

(2023) 05 GUJ CK 0075
In the Gujarat High Court

Case No : R/Special Civil Application No. 9142, 9143, 9144, 9145 Of 2023

Rakeshbhai Chandubhai Patel S/O Chandubhai Manilal Patel	APPELLANT
Vs	
Vapi Nagarpalika	RESPONDENT

Date of Decision : 22-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Municipalities Act, 1963 — Section 150, 185

Citation : (2023) 05 GUJ CK 0075

Hon'ble Judges : S.V. Pinto, J

Bench : Single Bench

Advocate : Hari K Brahmabhatt

Final Decision : Disposed Of

Judgement

S.V. Pinto, J

1. By way of the present petition under Article 226 of the Constitution of India, the petitioners herein are seeking to challenge the show-cause notices dated 04.05.2023 and 03.05.2023 issued by the respondent no.2, for the illegal construction that the petitioners have made on the margin area of the roads.

2. The petitioners have made the following prayers in the captioned petitions:

“(a) This Hon’ble Court may be pleased to admit and allow the present Petition in the interest of justice;

(b) This Hon’ble Court may be pleased to issue a writ of mandamus or any other writ in the nature of mandamus or any other writ, order or direction quashing and setting aside the show-cause notice dated 04.05.2023 issued by the respondent no.2, in the interest of justice;

(c) During the pendency of the present petition, this Hon’ble Court may be pleased to stay the implementation and operation of the show-cause notice dated 04.05.2023 and restrain the respondents from taking coercive steps/actions

which can prejudice the petitioner, in any manner, in the interest of justice;

(d) For ex-parte interim and ad-interim reliefs in terms of prayer (c) hereinabove.

(e) For any other reliefs that this Hon'ble Court may in the facts of the present case deem fit and proper."

3. Heard learned advocate Mr. H.K Brahmbhatt for the petitioners at length.

4. Learned advocate for the petitioners has taken this Court through the notices issued by the respondent no.2 on 04.05.2023 and 03.05.2023, which states that the illegal construction has been made on the margin area of the Sulpad Bhadakmoira Road from Manavmilan mandir to Hanuman mandir, in the alignment of the D.P road, and the same is without any permission and is causing obstacle to the vehicles and traffic. On 18.04.2023, the marks were made regarding the illegal constructions which have to be removed within 10 days.

5. The learned advocate has relied on Civil Appeal No.5948 of 2008, arising out of SLP(C) No. 4599 of 2007 in the case of Municipal Corporation, Ludhinana Vs. Inderjit Singh & Anr and in the case of Dalwadi Laljibhai Gatorbhai and ors Vs. State of Gujarat reported in 1995 (1) G.L.H 1. The learned advocate has also taken this Court through the provisions of section 150 and section 185 of the Gujarat Municipalities Act, 1963.

6. Having heard the learned advocate for the petitioners and perused the documents on record, the main grievance of the petitioners is that the respondents have not followed due process of law and have not given an opportunity of hearing and have straight away issued the notice to demolish the construction within 10 days. Learned advocate for the petitioners has also submitted that the demolition process has already been started. He has also admitted that some of the petitioners have constructed shops and are residing on the first floor of the construction, for which no permission from any authority has been taken. There is also a grievance that sufficient time has not been granted as per the provisions of law. Hence, considering the above and pursuant to the documents submitted by the petitioners, the respondent-authority is directed to give sufficient opportunity of hearing to the petitioners and take decision in accordance with law, on its own merits. It is clarified that this Court has not gone into the merits of the case.

In view of the above, the captioned petitions stand disposed of accordingly. Direct service is permitted today.