

(1991) 09 GUJ CK 0025
In the Gujarat High Court

Kanji Haridas Goradia and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 96(4), 96(4)

Citation : (1994) 1 GLR 375

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner-Panchayat is aggrieved by the order of the respondent authority resuming 176 Acres of gauchar land for public purpose of allotting the land to Scheduled Caste and Backward Class people. On representation of such down trodden people, Mamlatdar, Una had made a proposal for resumption of gauchar land of village Delvada and to allot 182 Acres of the Government waste land to that village for gauchar.

2. This resumption u/s 96(4) of the Gujarat Panchayats Act is challenged on the ground that it is in violation of the principles of natural justice and fair play.

Section 96(4) provides that where any open site or waste vacant or grazing land vesting in the Government has been vested by the Government in the Panchayat, then it shall be lawful for the State Government to resume at any time such site or land if it is required by it for any public purpose. It is, thus, clear that there is ample power in the Government and it is lawful for the Government to resume the land it has vested in the Panchayat.

3. However, the question is how this power is to be exercised. The petitioner-Panchayat has submitted that there was no inquiry and no opportunity of hearing was given to the petitioner-Panchayat. In the affidavit-in-reply, it is stated that the order in question has been passed only after due deliberation and due consideration and the land has been resumed to be utilised for public purpose and the petitioner has no right to retain the land as gauchar land and it was not

necessary to hear the people of Delvada village before passing the said order. It is, thus, clear that no hearing has been given to the village people, Nagar Panchayat or Gram Panchayat from whose possession the land is to be resumed.

4. The Gram Panchayat is a vitally interested party. The land is vested in the Gram Panchayat for the purpose of gauchar and in rural economy, this requirement is vitally important. If the gauchar land is to be resumed from the Panchayat, fairness requires that the said Panchayat should be given an opportunity of hearing. Simply because it is, lawful for the Government to resume the land, it does not mean that it can resume the land in an arbitrary or high-handed manner. Even in order to arrive at a fair and reasonable administrative decision, the authority is expected to give an opportunity to the concerned and affected Panchayat to put forward its case. After hearing them, it is open and lawful for the authority to come to its own conclusion about the resuming of the land from the Panchayat for public purpose of the Government. In the present case, admittedly there is no such hearing. Hence, the impugned order of resumption is required to be quashed and set aside.

5. Accordingly, the petition is allowed and rule is made absolute by quashing and setting aside the order of resumption dated March, 13, 1980 with a direction that it is open to the authority to resume the land after following proper and reasonable procedure of affording an opportunity to the affected Panchayat. It is not necessary to give any hearing to the village people at large. The stated public purpose of providing agricultural land to the down trodden people is an object for which if the Government thinks it fit to do so, the Government can do so after following proper procedure. No order as to costs.