

(1966) 10 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 576 of 1962

Motibhai Garbadbhai

APPELLANT

Vs

F.N. Rana and Others

RESPONDENT

Date of Decision : 06-10-1966

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 142(3)
Constitution of India, 1950 — Article 227

Citation : AIR 1967 Guj 280 : (1967) 8 GLR 333

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Advocate : M.M. Patel, for the Appellant; G.T. Nanavati, Asst. Govt. Pleader and R.M. Vin, for the Respondent

Judgement

(1) This petition is directed against an order passed by the Commissioner, Baroda Division, u/s 142 of the Bombay Village Panchayats Act, 1958, by which the Commissioner set aside the order of the Collector staying the operation of two resolutions dated 1st November 1961 passed by the Gram Panchayat of Lengasthali under the same Section of the Act. The petitioner is a resident of village Lengasthali, Taluka Dabhoi, District Baroda, and he owns a house abutting on the eastern side of a public road running North-South in the said village. Respondent No. 4 is also a resident of the said village and his house abuts on the western side of the public road. It appears that sometime in 1960 the fourth respondent erected four wooden posts on a portion of the public road admeasuring 20 feet North-South and 9 feet East-West immediately in front of his house and started storing fuel and other articles on the enclosed portion of the public road. The petitioner thereupon complained to the Gram Panchayat of Lengasthali stating that the fourth respondent had encroached upon a portion of the public road belonging to the Gram Panchayat and that the fourth respondent should be directed to remove the encroachment. No action was taken on the application of the petitioner but in the meantime the fourth respondent made an application to the Gram Panchayat alleging that the land admeasuring 20 feet

North-South and 9 feet East-West which was enclosed by him by four wooden posts was of his private ownership and did not form part of the public road and praying that permission to put up a construction on the same be granted to him. The petitioner and one Iswarbhai Garbadhbhai filed written objection against the application of the fourth respondent and the contention which they took up was that the said land in respect of which permission to construct was sought by the fourth respondent was part of the public road and the fourth respondent was, therefore not entitled to put up any construction on the same. The petitioner and Ishwarbhai Garbadhbhai urged that the public road was being used for passage for the residents of the locality as also for carts, bullocks etc., and if permission was granted to the fourth respondent to construct on the said land the result would be that the width of the public road would be reduced only to 2 to 3 feet and it would not be possible for the residents of the locality including the petitioner to pass and repass along the public road by themselves as also with their carts and bullocks. Notwithstanding this objection raised by the petitioner and Ishwarbhai Garbadhbhai, the Gram Panchayat at its meeting held on 1st November 1961, passed two resolutions, one accepting the claim of the fourth respondent to be the owner of the said land in respect of which permission to construct was sought by him and the other granting him permission to construct on the land. The petitioner thereupon moved the Collector u/s 142 of the Act for suspending the execution of the said resolutions passed by the Gram Panchayat were unlawful and by an order dated 30th April 1962 purported to be passed u/s 142 sub section (1) stayed the operation of the said resolutions and directed that the Gram Panchayat should consider the matter in the light of the observations made in the order and get the encroachment made by the fourth respondent removed. The Collector immediately after making this order submitted a report of the case to the Commissioner u/s 142 sub section (3) and the Commissioner by an order dated 18th May, 1962 set aside the order of the Collector on the ground that it was not possible to say that the resolutions passed by the Gram Panchayat were unlawful. The petitioner thereupon preferred the present petition challenging the order passed by the Commissioner.

(2) When the hearing of the petition commenced Mr. R.M. Vin, learned Advocate appearing on behalf of the fourth respondent, raised a preliminary objection against the maintainability of the petition and the objection was that the petition being one under Article 227 of the Constitution was not maintainable since the Commissioner whose order was sought to be challenged in the petition was not a Tribunal within the meaning of that Article. If this preliminary objection is well founded, that would be sufficient to dispose of the petition and in that event it would be unnecessary to go into the merits of the questions raised in the petition and it would therefore, be convenient to first consider the validity of the preliminary objection. The petition is admittedly a petition preferred under Article 227 and it is so stated expressly and in so many terms in paragraph 7 of the petition. Now the power of superintendence of the High Court under Article 227 can be exercised only in respect of Courts or tribunals subordinate to it and,

therefore, the order of the Commissioner in the present case can be challenged under Article 227 only if the Commissioner is a Court or tribunal subordinate to the High Court. The Commissioner is admittedly not a Court and the only question can, therefore, be whether he is a tribunal within the meaning of Article 227. Now what is a tribunal within the meaning of Article 227 came up for consideration before Vakil J., in *Pursottamdas v. D.S. Patel* (1966) 7 Guj LR 443 and in that case Vakil J., in an elaborate and exhaustive judgment held that the only basic and firm test to determine whether a particular body or authority is a tribunal or not within the meaning of Article 227 is whether it has been constituted under a statute and is an adjudicating authority which is vested with the judicial power of the State. The authority in question must, therefore be vested with the judicial power of the State before it can be regarded as a tribunal for the purpose of Article 227 and that necessarily requires that functions to be discharged by the authority must be if not judicial at least quasi judicial functions. If the authority constituted under the statute has to discharge functions which are administrative in nature, it would not be exercising the judicial power of the State and in that event it would not be a tribunal within the meaning of Art. 227. It is, therefore, necessary to examine what is the nature of the power exercised by the Commissioner u/s 142 of the Act. The power of the Commissioner is to be found in sub-section (3) of Section 142 and it is the same as that of the Collector under sub section (1) of Section 142. Section 142 sub section (1) provides that if, in the opinion of the Collector, the execution of any order or resolution of a Panchayat or the doing of anything which is about to be done, or is being done by or on behalf of the Panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of peace, or is unlawful, he may by order in writing suspend the execution or prohibit the doing thereof. The condition precedent to the exercise of the power of the Collector u/s 142 sub section (1) is, therefore, the formation of his opinion that the execution of any order or resolution of a Panchayat or the doing of anything which is about to be done, or is being done by or on behalf of a Panchayat, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of peace, or is unlawful. This is abundantly clear from the language of the Section itself and no authority is needed in support of it but if any authority were needed it is to be found in the decision of a Division Bench of the Bombay High Court in *Shankarappa Ramappa Sidalali Vs. The State of Bombay*, . The section which came up for consideration before the Bombay High Court in that case was Section 99 of the Bombay Village Panchayats Act, 1933, and that Section was in identical terms as the present Section 142 and construing that Section. Chagla, C.J., delivering the judgment of the Court observed:

"Turning to Section 99(1) what is material is the opinion of the Collector and if the Collector honestly forms the opinion that any order or resolution of a Panchayat, or the doing of anything which is about to be done or is being done by or on behalf of a Panchayat is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, or is unlawful, he may, by

order in writing, suspend the execution or prohibit the doing thereof. If the opinion, as I just said, is honestly formed, it is not for this Court to consider the validity of that opinion. Therefore when the Collector says that he had formed the opinion that there was a likelihood of the breach of the peace, he was entitled to pass the order. Even assuming that the Panchayat was within its powers in passing the resolution about the Kannad language, even assuming that the Collector's view about bye-law 41 is erroneous, what matters and what is material for the purpose of S. 99 is whether the Collector formed the opinion about the likelihood of the breach of the peace. If the Collector formed that opinion, there is an end of the matter. The making of the order u/s 142 sub section (1) is, therefore, made dependent upon the subjective opinion of the Collector as regards the matters set out in the sub-section and once that opinion is reached by the Collector, the Collector can make the order and the Court cannot sit in appeal over the opinion formed by the Collector. Now, if this be the position, it can be hardly be disputed that the function discharged by the Collector u/s 142 sub-section (1) is an administrative function and not a quasi judicial one. It is now well settled by several decisions of the Supreme Court that if the exercise of a power by an authority is made dependent upon the subjective satisfaction of the authority as regards matters specified in the statute, the exercise of the power by the authority must be held to be administrative and not quasi judicial. I pointed out Patel Gandhal Somnath and Others Vs. State of Gujarat and Others, , that where the language of a statute indicates with sufficient clearness that the personal satisfaction of the statutory authority on certain matters, about which he has to form an opinion, founds his jurisdiction to do a certain act or to make a certain order, the function should be regarded as an administrative function as opposed to a quasi judicial function. The function of the Collector u/s 142 sub-section (1) is therefore, an administrative function and not a quasi judicial one and consequently the function of the Commissioner u/s 142 sub section (3) must also be held to be an administrative and not quasi judicial function. The Commissioner was therefore not a tribunal within the meaning of Art. 227 and the present petition challenging, the order of the Commissioner is not maintainable. In this view of the matter it is not necessary to consider the various grounds urged on behalf of the petitioner challenging the validity of the order of the Commissioner.

(3) The petition, therefore, fails and the rule is discharged with no order as to costs.

(4) Rule discharged.