

(1997) 07 GUJ CK 0025

In the Gujarat High Court

Case No : Spl. Civil Application No. 4960 of 1997

Kamlesh Manilal Mehta and Others

APPELLANT

Vs

Amreli Municipality and Another

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Guj 77

Hon'ble Judges : R.A. Mehta, Acting C.J.;N.N. Mathur, J

Bench : Division Bench

Advocate : P.J. Kanabar, for the Appellant; Tushar Mehta, for Repondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Mehta, Actg. C.J.

1. The ten petitioners have filed this petition in the name of public interest litigation challenging the construction of "a shopping center in the playground of Government Girls' School" in the town of Amreli.

On behalf of the respondents, an unaffirmed affidavit-in-reply is filed with an undertaking that it will be affirmed by tomorrow and copies thereof have been given to the learned advocate for the petitioners.

The affidavit-in-reply alleges that the present litigation is gross abuse of the process of the Court and of public interest litigation. It is submitted that one Ashokkumar Kava had filed Civil Suit No. 268 of 1995 claiming that he was a tenant of part of the open land and the municipality should be restrained from putting up any construction of the shopping centre at that place and from interfering with the possession of that plaintiff. The ex parte interim relief was granted and after hearing the defendant-municipality, it was vacated. Same thing happened in the appeal before the District Court where the ex parte stay was granted and ultimately the Misc. Appeal was dismissed and interim relief was

vacated. In the revision application before the High Court also, ex parte interim relief was granted and subsequently vacated and ultimately the Supreme Court also dismissed the SLP on 27-11-1996.

2. Immediately thereafter, the public interest is invoked. Within a week, a notice is issued by one Girdharlal Bijumal, the petitioner No. 6.

3. On 6-7-1997, the unsuccessful plaintiff issued a public advertisement that he was in possession of the land and issuing a warning to the intending buyers of shops that a suit was pending (even though findings of all the Courts were that he was prima facie not in possession). The municipality had also issued a counter advertisement on 8-7-1997 pointing out the history of litigation. On 9-7-1997, the present petition is affirmed and moved on the next day for urgent orders on 10-7-1997. These dates clearly go to show without any doubt that the present petitioners have acted as proxies of other persons and not genuinely interested in any public cause.

4. In the petition, it is averred that the action of the respondents of constructing a shopping centre in the playground of the Government Girls' School is illegal. On behalf of the respondents, it is pointed out that the playground of Girls' School is on the other side and the place where the shopping centre is constructed is not a playground at all. In para 2.2 of the petition, it is averred that the main door of the school faces north and on the south east and west, there is a strip of land which is open and except that, there is absolutely no open land available to the Girls' School. This averment is also shown to be utterly false because the playground is on the other side. Thus, the petition suffers from material misstatements and, therefore, it deserves to be dismissed.

5. On behalf of the municipality, it is pointed out that this municipality had been in great financial crisis and had not been able to pay the water charges and electricity dues to the Gujarat Electricity Board and essential services to the entire public of Amreli municipality were likely to be stopped and Administrator was appointed and arrangement was worked out with Gujarat Electricity Board to make payment and a programme was chalked out to make payment of dues and it was suggested to the District Collector, Amreli that those lands which are incapable of being put to any effective use should be used for the purpose of making constructions of shops out of which the municipality can earn and discharge its financial liabilities, it is pointed out that even in respect of this shopping centre, whatever amounts have been received by way of advance payments have been paid to the Gujarat Electricity Board. Such amounts are in the vicinity of about Rs. 25 lacs. Other amounts are likely to be realised soon.

6. Even prior to putting up this construction, this strip of land was used as a dumping ground for waste of the area and as seen from the photograph, it was a nuisance to the public as well as to the school. While putting up the present construction, not only a shopping centre is coming up, but it will also beautify the place and utilise the land in a most useful and beautiful manner; at the same

time, generating large funds for the municipality to discharge its obligations in seeing that the essential services to the citizens of Amreli are not discontinued.

7. The action of the municipality has been taken in public interest. The present attempt is directly against the public interest and is not at all bona fide and such frivolous and improper litigation in the name of PIL deserves to be strongly deprecated and an example is required to be set to discourage this type of litigation.

8. Hence, this petition is dismissed. Notice discharged. The petitioners to pay to the municipality the costs quantified at Rs. 5000/- (Rs. Five thousand only) within two weeks from today.