts, the District Development Officer on 21-6-2016 withdrew the show-cause notice which was given u/s.57(1) of the Gujarat Panchayat Act. It means that the Sarpanch as well as Deputy Sarpanch have not misused their powers and position and on 21-6-2016 everything is concluded and therefore, present petition is filed by the petitioners to harass us and again prayed to take action against us, which itself shows that the petition is filed with malafide intention.

5. I say and submit that on 25-9-2014, Gram Panchayat has passed Resolution No. 192(2) and took a decision to construct the S.T. Bus Stop alongwith the Shopping Centre on Bhindi Bazar, Kadod. Thereafter, a detailed proposal was forwarded to the District Development Officer by the village panchayat on 23-3-2015. In the proposal was forwarded for getting Technical and Administrative approval from the District Development Officer. In the proposal it was mentioned in detail that why the gram panchayat is thinking to construct the ST depot alongwith shopping centre. It is mentioned that as per the last census the population of the Kadod village is more than 11936. From the Kadod village about 275 total buses are routing. Not only that but the students of Kadod village as well as Miyavadi village are also travelling in those buses and they are more than 2800 in number. Therefore, there is necessity to have a bus stand and to provide the facility to the passengers in the season of monsoon as well as winter, bus station is necessary. The land in question was open and therefore, to avoid

the misuse of the land by encroachment and from throwing garbage by the people in the interest of public at large, earlier the panchayat has passed Resolution to construct the shopping centre with ST Bus Stop. But at the relevant point of time, we were not having knowledge of provisions of Panchayat Act and therefore, the Resolution was passed and construction was started. But as soon as the higher authorities have issued instructions to stop the construction, from 22-2-2015 the construction was stopped. A copy of the proposal dated 23-3-2015 submitted to the District Development Officer alongwith the annexures is annexed marked Annexure ?R.1? to this reply.

6. I say and submit that no reply from the higher authorities has been received, we have again sent a reminder letter to the higher authorities on 25-5-2015. After taking into consideration the proposal and reminder letter, the District Development Officer passed Resolution on 21-6-2016 and the Technical as well as Administrative Approval has been given and it is also mentioned in the Resolution that if the work is of more than 10 lacs of rupees, then the government can give sanction to the proposal and therefore, whatever Lay Out plan as well as material has been received from the Executive Engineer, Bardoli, was forwarded to the government for its approval.

7. Having regard to all the facts the Hon'ble court would find that it is not the fact that there is any misappropriation of money. We have started that work but as earlier we were not having knowledge about the provisions of the Act, however, thereafter the work was stopped and we have moved for technical as well as administrative approval from the authorities and after the same is received, we could start the work.

8. The another contention which is taken by the petitioners are that in constructing the shopping centre, we have misused the government money and misappropriated the money same is absolutely wrong. The Deputy District Development Officer has already made inquiry in this regard. However, in nut shell I am giving the details of the money as under.

9. I say that we have got prepared the plan from Architect and in the land in question total 40 shops were proposed to be constructed. For constructing these shops we have not used the panchayat money and therefore, we have prayed for donation and the public auction for the shops was conducted. There are total 70 persons who have taken part in the public auction and each person has deposited Rs. 500/- alongwith their application. The Receipt of the amount has been given by the Panchayat and said amount has been deposited in the account of the panchayat. Therefore, there is no misappropriation of any money. On 17-2-2015, the public auction was held and we have collected an amount of Rs. 10,000/- from 62 persons and therefore, total Rs. 6,20,000/- was collected as deposit and that also has been deposited in the account of the panchayat and Receipt to that effect was issued to each and every person. Out of 62 persons, 40 persons have given the shops on rent but 22 persons have taken back their deposit from the panchayat. Hence in all Rs. 10,50,000/- the Panchayat has collected and

deposited in the account of the Panchayat. Therefore, not a single amount has been misappropriated by us. The amount spend for giving advertisement has been spent from the panchayat fund. I say that no doubt we have invited the tender, collected the tender forms but thereafter as the petitioners made complaint, we have not opened the tender till date. Hence all the allegations of misappropriation of money are baseless and concocted. I say and submit that the petitioners are relying upon only one application i.e. dated 12-9-2013 at ANN.B. As stated hereinabove the action have already been taken by the higher authorities pursuant to the said application. However, I say and submit that this application was given by the members of the Gram Panchayat. The members of the Gram Panchayat have signed only because the petitioners have forced them to sign. There are total 9 persons who signed the said application, out of which Kokilaben Vyas and Girishbhai Rawal did not remain present in the meetings on 29-1-2013, 28-3-2013 and 26-4-2013. Therefore, naturally they were not having knowledge about the contents of the Resolution. But is is a procedure of the Panchayat that in last meeting whatever Resolutions were passed earlier, would be sanctioned by all the members. In the last meeting dated 31-5-2013, all theses two persons were present and they have signed and approved earlier resolution. It means that they have no grievance with regard to the Resolution which are passed earlier but only because of pressure from others, they have signed over the application. The other persons have also signed in last Resolution and approved the earlier Resolution. Therefore, the Hon'ble Court may not rely upon the contents which are mentioned in the application. The Resolution No. 72/1 and 72/2 were passed on 29-1-2013 and 26-2-2013 unanimously. When the Resolutions are passed unanimously by all the persons then Sarpanch and Deputy Sarpanch and Talati-cum-Mantri cannot be held liable personally.

10. I say and submit that the petitioners have contended that in City Survey No. 1562, there is property No. 985 upon which the Panchayat has granted the permission for construction. It is submitted that one Anandbhai Mistry has given an application to demolish all the property and construct the new one in Property No. 985 but the village people have taken objection. Therefore, on 21-10-2014 by passing Resolution No. 195/1, the Panchayat has not given permission for construction. But thereafter Anandbhai Mistry has given an application with modification on 20-3-2015 and therefore, looking to the revised Lay Out Plan, the permission for construction was given on condition that the said party keep 1.2 meters land, open and then start the construction. The petitioners are in knowledge of all these facts but only with a view to harass the office bearers, the wrong fact is mentioned that earlier the permission was not granted and again it was granted illegally. I say and submit that as stated hereinabove that all the Resolutions are passed by all the members, this particular Resolution dated 30-3-2015 is passed by 15 members of the Panchayat.

There were total 19 members, 15 members were agreed to give construction permission, two members have not signed and one member remained neutral and only one member has objected the same. Hence the Resolution dated

30-3-2015 was passed unanimously. I say and submit that the petitioner has made allegation against us that one Ramilaben Manharbhai Patel has given Rs. 15,000/- as donation and the Deputy Sarpanch has given Receipt to that effect but that amount has not been deposited in the account of Panchayat. Looking to this allegations, notice u/s.57(1) was issued to Deputy Sarpanch that why he should not be removed from the post of Deputy Sarpanch. The Deputy Sarpanch has given explanation that the amount of Rs. 15,000/- was given to Gram Vikas Samittee and not to the Gram Panchayat, but by mistake the Deputy Sarpanch has given Receipt of Gram Panchayat. After taking into consideration the explanation of Deputy Sarpanch and the affidavit which is filed by Ramilaben that she has given the amount to Gram Vikas Samittee, notice was withdrawn by the District Development Officer. A copy of the order passed by District Development Officer, Surat dated 4-7-2014 is annexed marked Annexure ?R.2? to this reply. Now again the same point is raised by the petitioners before this Hon'ble Court. This itself shows that only to harass us, time and again the same incidence have been mentioned by the petitioner. I say and submit that the petitioners have took a contention that he land bearing Block No. 173, has been given to Gram Panchayat by the Collector for the purpose of Crematorium but the Panchayat has unauthorizedly given permission to construct platform of Weigh-bridge and Cabin upon the said land. But the petitioners themselves have mentioned that District Development Officer has directed to put the land in its original position and the Panchayat has put the land in original position. Therefore, there is no question of giving unauthorized permission to anybody. I say and submit that we have collected Rs. 17 lacs in the name of Panni Samittee (Water Committee). It is submitted that there was necessity to construct the pipe line in entire village Kadod and therefore, we have collected the donation in Panni Samittee and given receipt of the said amount from Panni Samittee. The Panni Samittee is different from village panchayat and the audit is also done separately for Panni Samittee. I crave leave to produce Audit Report at the time of hearing if it is necessary. All other allegations which the petitioners have made are without any substance and are made with oblique motive. Therefore, I am not giving reply to them. The petitioners have also alleged that we have disposed off 400 trucks of soil and thousands of Baval Trees have been cut off illegally and disposed off. It is respectfully submitted that this is with regard to GIDC Miyawadi village and does not pertain to Kadod-Miyawadi group Gram Panchayat i.e. present Panchayat. I say and submit that the petitioners are not entitled to get any relief as prayed for by them. The petitioners have prayed to higher authorities to take immediate action for removal of illegal and unauthorized construction under the guise of construction of ST Bus Depot with Shopping Mall. It is submitted that I have already mentioned hereinabove that proposal for Technical and Administrative approval have already forwarded by the District Development Officer and for further action, the proposal is pending with the government. Therefore, there is no question to remove the shops. The petitioners have prayed not to allow further construction with regard to shopping mall. It is submitted that as stated earlier, that from 22-2-2015 the construction has already been stopped and

therefore, petitioners are not entitled to get any other relief as prayed for and the petition requires to be rejected."

7. In view thereof, we are of the opinion that the actions have been brought to its logical end and the statement insisted by the counsel cannot be insisted upon, as the procedural law and the substantive law both warrant strict abiding and obedience by the concerned. It is always open to the public spirited citizens like the petitioners to approach in case, if there is deviation recorded.

8. With these observations, the petition is disposed of.