

(2001) 08 GUJ CK 0001
In the Gujarat High Court

Case No : Special Civil Application No's. 2322 and 2583 of 2001

Sandeep Brahmabhatt Managing Trustee	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Citation : (2002) 22 GLH 536

Hon'ble Judges : D.M. Dharmadhikari, C.J;K.R. Vyas, J

Bench : Division Bench

Advocate : Shalin N. Mehta, for Petitioner No. 1-14 in Special Civil application No. 2583 of 2001 and Mitul K. Shelat in Special Civil application No. 2322 of 2001, for the Appellant; Manisha Lavkumar, AGP for Respondent No. 1, 3, D.N. Patel, for Respondent No. 2, A.J. Patel, for Respondent No. 4-11 and K.S. Jhaveri, for Respondent No. 12-14 in Special Civil Application No. 2583 of 2001 and Manisha Lavkumar, AGP for Respondent No. 1 in Special Civil Application No. 2322 of 2001, for the Respondent

Judgement

D.M. Dharmadhikari, J.—Rule. Shri A.J. Patel and Shri Kalpesh Jhaveri waive service of Rule on behalf of private respondents in Special Civil application No. 2583 of 2001. Mrs. Manisha Lavkumar waives service of Rule on behalf of respondent-State and its authorities and Shri D.N. Patel waives service of Rule on behalf of Ahmednagar Urban Development Authority, in both these petitions.

2. All the petitioners in these two petitions state that they are actively involved with the Non Governmental Organizations working in the area of protection of animal rights and preservation of natural resources. They are also working volunteers as guides for various bird watching groups and nature lovers in the State of Gujarat. These petitions have been filed in the public interest seeking directions from this Court to the authorities of the State of Gujarat (respondents herein) to take immediate steps to preserve and conserve the shallow water lake of Gopalnagar covering Survey Nos. 80/2, 80/1B, 1506, 1507/1, 1507/2, 1508, 1509, 1507/3 and 1510/1 of Saij village and Survey Nos. 147, 148, 159, 160, 161, 157, 164, 162, 170, 168, 165, 156, 151, 152 and 150 of Borisana village

near Kalol. According to the petitioners, Gopalnagar lake, also popularly known as mini Nal Sarovar, has been a natural habitat since last several years for numerous migratory birds. Their habitat and the birds are required to be protected under the provisions of the Wild Life (Protection) Act, 1972. The petitioners submit that the geological history of the land which now forms lake is that there was a river name `Vyantri". This fact is duly recorded in the documents of Railways of Union of India. Gradually, the water level in the river decreased and the land in the above Survey numbers only remained a wet land. During rainy season, lake is formed but during dry season, farming takes place. It is now disclosed that the said Survey numbers stand in the name of various land holders in the form of agricultural lands. It is stated that as the cultivation of crops is not possible for the whole year because of collection of water, farming takes place only during dry season. It is submitted that with the passage of time, it has converted into a natural shallow water lake which is now popularly known as Gopalnagar lake or mini Nal Sarovar. The petitioners state that the said wet land is home to about twenty two various species of birds including Flamingos, Ibis, Spoonbills and Pelicans. It is also a natural habitat for various other migratory birds like Pin-tailed Duck, Shoveler, Heron, Little Grebe, jacana, Babbler, Hoopoe and many other species of Cranes and Kingfishers. The petitioners then point out that in the Development Plan prepared by the Ahmedabad Urban Development Authority (hereinafter referred to as `AUDA"), the Survey numbers which were wet lands forming Gopalnagar lake were reserved for recreational purpose. This was statutorily so declared u/s 12 read with Section 17 of the Gujarat Town Planning & Urban Development Act, 1976. The final Development Plan was sanctioned sometime in the year 1981. It is now reported that in the year 1998, some builders and private contractors have been able to persuade the AUDA to make available these lands for building purposes. The proposed variation in the Development Plan as such is pending approval before the State Government. The petitioners say that such conversion of the use of land from recreational zone to residential zone would be against public interest and would harm the objects of Wild Life (Protection) Act, 1972, and the Environment Act. It is submitted that when the petitioners saw that huge quantity of material was stacked near the lake site for filling the lake and for changing the landscape, they raised protest in writing including through the Hon"ble Minister Mrs. Maneka Gandhi who is one of the well-known environmentalist of the country. According to the petitioners, representations and protest were raised by the petitioners in the interest of protection of wild life and environment, but no heed was paid through any of the authorities of the State. Hence they were compelled to approach this Court for seeking necessary directions by this public interest litigation.

3. Then we entertained these petitions and issued notice. On behalf of the agriculturists who had acquired agricultural rights in some of the survey numbers intervened through Senior Counsel Shri A.J. Patel and Shri Kalpesh Jhaveri. We allowed their intervention and permitted to produce revenue records and Title

Deeds to show their nature of rights in these Survey numbers. On behalf of the agriculturists who have intervened, it has been submitted that the Survey numbers were never recognized and recorded as lake in the revenue records. The agriculturists are exercising their agricultural rights since more than fifty years. It is stated that it is a low lying land in which water accumulates only during the monsoon season and sometimes the land gets flooded because of effluent from the nearby industries and mills. It is submitted that even during monsoon season, the agriculturists do some farming for Kharif crops and in dry season, they are raising several kinds of crops. It is submitted that any restraint in exercising of their agricultural rights would affect their source of livelihood and this Court should therefore refrain from issuing any directions for allowing conversion of the land for being preserved as lake. The agriculturalists however stated that they would have no objection if the lands are acquired by the State or other authorities of the State and they are paid due compensation for the acquisition.

4. In view of the intervention made by the agriculturists and the stand taken on their behalf, on 3.5.2001, we passed an order directing the concerned authorities in the Revenue and Forest Department of the State to make a survey of the land and of its continuous use for the past several years and thereupon consider whether it is required to be preserved as a lake in the interest of birds and environment. Pursuant to our directions made on 3.5.2001, along with the affidavit of the Under Secretary of Revenue Department, a joint report has been submitted under the signatures of Shri Prakash Patel, Under Secretary, Revenue Department and Shri Anant Patel, Under Secretary in Forest and Environment Department through the Government Pleader dated 25th July, 2001. The contents of the report in the nature of a letter addressed to the Government Pleader read as under:

Urgent No. WLP-10-2001-SCA19-G-1 Time Limit Government of Gujarat, Forest & Environment Deptt., 14/8, Sardar Bhavan, Sachivalaya, Gandhinagar-382010. Dated: 25th July, 2001 To,

Shri Arun D. Oza, Government Pleader, Gujarat High Court, Ahmedabad

Sub.: Special Civil Application No. 2322/2001 filed by Biren Padhya v/s. The State of Gujarat and ors.

Dear Sir,

This has reference to your letter dated 11.5.01, No. 8137/1999/2000. As per the direction of the Hon"ble High Court on 7.7.01 the site at Borisana known as Gopalpur Talav was visited by Principal Secretary, Revenue Department, Principal Secretary, Forests & Environment Department, Collector Gandhinagar, Chief Wild Life Warden, Prant Officer, Gandhinagar, Conservator of Forests, Mehsana and other local revenue officers. The area seems to have water accumulation, presumably from the recent rains in one part of it. The remaining part showed signs of cultivation. It is slightly at a lower level compared to the surrounding

areas. But in any case it will not be more than a foot. There was no visible sign of any water course through which surface run off of rain water reaches this depression.

As informed by the Prant Officer, Gandhinagar, the record from 1940 reveal that the land was never considered to be a talav (pond) in the revenue survey. Rather it has been shown as agriculture fields of private owners all these years. he also recorded that there are five to six other talavs, which are, recorded so in the revenue records. Therefore, the obvious assumption is that had the place been a traditional Talav, it would have been mentioned suitably in the revenue records.

Total area of this slightly depressed land would be about 16 hectares. If we want to develop this area, it would require a fairly large sum of money. Further such a development would not only mean acquisition of land but also deepening and maintaining the channel through which the surface run off rain water can reach the place. So far as water birds are concerned, migratory or local, those are seen in various bodies at different parts of the State. It will be difficult to tackle each and every one of them as reserve forest or sanctuary. We have to have parameters for selecting out such water bodies to be given the status of a sanctuary and the Forest Department does not find it necessary or administratively convenient to take up this Gopalpur water pond for the purpose of creating a sanctuary. Long history of 60 years of the use of this piece as agriculture land would make any such attempt arbitrary.

This report is prepared after joint deliberation between Principal Secretary, Revenue Department and Principal Secretary, Forests & Environment Department.

This may kindly be put for perusal of the Hon''ble High Court.

Thanking you,

Yours faithfully,

sd/- sd/- illegible illegible (Prakash Patel) (Anant Patel) Under Secretary Under Secretary to Revenue Department Govt. of Gujarat, Forest & Environment Department

The report of the two Secretaries as submitted and quoted above state that it may not be economically viable to preserve the land as a lake or sanctuary of birds.

5. The learned counsel for the petitioners draws our attention to the provisions of the Wild Life (Protection) Act, 1972 and submits that the proper authority for taking a decision on the question of reservation of lake or water body as habitat or sanctuary of birds is State Wild Life Advisory Board constituted u/s 6 of the said Act. Surprisingly, the learned counsel appearing for the State were unable to point out whether State wild Life Advisory Board has been constituted and is in existence to which we can make directions on the issue of preservation of the land as lake or sanctuary for birds. The learned counsel appearing for the State

took time to take necessary instructions. It is now reported to us and two Notifications dated 21.2.1994 and 11.11.1997 have been placed before us to show that the State Wild Life Advisory Board is duly constituted, may be that some of the members, other than ex-officio members are required to be substituted on their retirement.

6. We also directed the AUDA through its learned Standing Counsel Shri D.N. Patel to confirm whether the Survey numbers popularly known as Gopalnagar lake were reserved for recreational use in the Final Development Plan prepared under the Gujarat Town Planning & Urban Development Act, 1976. The Assistant Town Planner, on behalf of the AUDA as respondent No. 4 filed reply on Affidavit stating that the Survey numbers referred by petitioners of Gopalnagar lake are included in the residential zone in the Draft Development Plan submitted by AUDA to the State Government. The Draft Development Plan is yet to be sanctioned by the State of Gujarat in accordance with the provisions of the Gujarat Town Planning & Urban Development Act, 1976. It is also admitted in the affidavit that earlier the land in Survey numbers fell within recreational zone.

7. On specific directions made by us to the learned counsel appearing for the AUDA, now a detailed report with maps showing the proposed change of use in Survey numbers from recreational zone to residential zone has been filed in which it has been admitted by the AUDA that after following the necessary procedure for revising the Development Plan for change of user of the lands by conversion from recreational to residential zone, the matter is pending with the State Government for approval of the Draft Development Plan. The relevant part of the report contains necessary statutory steps taken by the AUDA for converting the purposes for which the land was reserved as recreational zone and its conversion to residential purposes. The report reads as under:

"The principal development Plan of Ahmedabad Urban Development Authority (AUDA) was sanctioned u/s 17 of the G.T.P. & U.D. Act, 1976 by the Government vide Notification No. GH/V/240 of 1987/DVP/L dated 01/11/1987 and came into force from 3rd Dec. 1987. The land under reference that is R.S. No.. 91, 92, 94 etc. of village Saij and Block No. 147, 148, 148 etc. of village Borisana were in the recreation Zone in the said sanctioned development Plan Part Plan, Zoning certificate of the same are attached herewith at annexure I & V.

The Development Plan is to be revised in every ten years as per section 21 of the Act. The revised Draft development Plan was prepared and submitted to the Govt. u/s 9 on 27.11.1997 and was published in the official gazette u/s 13 of the Act inviting suggestions/ objections on dated 28.11.1997. The lands under reference were proposed in the residential Zone-1 in this published Plan. This proposals were made after detailed land use survey, based on which this lands being included in the vicinity of the area where residential development was developing and likely to be developed. The part Plan and zoning certificate of the published proposal of revised Draft development Plan are attached herewith at Annexure 2 & 5.

AUDA received 35000 suggestions and objections to the published Draft development Plan proposals but no objection was raised or taken by anyone regarding the said propose residential zone of the land under reference. After considering the suggestions and objections received, AUDA made some modification in the published revised Draft development Plans and the modifications were published, in the official gazette dated 16.1.1999 wherein also the said lands were proposed in the residential zone-I. The part Plan & zoning certificate are attached herewith annexure 2 & 5.

The modifications of development Plan were widely published in the local newspapers also. AUDA received 3500 suggestions/ objections to the published modification wherein also no objection was taken by anyone for the said land. Finally AUDA prepared the final revised Development Plan and submitted the Draft revised Development Plan to Govt. on 25.5.1999 for sanction u/s 16(1). Wherein also the said lands were in the residential Zone-1 the part Plan and zoning certificate are attached herewith Annexure 3 & 5.

Govt. has published the preliminary notification of the modifications made in the revised Draft Development Plan submitted by AUDA to Govt. for sanction. The said modification were published in the official gazette on 4.5.2001 for inviting objections and suggestion. This notification also does not show any change in the said land of Saij and Borisana and are in the Residential Zone - 1 only. The part Plan and zoning certificate are attached herewith at annexure 4 & 5.

AUDA has prepared the revised Draft Development Plan in democratic way and with public participation at all levels and the objections and the objections/ suggestion were duly considered by AUDA before finalising the revised Draft development Plan.

sd/- illegible Senior Town Planner AUDA, Ahmedabad

The contents of the above report do show that the Draft Development Plan proposing variation in the earlier Final Development Plan has been duly notified for inviting suggestions and objections but it is not made clear by the AUDA as to what was the necessity of changing the purpose for which the land was reserved, namely from recreational to residential zone. In the absence of any specific reason assigned for such proposed change it is a matter of guess whether such a change was made keeping in view the interest and protection of the wild life and environment or there was some direct or indirect pressure of the builders and private contractors who were interested in utilizing the land for raising constructions, particularly, because the residential colony is very near from the land. The Draft Development Plan proposing the above variation has not been finally approved by the State Government and the matter is pending with the State Government. There are, on record, affidavit of Prant Officer, Gandhinagar, on behalf of the State of Gujarat and letter of Chief Wild Life Warden addressed to the Secretary, Forest and Environment Department, State of Gujarat. Both, in the affidavit of the Prant Officer and in the letter dated 16.3.2001 addressed by

the Chief Wild Life Warden to the Secretary in the concerned ministry of the State of Gujarat, the fact is admitted that the land is low lying and in certain months of the year during monsoon and for some period thereafter, water accumulates on the land converting the area into a lake and birds are attracted to use it as habitat. In the Affidavit of the Prant Officer, it is denied that there has been a lake in existence in the village since past several decades and it is like an Oasis in the desert but it is admitted that the so-called lake is situated in the land which is sloping and lower and hence it is filled up with water in rainy days. So this land in question turns into the so-called lake in monsoon season. In the letter of the Chief Wild Life Warden, on the enquiry for establishment of sanctuary for the birds migrating to Gopalnagar, Taluka: Kalol, the opinion of the Warden is, "it is true that migratory birds halt near the lake at Gopalnagar but there are other suitable places for the same and said place near Gopalnagar cannot be taken to be a permanent abode of birds". In the said letter, the opinion expressed then is as under:

"..... If the lake of this Gopalnagar is declared as protected area, administrative and legal problems can also arise, because as per our information, this area is of private ownership. Under these circumstances, instead of declaring this area as protected area, it appears more appropriate to arrange natural literacy camp by the Conservator of Forest, Mehsana and Chief Conservator of Forest, T.R.O., Gandhinagar, with a view to create awareness towards birds amongst the leaders, schools, colleges and village people in the surrounding areas for the purpose of public awareness in this area and thereby to provide appropriate protection to such birds, which may be noted"

From the above quotes opinion contained in the letter of the Chief Wild Life Warden, it is clear that the lake near Gopalnagar is temporary habitat of migratory birds and he has therefore advised that even if it cannot be declared as sanctuary, which would require acquisition of land from agriculturists, it is necessary to arrange natural literacy camps for protection of birds. This part of the opinion was given because it was found that at that place, many people were hunting and killing birds during their temporary sojourn at Gopalnagar lake.

8. On behalf of the agriculturists as interveners, affidavits have been filed and revenue records have been produced which unmistakably show that on Survey numbers, agricultural rights have been granted to various land owners. From the various affidavits, reports and opinions of the respondents - authorities, it is clear to us that the Survey numbers were never recognized in the revenue records or other records of the State Government as lake but in reality, agricultural operations are possible only for a limited duration when there is no water on the said land. It is admittedly a shallow land in which water accumulates in the monsoon and gets converted into a lake which attracts all kinds of birds including migratory birds and therefore, it appears it was proposed to be reserved as a recreational zone. It is not clear to us as to what prompted the AUDA to propose conversion of the Survey numbers from recreational to

residential zone. Objections and suggestions were invited on the Draft Development Plan but may be the general public did not show much concern excepting a few environmentalists like the petitioners who later on raised protest and sent representations. From the information and documents produced before us including the reports by various State authorities, it appears to us that a serious thought is required to be given by the concerned authorities, particularly AUDA and Wild Life Advisory Board to take a decision and convey it to the State Government whether the Survey numbers which get converted into a lake known as Gopalnagar lake, are required to be preserved as lake, if necessary, by acquisition of the lands from the farmers for the protection of wild life and maintaining environment.

9. The attempt of the petitioners by this Public Interest Litigation deserves praise as they are discharging their fundamental duties recognized by the Constitution under Article 51A, clause (g). One of the fundamental duties prescribed therein for every citizen is, "to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". Article 48A of the Constitution is one of the directive principles which calls upon the State to make an endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. The Legislation on the subject of wild life protection and preservation of lakes and water bodies for wild life is Wild Life (Protection) Act of 1972. In the definition of 'animal' contained in Section 2(1), amongst other living creatures, birds are included. 'Habitat' is defined in Section 2(15) to include land, water or vegetation which is natural home of any wild animal. u/s 2(17), 'land' is defined to include canals, creeks and other water channels, reservoirs, rivers, streams and lakes, whether artificial or natural, marshes and wet lands including boulders and rocks. There is hierarchy of officers to be appointed by the Central Government and the State Government under this Act. There has to be a Director of Wild Life Preservation to be appointed by the Central Government u/s 3 and Chief Wild Life Warden to be appointed by the State u/s 4 of this Act. Section 6 contains the provision of constitution of Wild Life Advisory Board by every State Government. The Board consists of ex-officio Secretaries of various Departments of the State, particularly from the Forest Department. u/s 7 of the Act, the Wild Life Advisory Board has to meet at least twice annually. The duties of Wild Life Advisory Board are prescribed in Section 8 and include selection of areas to be declared as sanctuaries, National Parks and closed areas and the administration thereof, formulation of the policy for protection and conservation of the wild life and specified Plants. Section 8 deserves to be quoted:

8. Duties of Wild Life Advisory Board --

It shall be the duty of the Wild Life Advisory Board to advise the State Government --

(a) in the selection of areas to be declared as sanctuaries, National Parks and closed areas and the administration thereof;

(b) in formulation of the policy for protection and conservation of the wild life and specified Plants;

(c) in any matter relating to any Schedule;

(cc) in relation to the measures to be taken for harmonising the needs of the tribals and other dwellers of the forest with the protection and conservation of wild life; and;

(d) which may be referred to it by the State Government.

Section 18 of the Act authorizes the State Government to issue a notification declaring its intention to constitute an area as a Sanctuary. On issuance of Notification, the Collector has to issue a proclamation inviting parties affected to submit their claims and after inquiry, the Collector has to grant compensation for acquisition of rights of the persons affected by declaration of area as sanctuary. There are, thus, detailed provisions made under the Wild Life (Protection) Act, 1972, for deciding upon the question of preserving an area as water body or sanctuary for birds, etc.

10. As we have mentioned above, the State has produced Notifications to show that Wild Life Advisory Board is in existence. We have also recorded the fact that Draft Revised Development Plan converting the use of the land from the recreational to residential zone is pending before the State Government for approval. From the facts that are disclosed to us, the proper authority for taking a decision and advising the State Government in this regard would be the Wild Life Advisory Board. The Chief Wild Life Warden, the Prant Officer and the two Secretaries from Revenue and Forest Departments have given their opinion that it is not viable or economical to preserve the land as lake for sanctuary of birds but the authority which has final say in the matter is the Wild Life Advisory Board. It is on the advice of the Wild Life Advisory Board that the State Government should sanction or refuse the revision of revised Draft Development Plan submitted by the AUDA. We have confirmed that the Survey numbers are owned by various farmers and they have cultivating rights which they are exercising depending upon the season and vagaries of nature. By grant of interim directions, we allowed them to carry on their agricultural operations but restrained them from changing the landscape so as to stop the accumulation of water for its conversion as a lake.

11. The Division Bench of this Court comprising Justice B.C. Patel and Justice D.A. Mehta in Public Interest Litigation seeking preservation of Lakes and water bodies of all kinds in the State of Gujarat made general directions to all authorities by its order dated 18.4.2001 in Special Civil Application No. 10621 of 2000 and cognate matters. The directions given in the operative part of the said order of the Division Bench in the aforesaid P.I.L. are as under:

In view of the policy and the provision contained in the Constitution, it is directed that the State Government shall maintain all water bodies, lakes, ponds, etc. as

lakes, ponds, water bodies, river, canal etc. Encroachments shall be removed at the earliest and priority must be given to the water crisis as that is the need of the day. The Government to submit report before the Court after 6 weeks as to what action the Government and Corporation are proposing to take and how much time will be required to carry out the directions. Before the monsoon if the priority is given and this work is done, it would be a job which will be appreciated by everyone. We adjourn the matter to 13th June, 2001 for submitting the report before this Court.

12. On behalf of the land owners, it was very forcefully argued that since the lands are source of livelihood of the farmers, they should be allowed to do whatever they like with the land for its use as agricultural lands. We are conscious of the fact that the farmers cannot be restrained from carrying on agricultural operations, but in our opinion, till the matter is deliberated and decision is taken by the Wild Life Welfare Board, the land owners cannot be allowed to fill the land and change its landscape so as to make it impossible for its retrieval and preservation as a lake. The land owners can therefore be only allowed to use the land as they had been using it in the past but in no case they can be permitted until decision of the Wild Life Welfare Board of the State Government to change the landscape and fill the land artificially with any building material or any other material like boulders and stones, etc. On the basis of information and documents made available to us, we consider it proper to allow these two petitions filed as Public Interest Litigation and make the following directions:

(i) The State of Gujarat and the Chief Wild Life Warden are directed to convene, within a period of one month from the date of this order, a meeting of the Wild Life Advisory Board to consider the various reports, suggestions and opinions of the petitioners and other authorities of the respondent-State for deciding and giving its opinion on the question of acquisition of land known as Gopalnagar Lake in the Survey numbers mentioned above for its preservation and use as lake for protection of birds and other animals and also for the protection of environment.

(ii) The Wild Life Advisory Board, while deliberating the subject in its meeting, shall take a formal decision and convey the same to the State Government within an outer limit of two months from the date of its meeting. Before taking such decision, the Board shall also grant due opportunity of hearing in the matter to both the parties and permit them to place their point of view and the material and information or study with them, on the subject.

(iii) The State of Gujarat is directed not to sanction the revised Draft Development Plan submitted by the AUDA, particularly, to the extent of proposed conversion of the land known as Gopalnagar Lake in Survey numbers referred above, from recreational to residential zone till the decision and opinion of the Wild Life Advisory Board is received by it.

(iv) The respondents, particularly, the State of Gujarat, through its Secretary in the Revenue Department and Forest Department, the Collector, Gandhinagar, the Chief Wild Life Warden, and the Ahmedabad Urban Development Authority, through its Chief Executive Officer, are directed to ensure that the land in Survey numbers described as Gopalnagar Lake is not put to any other use except agricultural and without any change of its landscape or permitting filling of it by any building or other artificial material so that it does not lose its character as a seasonal lake in every monsoon.

(v) The interveners who claim to be agriculturists and land owners carrying on agricultural operations on the land are directed to only carry on agricultural operations on the lands as they had been doing in the past but they shall not in any manner, either fill the land or raise any superstructure thereon. The landscape and character of the land as it exists today shall be maintained. Any violation of these directions shall, when reported, be viewed seriously. (vi) It shall be open to the parties to approach this Court in the event of any difficulty in implementation of this order.

13. The parties shall make a report to this Court of compliance of various directions made by us above after expiry of the period. Rule is made absolute in aforesaid terms in both these petitions. In the circumstances, the parties are directed to bear their own costs.