

**(2020) 02 GUJ CK 0090**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 2126 Of 2015**

Naginbhai Vitthalbhai Patel

APPELLANT

Vs

State Of Gujarat & 1 Other(s)

RESPONDENT

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**Date of Decision : 07-02-2020**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19, 21, 226  
Code Of Criminal Procedure, 1973 — Section 65

**Citation : (2020) 02 GUJ CK 0090**

**Hon'ble Judges : A.J.Desai, J**

**Bench : Single Bench**

**Advocate : Harshadray A Dave, Meet Thakkar, Devang Bhatt**

**Final Decision : Allowed**

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## **Judgement**

A.J.Desai, J

[1.0] RULE. Learned AGP waives service of notice of Rule on behalf of the respondent No.1 and learned advocate Mr. Devang Bhatt waives service of notice of Rule on behalf of the respondent No.2. With the consent of learned advocates appearing for respective parties, present petition is taken up for final hearing today.

[2.0] By way of present petition under Articles 14, 19, 21 and 226 of the Constitution of India, following prayers have been made.

"(b) This Hon'ble Court be pleased to issue a writ of mandamus or certiorari or in the nature of mandamus or certiorari or any other appropriate writ, order or direction quashing and setting aside the order dated 28th January 2015 passed by the Respondent No.2 at Annexure A and declare the same to be null and void;

(c) This Hon'ble Court be pleased to issue a writ of mandamus or certiorari or in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to decide the application under Section 65 as early as

possible;

(d) This Hon'ble Court be pleased to issue a writ of prohibition or in the nature of prohibition or any other appropriate writ, order or direction prohibiting the Respondent No.2 to remove the construction of the petitioner on land bearing block No.601 admeasuring 4500 square meters situated at village Muval of Tal. Padra of District Vadodara pending the application under Section 65 of the Code;

(e) Pending the admission and final disposal of this petition this Hon'ble Court be pleased to stay the execution and implementation of the order at Annexure A;

(f) Pending the admission and final disposal of this petition this Hon'ble Court be pleased to direct the Respondent No.2 to decide the petition of the petitioner under Section 65 of the code on its own merits and without being prejudiced by the order impugned or pendency of this proceedings;"

[3.0] Having heard learned advocates appearing for respective parties and having gone through the contentions raised by the petitioner and the reply filed by the District Panchayat, it appears that subsequent to remand of the case by an oral order dated 29.12.2014 of the Special Secretary, Revenue Department, the impugned order dated 28.01.2015 has been passed. Prima facie, it also appears that the impugned order is passed without affording opportunity of hearing to the petitioner. Hence, I am of the opinion that there is a breach of principle of natural justice and the petition requires consideration.

[4.0] It is true that alternative remedy is available to the petitioner to challenge the impugned order which has been passed in January, 2015, however considering the basic principle of law about affording opportunity of hearing to a party in whose matter any order is passed, it is not desirable to send the matter for filing the same before appropriate Court.

[5.0] Hence, the present petition is allowed. Impugned order dated 28.01.2015 is hereby quashed and set aside. The District Panchayat is hereby directed to pass a fresh order after giving opportunity of hearing to all concerned in accordance with law and without being influenced by its own order dated 28.01.2015 at the earliest. Till the matter is decided by the District Panchayat, the parties are hereby directed to maintain status-quo as ordered at the time of admission of the present petition. Present petition is disposed of accordingly. Rule is made absolute to the aforesaid extent.

Direct service is permitted.