
(1999) 03 GUJ CK 0059
In the Gujarat High Court

Case No : Special Civil Application No's. 8491 of 1995 and 6907 of 1996

Okhaji Girdharji Patel

APPELLANT

Vs

Collector Banaskantha

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 96(4)

Citation : (1999) 2 GLR 743

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : B.N. Patel, in Special Civil application No. 8491 of 1995 and Meeta Panchal, for G.M. Amin, in Special Civil application No. 6907 of 1996, for the Appellant; B.N. Patel, for respondent Nos. 5 to 9 in Special Civil Application No. 6907 of 1996, Umesh Trivedi, Ld. A.G.P. for respondent Nos. 1 to 3 in Special Civil Application No. 8491 of 1995 and for respondent Nos. 1 to 4 in Special Civil Application No. 6907 of 1996 and Mahesh Bhavsar, for respondent Nos. 4 to 26 in Special Civil Application No. 8491 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla, J.—Both these petitions involve the dispute with regard to the gauchar land of village Bhensana, a part of which was resumed. The controversy between the parties in both the cases is based on identical facts and involve common questions and, therefore, I propose to decide both these matters by this common judgment and order.

2. There is no dispute between the parties that on 31st May 1978, the Collector, Banaskantha, had passed an order resuming the land admeasuring 103 acres 11 gunthas of Survey Nos.54, 56 and 137 of village Bhensana Gram Panchayat, Bhensana u/s 96(4) of the Gujarat Panchayats Act, on the basis of the census of cattle which was conducted in the year 1971. Aggrieved from this resumption of a part of the gauchar land, Bhensana Gram Panchayat filed Special Civil Application No.1355 of 1978 challenging the order of resumption. In this Special Civil Application, it was held out by way of a statement in the affidavit-in-reply

on behalf of the respondents that the land was required for settling the flood affected people of village Nana Jampur and because the proposal was moved in the year 1973 which was based on the figures of the census of cattle, conducted in the year 1971. This Special Civil Application No.1355 of 1978 was dismissed by the Court on 13th July 1994 and thus, the order of resumption attained finality. Accordingly, on 3.2.1989, the entry was mutated in the revenue records of rights and in 1992, the landless applicants of village Bhensana were informed by the Mamlatdar, Deodhar, that the land was reserved for flood affected people for Nana Jampur and therefore, the same could not be granted to them. Now, the question came with regard to the use and disposal of this land which was resumed and, therefore, the Collector, Banaskantha, passed an order on 27th May 1994 for holding a Land Kacheri. A reading of this order dated 27th May 1994, Annexure. E mentions that the land so resumed was to be given to the landless persons belonging to backward class, but the landless persons belonging to backward class neither demanded nor consented to take this land and, therefore, it had remained as it is. This order dated 27th May 1994 then records that the refugees of Indo-Pak War of 1971 including Shri Tekchandbhai Thakkar etc. had made a demand for agricultural land and, therefore, the question of disposal of the land was to be decided through the Land Kacheri and the list had to be finally decided by the Land Kacheri and later on, a notification dated 18th April 1995 was issued by the Prant Kacheri, Radhanpur, under the signatures of the Deputy Collector, Radhanpur, which has been placed on record as Annexure. F. Thus, on one hand, the petitioners in Special Civil Application No.8491 of 1995 who are agriculturists and villagers of village Bhensana claimed that if the resumed land out of the gauchar land of Panchayat Bhensana is not being put to the use for the flood affected people, and whereas the same is being used as gauchar land even until now, despite the order of resumption passed by the Collector, u/s 96(4) of the Panchayats Act, it should be allowed to be continued to be used as gauchar land and the order dated 27th May 1994 Annexure. E may be set aside; the petitioners in Special Civil Application No.6907 of 1996 claiming to be the refugees of Indo-Pak War of 1971 claimed that the land should given to them on the basis of the Land Kacheri as had been ordered vide order dated 27th May 1994 and the subsequent notification which was issued on 18th April 1995; at the same time, respondents nos.4 to 26 in Special Civil Application No.8491 of 1995 who were arrayed as respondents on the basis of the order passed by the Court on 25th November 1996 in Civil Application No.7291 of 1996 and who claimed to be the landless persons of village Bhensana itself want that this land should be allotted to them. It is, therefore, clear that while the legality of the resumption of the land itself has been questioned by the petitioners in Special Civil Application No.8491 of 1995, the petitioners in Special Civil Application No.6907 of 1996 are claiming this land for them as War refugees and the respondents nos.4 to 26 in Special Civil Application No.8491 of 1995 are also claiming the very same land.

3. So far as the resumption of the part of the gauchar land of Panchayat

Bhensana which was ordered way back on 31.5.1978 is concerned, the resumption cannot be said to be illegal merely because the land has not been put to the actual use for which it was resumed and more particularly when the Gram Panchayat Bhensana itself had approached this Court by way of Special Civil Application No.1355 of 1978 with the prayer to set aside the resumption order and the said Special Civil Application was dismissed, there is no question of now declaring the order of 31st May 1978 to be illegal on any of the grounds as have been submitted. Mr. B.N. Patel appearing for the petitioners in Special Civil Application No. 8491 of 1995, i.e. villagers of village Bhensana has submitted that the Gram Panchayat, Bhensana had agitated against the resumption of the land itself, but the villagers seek to enforce the right of grazing of the cattle on the gauchar land and according to Mr. Patel, even if the land had been resumed by the Government, it could not negate the rights of the villagers for such area of pasture land as was required on the strength of the cattle of the village and, therefore, the villagers could not be deprived of the right of the cattle grazing on such area of the gauchar land which is required according to the principle and strength of the cattle with the villagers in this village. He has submitted that even if the Panchayat's petition had been dismissed by the Court, the villagers are entitled to relief for an appropriate and sufficient area as a gauchar land for the grazing of the cattle of the villagers. Mr. Patel has placed strong reliance on Section 38 of the Bombay Land Revenue Code, which reads as under:

"38. Subject to the general orders of the State Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII, and at any other for the Collector to set apart lands the property of the State Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise used without the sanction of the Collector; and in the disposal of land u/s 37 due regard shall be had to all such special assignments."

True it is, that the Bombay Land Revenue Code provides for the gauchar land and accordingly the lands may be assigned for specific purposes and when assigned for such specific purpose, it cannot be put to any use otherwise than the one for which it is assigned without the sanction of the Collector. Therefore, it is clear that even if a land is assigned for a particular purpose or a specific purpose such as gauchar land, it may be used for other purpose with the sanction of the Collector and, therefore, when the land assigned for a specific purpose such as gauchar land or pasture land for free grazing of the cattle of the villagers, it may be put to other use with the sanction of the Collector and if the enactment relating to Panchayats permits and provides for resumption of such land, namely, Section 96, in appropriate cases, the land which is assigned for a specific purpose may also be put to other use in appropriate cases. Section 96(4) of the Gujarat Panchayats Act, 1961 provides that where any open site or waste, vacant or grazing land vested in the Government has been vested by the Government in

a Panchayat whether before or after commencement of this Act, then it shall be lawful for the State Government to resume at any time such site or land if it is required by it for any public purpose. If there were floods and the Government wanted to give protection to the landless flood affected people of that area and for that purpose they wanted to resume the land and in fact did resume the land which was assigned for a specific purpose of gauchar land, it cannot be said that there was no element of public purpose involved in it and that the land could not be resumed u/s 96(4) of the Panchayats Act merely because Section 38 of the Bombay Land Revenue Code, 1879 provides for setting a part of the land for a specific purpose. Thus, the reading of Section 38 of the Bombay Land Revenue Code along with Section 96(4) of the Gujarat Panchayats Act makes it clear that even if a land is assigned for a specific purpose, in appropriate case, it is permissible to put the very same land to use for other purpose as resumption of it is permissible u/s 38 itself with the sanction of the Collector and as is permissible u/s 96(4) of the Gujarat Panchayats Act itself for any public purpose. The right of free cattle grazing on a land which is assigned for the specific purpose is, therefore, subject to the limitations as prescribed u/s 38 itself and the same is also permissible under the law. In this view of the matter, this Court does not find that merely because the land as has been resumed for a public purpose viz. for the welfare of landless flood affected people was not put to such use and could not be put to such use for reasons more than one, should be restored back as gauchar land only because it is continued to be used as gauchar land for all these years notwithstanding the resumption order of 1978.

4. If at all the villagers feel aggrieved that they do not have an adequate area after the resumption of the part of the land as aforesaid and the area available as gauchar land is not sufficient to meet the requirements of the strength and the number of the cattle with the villagers, the villagers may always approach the concerned Collector to take appropriate action in accordance with law for providing such land for free grazing of the villagers' cattle and subject to the availability of such land, the Collector may deal with the question and grant appropriate relief to the villagers in accordance with law so as to provide adequate area for the purpose of grazing the cattle keeping in view the requirements of the village and for that purpose the assistance or consultation with the concerned Panchayat can always be made and the Panchayat may provide the appropriate data and may also make appropriate recommendations to the Collector for suitable action. It is the duty of the State through the concerned Collector to provide sufficient gauchar land meant for cattle grazing. The cattle is unable to communicate or to form a union or Association and agitate and demand. Therefore, the authorities of responsive Government should feel more concerned and be more receptive to the demand of villagers for cattle grazing land. This Court expects that the authorities would not ignore the latent rights of cattle and would take all possible measures to do the needful in this regard. Beyond the observations as aforesaid, no relief can be granted in the Special Civil Application No.8491 of 1995 and this Court does not find any

justification for setting aside the order dated 27th May 1994 and the notification which has been issued thereafter for disposal of the resumed land through Land Kacheri.

5. So far as the respondents nos.4 to 26 in the Special Civil Application No.8491 of 1995 are concerned, they claim to be the members of backward class. They had not filed any substantive petition although they want that this land should be made available to them because they belong to backward class. However, it appears that this land which was resumed for the welfare of the landless flood affected people, was not so used or it could not be so used for the benefit of the landless flood affected people. The learned Counsel for the petitioners have pointed that such landless flood affected people either did not agree to take this land or they were given lands somewhere else and therefore, the land was not disposed of for any other purpose and it continued to be so used as gauchar land. It appears from the order dated 27th May 1994 Annexure. E that at one stage, this land was sought to be given to the members of the landless persons belonging to backward class and this order dated 27th May 1994 shows that such persons did not make any demand and also did not agree to take this land and, therefore, the decision was taken to make use of this land in favour of those who were the refugees of Indo-Pak War of 1971. Merely because certain persons belonging to the Scheduled Caste who are landless, as per their say, have now moved Civil Application in this Special Civil Application, the Collector cannot be directed so as to make this land available to them in respect of which the decision had already taken way back in the year 1974 to give it to the War refugees. If at all these respondents nos.4 to 26 are landless persons belonging to Scheduled Caste, they may approach the Government for appropriate relief in accordance with law, in case any other land is available or in case any land out of this resumed land remains available after accommodating the War refugees under the order dated 27th May 1994.

22nd March 1999

6. Ms.Meeta Panchal, learned Counsel for the petitioners in Special Civil Application No.6907 of 1996 has cited the case of Panchayat Varga Sharmajivi Samudaik Sahakari Khedut Co-op. Society Ltd. and Others Vs. Haribhai Mevabhai and Others, to argue that before resuming the land under the Panchayats Act, it was not even necessary to issue prior notice to the villagers and the villagers cannot question the resumption order on the ground that no prior notice had been given to them before resuming the land u/s 96(4) of the Panchayats Act. She has also cited the case of Munund Gram Panchayat v. State of Gujarat and ors., reported in 1992 (1) GLH 19 in which a learned Single Judge of this Court has held that if the resumption of land is legal, it is for the Government to decide as to the manner of distribution of such land and even the Panchayat cannot challenge such action of the Government in such cases as regards distribution of such land.

7. The order of resumption of the land in question as was passed by the

Government has already been found to be in order. May it be that the same was not put to the use for the landless flood effected people, the fact remains that the Collector, Banaskantha had passed an order on 27th May 1994 for holding a Land Kacheri. In this very order dated 27th May 1994, it has been recorded that a demand had been made by the refugees of Indo-Pak War of 1971 demanding the land in question and according to the petitioners in Special Civil Application No.6907 of 1996, the Land Kacheri had already processed the matter for the purpose of allotting this land to them. The land in question already stood vested in the Government u/s 88 of the Gujarat Panchayats Act and the same could be allotted to the refugees of the Indo-Pak War of 1971 through the Land Kacheri where the petitioners were required to be present before the said Gram Panchayat on 23rd May 1995. This land, therefore, could be allotted to the petitioners, but for the fact that respondents nos.5 to 9 had filed Special Civil Application No.8491 of 1995. In this Special Civil Application also, the present petitioners have filed a Civil Application No.3731 of 1996 for being arrayed as respondents wherein an order was passed that they will be heard along with the main matter. The Special Civil Application No.8491 of 1995 stands decided by this common order itself and the only question now remains is about the implementation of the order dated 27th May 1994 on the basis of the Land Kacheri which had been held way back on 23rd May 1995. The order dated 27th May 1994 passed by the Collector stands and there is no legal impediment against the implementation of that order, rather now that all the matters which were pending in this regard stand decided, it is the duty of the respondents authorities to implement that order dated 27th May 1994 on the basis of the Land Kacheri which was held on 23rd May 1995 and allot the lands to the refugees of the Indo-Park War of 1971 including the present petitioners in accordance with law and relevant Government Resolutions. While issuing the final orders, the concerned Collector shall also take into consideration the question with regard to the claim of the petitioners for allotment of 10 acres of land to each of the petitioners, in case any other persons falling in the same category have been allotted 10 acres of land.

8. The result is that the Special Civil Application No.8491 of 1995 fails and the same is hereby dismissed. Rule issued therein is hereby discharged.

9. The Special Civil Application No.6907 succeeds and the same is allowed with the directions to the respondents to implement the order dated 27th May 1994 in accordance with law and the relevant Government Resolutions as have already been directed in earlier part of this order. The order shall be complied within a period of three months from the date of the certified copy of this order is served upon the concerned Collector by the petitioners in Special Civil Application No.6907 of 1996 and for that purpose, direct service is permitted. Rule is made absolute accordingly. No order as to costs.