

(2023) 05 GUJ CK 0126
In the Gujarat High Court

Case No : R/Special Civil Application No. 9348, 9367 Of 2023

Mahbubhai Rahimbhai Chokiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 05 GUJ CK 0126

Hon'ble Judges : S.V. Pinto, J

Bench : Single Bench

Advocate : Mohmedsaif Hakim, Nikunj Kanara, HS Munshaw, Mohmedsaif Hakim

Final Decision : Disposed Of

Judgement

S.V. Pinto, J

1. The captioned petitions are filed under Article 226 of the Constitution of India seeking following main reliefs:

“(A) THIS HON’BLE COURT MAY BE PLEASED TO hold and declare that the impugned notice dated 23/05/2023 (Annexure-A), the impugned order dated 26/05/2023 (Annexure-B) and the actions thereupon by the respondent No.2 and 3 i.e. Bhavnagar Nagarpalika and its Town Development Officer are unconstitutional and illegal and thereby be pleased to quash and set aside the same.

(B) THIS HON’BLE COURT MAY BE PLEASED TO order, direct and restrain the respondent No.2 and 3 i.e. Bhavnagar Mahanagar Palika and its Town Development Officer from proceeding further and implementing impugned notices dated 23/05/2023 (Annexure-A), impugned orders dated 26/05/2023 and actions thereupon without following due process and procedure of law.

(C) Pending admission, hearing and till final disposal of present petition THIS HON’BLE COURT MAY BE PLEASED TO stay the execution, implementation and

operation of the impugned notices dated 23/05/2023 (Annexure-A), impugned orders dated 26/05/2023 (Annexure -B) and actions thereupon. Further THIS HON'BLE COURT MAY BE PLEASED TO direct the respondents to maintain status quo qua the hutments / small houses of the petitioners as mentioned in the impugned notices dated 23/05/2023 and impugned orders dated 26/05/2023."

2. The present petitioners have challenged the notice dated 23/05/2023 and the order dated 26/05/2023 ordering to remove illegal construction. It is the submission of the learned Advocates for the petitioners that the respondents No.2 and 3-authorities have neither followed the provisions of Section 260(1) of the GPMC Act; nor sufficient time has been granted to the petitioners to respond to the notices and; straightway the order to remove the illegal constructions has been passed.

3. In response to the notice, learned Advocate Mr.H S Munshaw appears for the respondents No.2 and 3-authorities and is permitted to file his Vakalatnama.

4. Learned Advocate Mr.Munshaw for respondents No.2 and 3 submits that Mr.Nitesh B Vadhvaniya, TDO, BMC & Mr.Falgun M Shah, Estate Officer, BMC are present before the Court. He further submits that today he telephonically talked with Mr.N V Upadhyay, Commissioner, BMC who has stated that the respondents No.2 and 3 are ready and willing to grant 15 days' time to the petitioners to submit their reply to the notice/s and thereafter after 15 days thereof the necessary orders will be passed.

5. In view of such statement made at bar by learned Advocate Mr.Munshaw, learned Advocates appearing for the petitioners does not press for these petitions. However, learned Advocate for the petitioners submit that the petitioners may be given an opportunity of hearing either through their representatives or their Lawyer and petitioners will not seek any adjournment and will fully co-operative with the hearing before the respondents No.2 and 3 authority. Accordingly, ordered.

6. The petitions stand disposed of as not pressed at this stage.