
(2003) 09 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 7837 of 2003

Janaksinh Mohansinh Chavda

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Panchayats Act, 1961 — Section 2(14), 249, 249(1), 3, 9

Citation : (2003) 09 GUJ CK 0015

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Devang Lathigara, for the Appellant; Phalguni Patel, AGP for Respondent No. 1, Sejal K. Mandavia, for Respondent No. 2-3 and Chirag M. Pawar, for the Respondent

Judgement

K.A. Puj, J.—RULE. Ms. Phalguni Patel, learned AGP waives service of rule on behalf of respondent No.1, Ms. Sejal K. Mandavia waives service of rule on behalf of respondent Nos.2 and 3, Mr. Chirag M. Pawar waives service of rule on behalf of respondent No.4.

2. The present petition is filed under Article 226 of the Constitution of India challenging the order passed by the Taluka Development Officer, Kamrej on 21.05.2003 whereby the Resolution No. 138 passed in the Gram Sabha of Bhada, Tal. Kamrej on 20.05.2003 has been suspended.

2. It is the case of the petitioner that Gram Sabha of village Bhada has unanimously resolved on 20.05.2003 to lease out a road land to the petitioner for a period of three years as the road has been constructed by the petitioner at the cost of Rs.15 to 17 Lacs. The T.D.O. by its order dtd.21.05.2003 suspended the said Resolution in exercise of his powers u/s 249 of the Gujarat Panchayat Act. While suspending the said Resolution, it is observed by the T.D.O. that prior permission of the Collector has not been obtained.

3. Mr. Devang Lathigara, learned advocate appearing on behalf of the petitioner submits that the T.D.O. has no power under Sec.249 of the Gujarat Panchayat Act to suspend the Resolution passed by the Gram Sabha. He has drawn my attention to the provisions contained in Sec.249(1) of the Act which reads as under :-

"If, in the opinion of the Taluka Development Officer the execution of any order or resolution of a panchayat subordinate to the taluka panchayat or the doing of anything which is about to be done, or is being done by or on behalf of such panchayat, is unlawful, may by order in writing suspend, the execution or prohibit the doing thereof."

The opening words of Sec. 249 (1) makes it clear that if, in the opinion of the T.D.O., the execution or any order or resolution of a panchayat subordinate to the taluka panchayat is unlawful, in that case, the T.D.O. may by an order in writing suspend the said order or resolution. Here in the present case, admittedly, the Resolution was passed by the Gram Sabha and not by the Gram Panchayat and hence, the T.D.O. cannot exercise his powers u/s 249 of the Act.

4. Mr. Lathigara has further drawn my attention to the Provisions contained in Sec. 94 (2) of the Act which reads as under :-

"It shall be open to the gram sabha to discuss any or all of the matters placed before it under sub-section (1) and the panchayat shall consider suggestions, if any, made by the gram sabha."

As per the said Provision, it is the function of the Gram Sabha to discuss the issues as mentioned in Section 94 (1) and take decision thereon. However, the said decision is in the form of suggestion and the same is to be placed before the Panchayat and the Panchayat will consider the same. The T.D.O's right u/s 249 would come into play only when the Panchayat passes the resolution. The action of the T.D.O. in the present case, is, therefore, amounting to pre-empting the issue, as before the Resolution No. 138 passed by the Gram Sabha is placed before the Panchayat for its consideration, the T.D.O. has disapproved the said Resolution. The Court should, therefore, hold that the same is contrary to the Provisions contained in Section 249 of the Act.

5. Ms. Phalguni Patel, learned AGP appearing on behalf of the respondent No.1 has submitted that the T.D.O. has taken the resolution passed by the Gram Sabha as the resolution passed by the Gram Panchayat and hence, the impugned order was passed.

6. Ms. Sejal K. Mandavia, learned advocate appearing for respondent Nos.2 and 3 has also submitted the same thing. She has, however submitted that the Resolution passed by the Gram Sabha is nothing but the Resolution passed by the Gram Panchayat and to place the same before the Gram Panchayat for its consideration is merely a procedural formality. The order of T.D.O. should not, therefore, be disturbed.

7. Mr. Chirag M. Pawar, learned advocate appearing on behalf of respondent No.4 has submitted that if the resolution will be placed before the Gram Panchayat, the same will be considered, in accordance with law.

8. After having heard learned advocates appearing for the respective parties and after having gone through the order and the Resolution in question, the Court is of the view that the T.D.O. has exercised his powers u/s 249 of the Act under some misconception of law as the resolution passed by the Gram Sabha was yet to be placed before the Gram Panchayat and against the decision of the Gram Panchayat, the T.D.O. can invoke his powers and jurisdiction u/s 249 of the Act. Before that stage has come, the impugned order was passed by the T.D.O.

9. Under the Provisions of Gujarat Panchayat Act, the powers and functions of the Gram Sabha as well as the Gram Panchayat are different. Section 2 (14) of the Act defines the Panchayat which means a Village Panchayat, Taluka Panchayat or District Panchayat. Section 3 of the Act discusses about the establishment of the Panchayat of different tiers and it states that there shall be in each district, village Panchayat for each village, Taluka Panchayat for each Taluka and District Panchayat for each District. Section 4 talks about the Gram Sabha which says that there shall be a Gram Sabha for a village performing such functions as are provided by or under this Act. Section 9 of the Act deals with Constitution of village Panchayat. Section 51 of the Act deals with Village Panchayats and Chapter 5 Part I of the Act makes the Provisions relating to village panchayat which inter alia includes the conduct of business, administrative powers and duties, property and fund and accounts etc. of Panchayats. Section 93 of the Act talks about the meeting of the Gram Sabha and Sub-section (1) of Section 93 states that there shall be held at least two ordinary meetings of the Gram Sabha every year on such date, at such time and place, as may be prescribed but in no case the intervening period between two ordinary meetings shall be less than three months. Section 94 casts an obligation on the Panchayat to place before Gram Sabha the statement of accounts etc. and it also discusses about the duties of Gram Sabha. As observed earlier, Sub-section (2) of Section 94 provides that it shall be open to the Gram Sabha to discuss any or all of the matters placed before it under sub-section (1) and the Panchayat shall consider suggestions, if any, made by the Gram Sabha. Section 99 of the Act makes the Provisions regarding administrative powers of Panchayat and it states that 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 1.

10. On examination of the aforesaid statutory provisions, it becomes clear that in the present case, the Gram Sabha has made certain suggestions and the same were recorded in the Resolution No. 138. Before the said Resolution is considered by the Gram Panchayat, the same was suspended by the T.D.O., while exercising powers u/s 249 of the Act. As per the scheme of the Act, the T.D.O. can invoke

his powers or jurisdiction u/s 249 only when the decision is taken by the Gram Panchayat and not by the Gram Sabha. This Court is, therefore, of the view that the T.D.O. is not justified in suspending the Resolution No. 138 passed by the Gram Sabha. The order of the T.D.O. is, therefore, not in consonance with the Provisions of the Act and hence, the same is quashed and set aside. It is however clarified that the Resolution No. 138 which was passed by the Gram Sabha is now required to be placed before the Gram Panchayat and the appropriate decisions may be taken by the Gram Panchayat without being influenced by the order passed by this Court in the present petition.

11. Subject to the above, the petition is accordingly disposed of. Rule is made absolute without any order as to costs.