

(2022) 11 GUJ CK 0030

In the Gujarat High Court

Case No : R/Special Civil Application No. 19289 Of 2016

Patel Ranaji Pragji & 34 Other(S)

APPELLANT

Vs

State Of Gujarat & 10 Other(S)

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 11 GUJ CK 0030

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Manish S Shah, Dhvani R. Tripathi,, HS Munshaw

Final Decision : Disposed Of

Judgement

Biren Vaishnav, J

1. Rule returnable forthwith. Ms. Tripathi, learned Assistant Government Pleader waives service of notice of rule on behalf of respondent Nos.1 to 4 while Mr. H.S. Munshaw, learned advocate waives service of notice of rule on behalf of respondent Nos.5 to 9.

2. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

3. In this petition, under Article 226 of the Constitution of India, the petitioners who are agriculturists of Village Chotpa, Taluka Tharad, District Banaskantha have approached this Court for additional compensation or compensation as the case may be for having suffered due to heavy rainfall that occurred in the western part of the District Banaskantha between 26th July, 2015 and 29th July, 2015. It is their case that their lands were submerged in water and the crops were washed out. The State Government came out with the Scheme for monetary compensation in accordance with the Resolution dated 27.4.2015 as well as 15.7.2015. According to the petitioners, the assessment of damages was not being paid in accordance with the damage suffered by the petitioners and the

compensation is not commensurate thereto.

4. In an order passed in an identical situation namely; in SCA No.13608 of 2021 dated 27.07.2022, the Court observed as under:

"1. Mr. Bhaumik Dholariya, learned advocate appearing on behalf of the petitioners has submitted that in a similar issue with regard to the grant of compensation, the Division Bench of this Court, while examining the issue raised in Writ Petition (PIL) No.81 of 2021, has passed an order dated 20th September, 2021 by directing the authorities to consider the representation filed by the petitioners and the authorities were directed that each and every person affected by Tauktae Cyclone be given benefits of Government Resolutions dated 18th March, 2021, 23rd May, 2021 and 24th May, 2021.

2. After the issuance of notice and the order passed by this Court on 27th June, 2022, the respondent no.4 District Development Officer, District Panchayat, Amreli has filed an affidavit by stating thus :-

"3. The respondent No.4 submits that the provisions of Clause 5(4)(g) of said GR dated 27.4.2015 issued by the Revenue Department of the Government of Gujarat were followed by the said team. It is submitted by the concerned villagers relating to damages caused to their properties were examined by the survey team by way of visiting the respective properties and thereafter report was forwarded to the Taluka Development Officer, Savarkundla Taluka Panchayat by such survey team and on that basis the financial aid was sanctioned or denied by TDO. It is submitted that the nature and quantum of financial aid for damages to the properties is provided under said resolution dated 27.4.2015. It is submitted that so far as the issue of damages to the properties and compensation payable is concerned, no aid is to be released in case the damage to the properties is less than 15%. It is further stated that partial aid is to be released in case the damage to the properties are more than 15% while entire amount of compensation is to be paid in case of 100% damage to the properties.

It is submitted that so far as facts relating to the present case are concerned there are in all 99 petitioners before the Honorable Court. It is submitted that in all 21 petitioners were released partial / total relief due to damages to their properties and copy of statement giving details is annexed as Annexure – B. The respondent No.4 further submits that the survey team has denied such relief to 23 petitioners and a copy of the statement is annexed as Annexure – C. It is humbly stated that 55 petitioners have not submitted the required forms for financial aid due to damages caused to their properties and a copy of statement is annexed as Annexure – D.

The respondent No.4 submits that in all 21 petitioners out of 99 are paid Rs.25,000/- due to partial damage caused to their properties over and above Rs.7,000/- cash dole. It is submitted that 11 petitioners or their family members out of 55 who have not submitted required forms for aid due to damages caused to their properties are also paid cash dole. The respondent No.4 submits that the

Survey Team has completed its survey of village Aambardi, Taluka Savarkundla by 31.5.2021 and submitted its report to Taluka Development Officer, Savarkundla has thereupon released financial aid on the basis of the provisions of GR dated 17.5.2021.

4. In view of the above mentioned facts and circumstances, it is crystal clear that the needful is done at the Taluka level in accordance with the provisions of GR dated 27. 4.2015 as well as 23.5.2021 issued by the Revenue Department of the Government of Gujarat, and therefore, Hon'ble Court is most respectfully prayed not to grant any interim relief and reject present special civil application in limine with cost in the interest of justice."

3. In response to the aforesaid affidavit, Mr. Dholariya, learned advocate appearing for the petitioners, submitted that in fact some of the petitioners are not even paid a single penny towards the relief for the damages caused to their properties. It is also submitted by him that looking to the damages of the properties, the petitioners, who are paid the benefits is very low and they are entitled to more compensation than which has been paid to them.

4. Thus, apparently, there is a disputed question of facts raised in this petition. The respondent no.4 has submitted that 21 petitioners are released partial/total relief and 11 petitioners or their family members out of 55 have not submitted the required forms for claiming the damages.

5. In wake of the disputed question of fact, this Court cannot entertain the writ petition. However, it will be open for the petitioners to make appropriate representation to the respondent authorities pointing-out the actual damages caused to their properties. If such a representation is made, giving the details of the damages caused to their properties, the respondent shall accordingly pay the relief or the benefits arising out of the Government Resolutions dated 18th March, 2021, 23rd May, 2021 and 24th May, 2021. It is clarified that if the petitioners are aggrieved by any such compensation paid to them with regard to the damages to their properties, they may file appropriate proceedings before the Civil Court so that appropriate evidence can be examined with regard to the damages caused to such properties.

6. With these observations, the present writ petition stands disposed. Notice is discharged."

5. Since disputed questions of facts are involved and since the petitioners will make appropriate representations to the respondent No.4 – Collector pointing out the damage caused to their properties, if such representation is made by the petitioners, giving the details of the damages caused to their properties, the respondents shall accordingly assess such damage and consider entitlement of the petitioners pursuant to the GRs dated 27.4.2015 as well as 15.7.2015 in accordance with law within a period of ten weeks from the date of receipt of copy of this judgment.

6. It is clarified that if the petitioners are aggrieved by any such compensation paid / unpaid to them with regard to the damage to their properties, they may file appropriate proceedings before the Civil Court so that appropriate evidence can be examined with regard to the damage caused to such properties.

7. With the aforesaid observations, the petition stands disposed of. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No costs.