

(1994) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 4417 of 1982

Nabipur Gram Panchayat and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 25-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Gujarat Panchayats (Amendment) Act, 1962 — Section 96(4)

Citation : AIR 1995 Guj 52

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Advocate : M.B. Farouqi, Ld, for the Appellant; T.M. Saikh, Ld. A.G.P. for Purnanand and Co. Solicitors, for the Respondent

Judgement

M.S. Parikh, J.—In this petition under Article 226 of the Constitution of India, the petitioner No. 1 -- Nabipur Gram Panchayat by itself and through petitioner No. 2, its Sarpanch, have challenged the resolution of the Executive Committee of Nabipur Taluka Panchayat passed on 3-12-1981 for making construction of huts in the grazing land (Gauchar land) of village Nabipur for providing residence to the village people under the Central Government's rehabilitation Scheme (Annexure C) and the order dated 5-4-1982 passed by the learned Collector, Bharuch for resuming such land from the grazing land (Gauchar land) of village Nabipur, for such rehabilitation.

2. Brief facts in so far as the case of the petitioners is concerned are: Nabipur village stood inhabited by about 4,000 people belonging to various creeds including Adivasis and Harijans and other economically backward persons. Most of the village population depends upon agriculture. Land bearing survey No. 1048 in the outskirts of village Nabipur has been used as grazing land from times immemorial. The same is meant for grazing for more than 1100 cattle heads. In compliance of the 20 Points Programme of the Government, the Taluka Development Officer wrote a letter to the petitioner -- Nabipur Gram Panchayat

to mutate the aforesaid grazing land into Gamtal (Ghar-thal) land with a view to plotting the same for landless persons. On receipt of the letter, the petitioner Panchayat invited objections from the members of the public as per public notice and proclamation dated 20-11-1981. Number of village people including the people belonging to weaker section for which Gauchar land was sought to be set apart for rehabilitation, raised objections protesting to the proposed action of the Government to convert the grazing land into Gamtal land for the purpose of rehabilitation thereof by the landless persons. On 24-11-1981 Social Justice Committee held a meeting where the question was considered and it was resolved that there was a shortage of land for grazing and if from the existing grazing land, some portion was set apart for rehabilitation, the problem of grazing would be aggravated. It was resolved that if the Government wanted to set apart the land for landless persons some other land should be found out. It is the say of the petitioners that the persons who formed Social Justice Committee represented the Adivasis and other backward classes for whom the Government wanted the land to be set apart. In spite of such objections on the part of the petitioner -- Gram Panchayat, the Executive Committee of the Taluka Panchayat passed the impugned resolution dated 3-12-1981. The petitioner thereupon submitted an appeal before the District Panchayat and the District Panchayat rejected the petitioner's appeal as per the impugned order dated 5-4-1982 passed by the learned Collector (Annexure D). A Review Application was also preferred to the same authority, but it met with the same fate on September 30, 1982. The petitioners are, therefore, before this Court as aforesaid.

3. On behalf of the respondents, the Collector, Bharuch has filed affidavit-in-reply. It has been asserted that the petitioners have challenged the validity of the order dated 5-4-1982 whereby Gauchar land admeasuring 18 acres 12 gunthas out of survey No. 1048 situated in the outskirts of Nabipur village was resumed under the provisions of Section 96(4) of the Gujarat Panchayats Act, 1961. It is the say of the respondents that as per the policy of the Government persons of certain classes, who do not have residential houses of their own, are to be provided with the land for construction of residential houses. In order to effectuate such purpose it was thought fit to resume the land in question. According to the say of the respondents, it was in public interest and in pursuance of the Government policy that it was decided to resume the land in question to provide shelter to needy and homeless persons and that being a more important public purpose than grazing, it was thought fit to resume the land in question. According to the say of the respondents efforts were made to see if any other land was available for granting the same to homeless persons but since no other land was available, order for resumption of the land in question was passed. According to the respondents, the figures supplied by the Taluka Development Officer, Bharuch revealed that there were only 700 cattle heads to be provided with grazing. It is also asserted that although it was not necessary for considering the representation and the objection of the village panchayat, the respondent No. 2 considered such objections and passed the

impugned order. The petition is, therefore, sought to be dismissed.

4. I have heard Mr. M. B. Farooqui, learned advocate for the petitioners and Mrs. T. M. Shaikh, Ld. A.G.P. for Purnanand and Company for the respondents.

5. It is submitted on behalf of the petitioners that there are two vital aspects which have been ignored by the respondents before passing the impugned order of resumption of the land in question. Firstly there was already a shortage of grazing land (Gauchar land) for village Nabipur and secondly the village people including the persons belonging to weaker sections and backward classes themselves insisted that the land in question should not be allowed to be parted with for the purpose of rehabilitation. Both these aspects were presented by the petitioners before the concerned authorities. It is submitted by Mr. Farooqui that no particulars about the landless persons who were to be rehabilitated have been set out. It is finally submitted that the occupation of grazing of cattle gains income to poor persons and resumption of grazing land would result in loss of income to them. It is finally submitted that the learned Collector has not at all applied mind to the aforesaid aspects of the case which were presented to him.

6. Mr. Farooqui also placed reliance upon the resolution of the Social Justice Committee. There it is made clear that the private plots could be acquired as that was done on earlier occasion.

7. In reply, it is the submission of Mrs. T.M. Shaikh, Ld. A.G.P. appearing for M/s. Purnanand & Company that the resumption of land in question is for public purpose and if that is so, it is within the power conferred u/s 96(4) of the Gujarat Panchayat Act, 1961.

8. It is no doubt true Section 96(4) does confer power upon the Government to resume land including grazing land for any public purpose. However, such power has to be exercised reasonably and upon consideration of the relevant factors. On a look at the impugned order dated 5-4-1982 it clearly appears that the learned Collector has failed to apply his mind with regard to the actual requirement of grazing land for people of village Nabipur and the actual availability of grazing land to them. It is an admitted fact that even prior to the impugned order for resumption of portion of the grazing land bearing survey No. 1048, there, was a demand from the petitioner Panchayat for annexing more grazing land as the land available was short of the requirement of grazing for the cattle heads in village Nabipur. It also appears that the particulars of landless persons who are in contemplation to be rehabilitated are also not forthcoming. They also do not appear in the affidavit in reply. As against that the people of Nabipur village at large have objected to the resumption of grazing land for non-agricultural use of providing residence to landless persons. If there are no landless persons, in fact requiring land, the proposed resumption would be futile. It is not the case of the respondents that some persons from other villages or of other places are sought to be rehabilitated in the outskirts of village Nabipur. The learned Collector has not weighed the purpose for which resumption is to be

made and the purpose of grazing in the context of the actual requirement of the village. In the facts of the case it, therefore, clearly appears that the impugned resolution and the impugned order respectively Annexure C and D apparently suffer from unreasonableness and non-application of mind to the very relevant factors. Finally it also does not appear on the face of the impugned order that the objections of the village people as also the petitioners have in fact been considered by the learned Collector.

9. In the result, the petition deserves to be granted. The impugned resolution and order Annexure C and D are here by quashed and set aside. Rule made absolute. No order as to cost.