

(1996) 09 GUJ CK 0011
In the Gujarat High Court

Shantilal Bamanian and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 18

Citation : (1997) 3 GLR 2129

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard learned Counsels for the parties. At the outset, it is to be noticed that though Rule has been issued in this case on 27th December 1985, the respondents have not filed any reply to this Special Civil Application. The petitioners in this Special Civil Application, prayed for quashing and setting aside of notification, Annexure "A" dated 20th September 1982, of respondent No. 1 and another notification dated 28th June 1984 of 2nd respondent.

2. The notification dated 29th September 1982 has been issued by respondent No. 1 in purported exercise of powers conferred on it u/s 18 of the Wild Life (Protection) Act, 1972, whereunder the area, limits of which are defined in the Schedule annexed to the said notification, was declared to be a Wild Life Sanctuary. In pursuance of the said notification of respondent No. 1, the respondent No. 2 made a notification dated 28th June 1984 declaring thereunder the said area as Wild Life Sanctuary. The Adivasis who were residing in the villages of said area covered under these notifications were likely to be dispossessed and hence this Special Civil Application has been filed before this Court. On 27th December 1985, this Court was pleased to issue Rule and interim relief has also been granted, which reads as under :

Rule. By way of ad-interim relief the respondents are directed not to disturb the petitioners and other similarly situated Tribals without making alternative provision for rehabilitating them. The Rehabilitation Scheme that may be made by the Government shall be placed before this Court. It would be open for the

respondents to move this Court at any time for seeking clarification and/or modification of this order.

3. This Court has not stayed operation of those notifications and also not restrained the respondents in any manner from having a Wild Life Sanctuary, but the Tribals who were residing in the area of the villages covered under those notifications were given necessary protection. Their dispossession from the villages was deferred or postponed without making alternative provisions for rehabilitating them. This Court has further ordered the respondents that Rehabilitation Scheme that may be made by the Government shall be placed before this Court. Liberty has also been given to the respondents to move this Court at any time for seeking clarifications and/or modification of the aforesaid order. Though more than 10 and a half years have passed from the date of this order the learned Counsel for the respondents is unable to say what is the present position of the petitioners. The respondents have also not brought on record any Rehabilitation Scheme for the petitioners. The learned Counsel for the respondents is further unable to make any statement whether some alternative arrangement has been made for rehabilitating the petitioners or not. The position on the side of petitioners is also not good. The learned Counsel for the petitioners is also not in a position to say what ultimately has happened in the present case. He in fact has no instructions regarding the prevailing position in the area. Thus, the petitioners' Counsel has no instructions regarding the latest position about the rehabilitation of the petitioners and the Counsel for the respondents is also unable to say what ultimately has been done by the respondents in pursuance of the order of this Court dated 27-12-1985. It is really serious and shocking state of affairs on the part of respondents. The respondent is State and/or its functionaries and non-compliance of the order of this Court by them is serious matter. When this Court has specifically directed the respondents to frame a scheme to provide alternative place for the petitioners for their rehabilitation, the respondents should have acted in pursuance to the directions given by this Court and a scheme should have been at least brought on record. For whatever reason if the respondents were not in a position or they were facing difficulties in complying with the directions of this Court given by way of interim relief, then the only course open to them was to seek clarifications and/or modification of the order of interim relief. That has also not been done in the present case. The apprehension of the petitioners that they might be dispossessed from the villages covered under the notifications, without any rehabilitation, is not unreasonable or unjustified. At the same time, taking into consideration ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protection, propagation and developing wild life and its environment, the action of the respondents preserving the area for the said purpose may also not be unjustified, unreasonable or arbitrary. It may be in larger national interest, but at the same time, the Tribals who are residing in the villages covered under the aforesaid notifications have to be provided with alternative residence. Otherwise, this class of persons will suffer. It is necessary

and in larger interest to see that these Tribals are being dispossessed from the areas covered under the notifications. The balance has to be drawn and this Court has done exactly same thing while passing interim order extracted above. There may be possibility that the petitioners would have been provided with the rehabilitation facilities and by this time, they would have been rehabilitated. The petitioners may not be under obligation to bring on record the existing position and the respondents are, but they have failed to do so.

4. In the facts and circumstances of the case, what I consider it be appropriate and reasonable is to dispose of this Special Civil Application with direction to the respondents that in case by now the petitioners have not been dispossessed from the area of the villages covered under the notifications impugned in this Special Civil Application, they may not be dispossessed till the respondents frame scheme for their rehabilitation. In case the aforesaid exercise has not been undertaken, then it has to be undertaken within a period of three months from the date of receipt of certified copy of this order. If for any reasons, it is difficult to provide a scheme for their rehabilitation, a reasoned order may be communicated to the petitioners. In case the petitioners have already been rehabilitated elsewhere in pursuance of the aforesaid notifications and interim order of this Court, then no further action whatsoever is required to be taken by the respondents and in that case, this Special Civil Application shall stand dismissed as having become infructuous.

In the result, this Special Civil Application is disposed of with above directions. Rule is made absolute in aforesaid terms with no order as to costs.