

(2021) 06 GUJ CK 0079

In the Gujarat High Court

Case No : R/Writ Petition (PIL) No. 242 Of 2016

Mukesh Kumar Gulabshankar Joshi

APPELLANT

Vs

Sarpanch - Kumbhariya Gram Panchayat & 5 Other(S)

RESPONDENT

Date of Decision : 15-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Panchayats Act, 1993 — Section 57
Gujarat Land Revenue Code, 1879 — Section 61

Citation : (2021) 06 GUJ CK 0079

Hon'ble Judges : R.M.Chhaya, J; Nirzar S. Desai, J

Bench : Division Bench

Advocate : PJ Mehta, Prakash G Pandy, Vaibhav A Vyas, Manoj T Danak

Final Decision : Disposed Of

Judgement

R.M.Chhaya, J

1. Heard Mr. Paresh J. Mehta, learned advocate for the petitioner, Mr. Manoj Danak, learned advocate for respondent no.1, Mr. Vaibhav Vyas,

learned advocate for respondents no.3 and 4 and Mr. Prakash Pandya, learned advocates for respondents no.5 and 6. Though served, no one appears

for respondent no.2.

2. Leave to add State of Gujarat, through Secretary, Panchayat and Rural Housing Department as party respondent no.7. Mr. Dhawan Jayswal,

learned AGP waives notice on behalf of the newly added respondent. Mr. P.J. Mehta, learned advocate for the petitioner shall provide copy of this

paper book to the office of the Government Pleader.

3. As short issue is involved in this petition, the petition is taken up for its final disposal with the consent of the learned advocates appearing for the

parties.

4. The petitioner who happens to be an editor of weekly newspaper Mahatrap published from Palanpur, District Banaskantha, posing him to be a

public spirited person as prayed for the following reliefs -

â??(A) Be pleased to pass interim relief to the effect of demolition of existed shops constructed in the Govt. waste surplus land of Revenue Survey

No. 62 of nearby Koteswar Bus Stand forthwith by directing the Respondent No. 1 and 2 in the interest of Justice.

(B) Be pleased to issue writ of Mandamus against Respondent No. 2 for appropriate action U/s 57 or any other relevant actions contemplated under

Gujarat Panchayat Act, 1993 against Respondent No. 1 Sarpanch Kumbhariya Gram Panchayat for inaction and absolute isolation in the subject

matter recommending to DDO Banaskantha for prompt and necessary Disciplinary action in the subject matter against involved public servants

respected in the interest of justice.

(C) Be pleased to award exemplary and compensatory cost in tune of Rs. 25,000/- in favour of Petitioner recovering from Respondent No. 1

Sarpanch Kumbhariya Gram Panchayat in the interest of Justice.

(D) Be pleased to pass appropriate order for dispensing with the Affidavit of Petitioner as well as Court fees in light of convert of SCA No. 6769 of

2016 order dated 27/9/2016 having been paid necessary court fee as well as foregoing Affidavit of Petitioner in said Petition in the interest of

Justice.â??

5. As far as prayers prayed for in para 12(B) is concerned, it may be noted that the petition was filed way back on 21.04.2016, i.e., before almost

more than four years. Even Mr. P.J. Mehta, learned advocate appearing for the petitioner has admitted that much time has passed and therefore, this

Court is of the opinion that no such blanket direction to take action under Section 57 or other provisions of the Gujarat Panchayat Act can be resorted

to against the Sarpanch. Moreover, Respondent no.1 is no more Sarpanch of the Kumbhariya Gram Panchayat.

6. The complaint which is raised in this petition is to the effect that upon Revenue Survey No. 62 situated near Koteswar Bus Stand at Kumbhariya,

Taluka Danta of District Banaskantha, which is Government land, encroachments have been made by private persons. In effect, in the prayer clause,

what is prayed for is for interim relief and no final prayer is prayed for in the petition. Still however, considering that the matter is a public interest

litigation, the said aspect needs to be examined.

7. We have also gone through the affidavit-in-reply filed by the private respondents, which is in fact not controverted on facts by the petitioner. It

would be appropriate to refer to one important aspect that earlier, some citizens of very village did file a writ petition under Article 226 of the

Constitution before this Court by way of filing SCA No 2010 of 2018 and the same came to be disposed of by one of us (R.M. Chhaya, J.) wherein on

02.02.2018, the following order was passed -

â??Heard learned counsel for the parties.

2. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the impugned notice/order dated

21.01.2018 issued by respondent No.4 under Section 61 of the Gujarat Land Revenue Code as well as another notice dated 18.01.2018

issued by respondent No.5.

3. It appears that pursuant to the notice dated 18.01.2018, communication/ notice dated 21.01.2018 is addressed, however, considering the

provisions of Sections 61 as well as 202 of the Code and so also the very connotation â??show-cause noticeâ? clearly indicates that there

should be an opportunity to show cause.

4. Be that as it may, the petitioners shall file detailed reply, if any, before respondent No.4 â?" Mamlatdar, Danta, latest by 28th February,

2019 and before taking any action pursuant to the impugned notice dated 21.01.2018, respondent No.4 shall give an opportunity of being

heard to authorized person of the petitioners and pass a reasoned order upon the impugned notice after considering the contentions that

may be raised by the petitioners. It is provided that till the aforesaid exercise is carried out, no further action be taken against the

petitioners.

5. With the above observation and direction, present petition stands disposed of. It is clarified that this Court has not expressed any opinion

on merits.

Direct Service is permitted.â??

Mr. P.J. Mehta, learned advocate appearing for the petitioner reiterates that even though this Court directed, no actions are taken.

7. It is no doubt true that Survey No.62 is a panchayat land. It is also the case of the petitioner that Sarpanch of Kumbhariya Gram Panchayat, after

the order was passed by this Court, requested the Government Officials and more particularly Mamlatdar, Danta to take appropriate steps under

Section 61 of the Gujarat Land Revenue Code. However, no actions have been taken, which is also an admitted position. The Government largesse

cannot be permitted to be withered away in the manner which is alleged by the petitioner. However, the authorities are also bound by law and are

required to follow the procedure as prescribed under law.

8. In view of the aforesaid, the following directions are given -

1) The newly added respondent no.7 shall get the land of Survey No. 62 situated at village Kumbhariya Taluka Danta, District Banaskantha, surveyed

by Mamlatdar, Danta within a period of three months from the date of receipt of this order and shall call for a detailed report.

2) The respondent no.7 as well as Sarpanch of Kumbhariya Gram Panchayat shall take into consideration the report so submitted by the Mamlatdar,

Danta and if it is found that there are encroachments, shall take appropriate actions in accordance with law within a period of two months from the

date of receipt of the report.

9. The prayer for taking action against the respondent no.1 under Section 57 or any other relevant provisions is rejected. The authorities shall take

action in accordance with law without in any manner influenced by any of the observations made in this order. In view of the aforesaid directions, the

petition is disposed of. No order as to costs.