
(2019) 08 GUJ CK 0071

In the Gujarat High Court

Case No : R/Writ Petition (PIL) No. 150 Of 2016

Rajeshbhai Devshibhai Kargatiya

APPELLANT

Vs

State Of Gujarat And Others

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Citation : (2019) 08 GUJ CK 0071

Hon'ble Judges : S.R. Brahmbhatt, J;A.P. Thaker, J

Bench : Division Bench

Advocate : Virendra Baheti, Asmita Patel, Vijay H. Nangesh

Final Decision : Disposed Of

Judgement

S.R. Brahmbhatt, J

1. Heard learned counsel for the parties.

2. The present Public Interest Litigation has been taken out for seeking following prayers:

"A. Your Lordship be pleased to admit this petition;

B. Your Lordships may be pleased to direct all the present Respondent authority No. 1 to 3 to take immediate action against the present Respondent No. 4 Bhagwanjibhai Lakhabhai Kargatiya for removing encroachment over the government "Gamtal" land admeasuring 1391 square Meter of village-Madhavpur (Ghed), Porbandar.

C. Your Lordships may be pleased to direct all the respondents Authority No. 1 to 3 to stopped to Respondent No. 4 Bhagwanjibhai Lakhabhai Kargatiya for using government "Gamtal" land admeasuring 1391 Square Meter of village-Madhavpur (Ghed), Porbandar till this petition is not finally disposed of.

D. Your Lordships may be pleased to grant any other reliefs as is deemed fit and necessary in the interest of justice, and as the facts and circumstances of this

petition suggest.

E. Your Lordships may be pleased to award the costs of this petition"

3. Essentially, what was urged before the Court was removal of encroachment on Gamtal land.

4. Learned counsel for the petitioner as well as learned AGP have invited this Court's attention affidavit, para 3 and 4 of which reads as under:

"3. It is most humbly and respectfully submitted that the request was made to regularized the encroachment on the land in question by the Sarvodaya Seva Mandal Trust, Madhavpur (Ghed) for the purpose of School or Old age homes and the said request was rejected on 02.12.2015 by the State Government through Revenue Department and in view of the same the Collector, Porbandar had issued instructions to remove the encroachment on the land in question and further instructed to vest the same in the Government and thereafter on 04.01.2016, the Mamlatdar, Porbandar had issued office order for removing the encroachment on 28.01.2016 but due to on going work promulgation as well as hearing of District Swagat Program, the procedure to remove encroachment could not be done and thereafter the petitioner had preferred present petition, wherein pursuant to the notice issued by this Hon'ble Court, on 29.03.2016 the Mamlatdar, Porbandar had passed office order wherein it was informed to remove the encroachment on 05.04.2016 at 9.00 a.m. And after following due procedure, on 05.04.2016 the State Authority had removed the encroachment on 05.04.2016 and necessary rojkam as well as videography and photography have been done to that effect. The copy of the office order dated 29.03.2016 along with rojkam dated 05.04.2016 with the photographs and CD are annexed hereto and marked as Annexure - R1 collectively to this affidavit in reply.

4. In the premises, therefore, it is humbly submitted that in view of the aforementioned facts and circumstances of the case the State Authorities have taken effective steps to remove the encroachment made on this land in question and the answering respondent prayed before this Hon'ble Court that to dispose the present petition by considering the facts stated in the present affidavit in the interest of justice."

5. And submitted that now in fact there is nothing survive in the matter and matter be disposed of.

6. Learned counsel for the petitioner, at this stage submitted that cost of removal of encroachment was required to be recovered from the encroacher. It goes without saying that cost aspect is better left to the State, which shall do the needful. We are of the view that, petition is required to be disposed of and is accordingly disposed of.

7. At this stage, learned counsel for the petitioner submitted that let there be some stipulation of time be framed for recovering the cost. We do not propose to frame such time limit, even that aspect also needs to be decided after giving full

opportunity to the person or encroacher from whom the propose cost is to be recovered. Notice discharged.