

(2011) 11 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 22397 of 2005

Jetunbibi Husenbhai Malek

APPELLANT

Vs

Sarat Gram Panchayat and Others

RESPONDENT

Date of Decision : 10-11-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 11 GUJ CK 0050

Hon'ble Judges : Mr. Justice J.B. Pardiwala, J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Rukhsana M. Pathan, for the Appellant; Harnish V. Darji for Respondent(s) : 1, Mr. Mihir Brahmbhatt, for the Respondent

Judgement

Honourable Mr. Justice J.B. Pardiwala

1. This matter has been called out twice. Learned advocate Ms. Rukhsana M.Pathan is not present even on the second call.

2. Heard learned advocate Mr. Harnish V. Darji appearing for respondent no.1.

3. In this petition preferred under Article 227 of the Constitution of India, the petitioner - original plaintiff seeks to challenge the judgment and order dated 3rd September 2005 passed by the Presiding Officer, Fast Track Court No.2, Vadodara in Misc. Civil Appeal No.339/2000, whereby the Fast Track Court No.2, Vadodara dismissed the Appeal preferred by the petitioner herein confirming the judgment and order passed by the 6th Jt.Civil Judge (S.D.), Vadodara dated 30th November 2000 below Exh.5 in Regular Civil Suit No.369/1999.

4. Facts relevant for the purpose of deciding this petition can be summarised as under :-

1. The petitioner - original plaintiff instituted Regular Civil Suit No.369/1999 against respondent no.1 Sarar Gram Panchayat and respondent no.2 Sarpanch of the said Gram Panchayat.

2. It appears that the Panchayat passed a resolution dated 18th May 1996 allotting land in favour of the petitioner for carrying on business. After the allotment, the petitioner constructed a cabin on the said land and started carrying on small business. Annual rent of Rs.100=00 was fixed. Apprehending eviction at the end of the Panchayat authorities, the petitioner preferred suit and prayed for injunction.

3. It appears that the lease was only for a period of one year and subsequently, there after, it was not extended at any point of time. Since the period of lease was not extended, the possession on the said land became unlawful and that is the reason why the Panchayat decided to take over the possession by evicting the petitioner from the land in question.

5. Both the Courts below have concurrently held that there is no prima facie case in favour of the petitioner and her possession as on today can be termed as unlawful because the lease period was not extended by the Panchayat.

6. In view of the fact that there are concurrent findings of both the Courts below, I am not inclined to disturb the concurrent findings of facts in exercise of my supervisory jurisdiction under Article 227 of the Constitution of India.

7. In this view of the matter, I am left with no other option but to reject this petition.

8. The petition is hereby rejected with no order as to cost. Interim relief granted earlier stands vacated forth with. Rule is discharged.

9. It is informed by Mr. Darji, learned advocate appearing for the Panchayat that since a long period of time the cabin is closed and the petitioner is not carrying on any business in the said cabin.

10. However, it is clarified that if at all the Panchayat wants to take over the possession as this Court has vacated the relief, before taking over the possession a notice may be issued to the petitioner giving her time of fifteen days to handover the possession of the land.