

**(2005) 08 GUJ CK 0046**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 11362 of 1994**

Timbanamuvada Gram Panchayat

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

**Date of Decision : 04-08-2005**

**Acts Referred:**

Gujarat Panchayats Act, 1961 — Section 47, 47(2), 96(4)

**Citation : (2005) 3 GLR 2701**

**Hon'ble Judges : Akil Kureshi, J**

**Bench : Single Bench**

**Advocate :** Jitendra M. Patel, for the Appellant; P.R. Abichandani, L.D.A.G.P. for Respondent Nos. 1 and 2, Prakash K. Jani and Gaurang H. Bhatt, for the Respondent

## **Judgement**

Akil Kureshi, J.—In the present petition, the petitioner Timbanamuvada Gram Panchayat has challenged orders dated 6th May, 1992, 19th May, 1992 and 11th March, 1993 passed by the Collector by which different parcels of lands came to be granted to the respondent No. 4.

2. It is the case of the Petitioner Panchayat and to which there is no serious dispute that earlier Village Panchayats of Padal and Timbanamuvada formed a group Gram Panchayat. However, subsequently on account of growth of both these villages, the two Village Panchayats were bifurcated by notification dated 1st June, 1985. Thus with effect from 1st June, 1985, two separate Panchayats, one for village Padal and another for village Timbanamuvada came into existence. The Petitioner Panchayat is opposing the grant of land in favour of the respondent No. 4 by the Collector. The respondent No. 4 which is an educational trust and which is running an "Ashram Shala" has requested for grant of land to the Collector for extension of its existing activities. By an order dated 6th May, 1992, the Collector decided to grant to the respondent No. 4, 10 Are and 28 sq. mtrs. of land forming part of survey No. 639. Though the order dated 6th May, 1992 refers to the land as one forming part of survey No. 639 of village Padal,

there is some controversy with respect to this aspect of the matter to which reference shall be made at a later stage. The grant of land was on payment of token fee of Rs. 1 per year. There is no dispute about the fact that the land which was granted to the respondent No. 4 was part of gouchar land so earmarked and assigned in the Revenue Records. Similarly, by another order dated 19th May, 1992, Collector decided to grant further land admeasuring 160 sq. mtrs from the same survey No. 639 paikee in favour of respondent No. 4. This grant was however, upon payment of Rs. 6080/- calculated at the rate of Rs. 38/- per sq. mtr. and was meant to be Market Price of lands in question. By yet another order dated 11th March, 1993, the Collector assigned the land admeasuring 11553 sq. mtrs. to the respondent No. 4 from the said survey No. 639. This grant was also without charging any amount from the respondent No. 4. Thus, by three different orders, the Collector, Kheda granted a total of approximately three acres of land in favour of the respondent No. 4 out of survey No. 639 which land was otherwise earmarked for gouchar land of the village.

3. The Petitioner Panchayat has challenged the above mentioned orders passed by the Collector Kheda, on various grounds. It is contended that there are number of Schools in the near vicinity of the School which is proposed to be set up by the respondent No. 4. It is therefore, contended that there is no requirement of an additional School. It is contended that Shri Trikambhai Parmar is the sole person behind the respondent No. 4 trust and the land is likely to be misused for his personal purpose if granted. There are allegations of mala fides also made in the petition. It is contended that the orders passed by the Collector was without hearing the Petitioner Panchayat and was therefore, opposed to provisions of Section 96(4) of the Gujarat Panchayats Act, 1961. It is contended that the Collector could not have granted the lands in favour of the respondent No. 4 without resuming the same as the land was allotted to Panchayat and without resumption by the Government, the same cannot be disposed of in any manner. It is additionally contended that the lands which are granted to the respondent No. 4 were part of gouchar land of the Village Panchayat; that people of the village had a valuable right of grazing their cattle on such gouchar land. Such rights could not have been extinguished without proper inquiry without hearing the Petitioner Panchayat and without considering the adequacy or otherwise of the availability of the gouchar land. In this regard, the petitioner has contended that at the relevant time there were as many as 1022 cattle in the Panchayat and the total area of gouchar land available with the Panchayat was inadequate to sustain its cattle population. It is pointed out that out of the total area of 72.26 acres assigned to the Petitioner Panchayat for gouchar land, a total of 32 acres and 24 gunthas of land has already been acquired by the Government for Narmada Canal. Thus, approximately 40 acres of land will be available with the Petitioner Panchayat as gouchar land. It is therefore, contended that considering the large number of cattle in the village, the gouchar land was inadequate and could not have been further diminished by granting any part of the land in favour of a private trust. In support of his contention, learned

advocate for the petitioner relied upon the decision of Learned Single Judge of this Court in the case of Kanji Haridas Goradia and Another Vs. State of Gujarat and Another, in which the Learned Single Judge of this High Court held that though the Government has powers to resume any land vested in the Panchayat, the Panchayat is a vitally interested party and the land which is vested in the Gram Panchayat for the purpose of gouchar land, if is to be resumed from the Panchayat, the Panchayat should be given an opportunity of hearing.

4. Appearing for the State Government, learned A.G.P. Shri P.R. Abichandani supported the Government's orders and submitted that after due inquiry, the land was granted in favour of the respondent No. 4 by the Collector and no illegality has been committed by the Collector in the process.

5. Appearing for respondent No. 4 learned Counsel Shri Bhatt submitted that respondent No. 4 is running "Ashram Shala" and it was for this public purpose that land was been granted in favour of respondent No. 4 trust; that there are no "Ashram Shalas" in the near vicinity; that the question of requirement of such "Shala" cannot be decided by this Court in its writ jurisdiction; that for the purpose of running residential school, land was required by respondent No. 4 and that the Collector after due inquiry decided to allot the same to respondent No. 4 which cannot be termed as illegal. He contended that Padal Gram Panchayat was throughout heard by the Collector; that Talati-cum-Mantri was common for both the villages who was present throughout the proceedings; that one Shri Narsinhbhai Shankarbhai Patel who was Sarpanch of Timbanamuvada Gram Panchayat from the year 1985 to 1990-1991 was also present before the Collector and was aware about the proceedings. He therefore, submitted that since both Talati-cum-Mantri as well as Sarpanch of village Timbanamuvada were heard before the Collector passed the impugned orders, requirement of Section 96(4) of Gujarat Panchayats Act, 1961 should be deemed to have been fulfilled.

6. After having heard learned advocates appearing for the parties and having perused the materials available on record, it is clear that group Gram Panchayat of village Padal and village Timbanamuvada were bifurcated by a notification dated 1st June, 1985 and separate Gram Panchayats came into existence for each of these villages. From the notification produced by the petitioner dated 5th September, 1991, it is clear that survey No. 639 was allotted to village Timbanamuvada i.e. the petitioner herein. It was therefore, not correct on the part of the Collector to treat the said land of survey No. 639 as belonging to village Padal as is being referred to in the impugned orders. The orders were passed in May 1992 and bifurcation of survey numbers had by then been finalised by a notification dated 5th September, 1991. If during the time when the Collector had undertaken the process of considering the request of respondent No.4 for being granted the land to the said respondent, the question of assignment of the land to either of the villages was not yet finalised., it is difficult to appreciate how it was treated to be a land forming part of village Padal. In that view of the matter, I find that Collector committed an error in

considering the survey No. 639 as forming part of village Panchayat of Padal. The entire proceedings appear to have been proceeded on this assumption which I find was intrinsically erroneous. If the Revenue Survey Numbers were not bifurcated and separately assigned to newly created Gram Panchayats from the erstwhile group Gram Panchayat, it was not open for the Collector to treat a particular survey number as being part of village Padal. As things developed even before the order came to be passed by the Collector, the very same survey number came to be assigned to Timbanamuvada Gram Panchayat who is petitioner before this Court. Effectively, therefore three acres of land forming part of gouchar land of village Timbanamuvada came to be assigned by the Collector in favour of respondent No. 4 without hearing the present petitioner. I am unable to accept the suggestion of the learned advocate for respondent No. 4 that since Talati-cum-Mantri was common in both the Gram Panchayats and was present from time to time during the hearing by Collector, same should be treated as notice and granting of hearing to the present petitioner. Talati-cum-Mantri is an employee of the Government and discharging his duties as Secretary of the Panchayat. His position cannot be confused with that of the elected body of the Panchayat which alone can represent the wish of the people of the village. The presence or absence of Talati-cum-Mantri therefore, would not conclude the question of hearing of the Gram Panchayat. The Petitioner Panchayat has in the petition clearly stated that no hearing or opportunity of hearing was granted to the petitioner. In the affidavit in reply, respondent No. 4 contended that Sarpanch of the Petitioner Panchayat namely Shri Narsinhbhai Shankarbhai Patel had also attended the proceedings from time to time. This averment has been denied by the petitioner in its rejoinder. It is stated that the then Sarpanch had never attended the proceedings as suggested. It is contended that the Petitioner Panchayat was totally ignorant about the proceedings. Curiously, the respondent No. 4 has obtained an affidavit of Shri Narsinhbhai Shankarbhai Patel dated 23rd November, 1994. In this affidavit the said Shri Narsinhbhai Shankarbhai Patel has stated that he was Sarpanch of Padal Gram Panchayat from the year 1975 to 1985 and, thereafter, of Timbanamuvada Gram Panchayat from the year 1985 to 1990-1991. He has stated that he has personally attended the proceedings in question along with Talati-cum-Mantri and that he was informed about the progress of the proceedings regarding the allotment of land in favour of the respondent No. 4. He has stated that the proceedings were within his knowledge and since the land was meant for public purpose, he did not object to grant of the land in favour of the respondent No. 4. I find the stand of Shri Narsinhbhai Shankarbhai Patel rather strange. Nowhere in his affidavit he has stated that he brought to the notice of the Gram Panchayat the proceedings going on before the Collector. Nowhere has he stated that Gram Panchayat resolved not to object to the grant of land. Nowhere has he stated that he has taken the members of the Panchayat into confidence before deciding not to object to the grant of the land. The Sarpanch of the Village Panchayat may be the Head of the Panchayat, independently he has no right to take such an important policy decision for and on behalf of the Panchayat and thereby on behalf of the entire population of the

village. It was the duty of the Sarpanch, if he was aware about the proceedings to have brought the same to the knowledge of the entire elected body of the Gram Panchayat and, thereafter, to represent the wish of the elected body of the Gram Panchayat before the Collector. Individually in his personal capacity in my opinion, Sarpanch totally lacked authority to make such an important commitment on behalf of the Village Panchayat and in turn on behalf of the people of the village. Section 47 of the Gujarat Panchayats Act, 1961 as it existed at the relevant time provided for the Executive functions of Sarpanch, Upa-Sarpanch etc. In so far as the said Section is relevant for our purpose, same is reproduced here-in-below.

Section-47 : Executive Functions of Sarpanch, Chairman, Upa-Sarpanch or as the case may be, Vice-Chairman.-

(1) Save as otherwise expressly provided by or under this Act, the executive power, for the purpose of carrying out the provisions of this Act and the resolutions passed by a gram panchayat or nagar panchayat vests in the Sarpanch or, as the case may be, the Chairman thereof who shall be directly responsible for the due fulfillment of the duties imposed upon the panchayat by or under this Act. In the absence of the Sarpanch or as the case may be, the Chairman his powers and duties shall, save as may be otherwise prescribed by rules, be exercised and performed by the Upa-Sarpanch or as the case may be, the Vice-Chairman.

(2) Without prejudice to the generality of the foregoing provisions :-

(i) in the case of Gram Panchayat, its Sarpanch and in the case of a nagar panchayat, its Chairman shall-

(a) preside over and regulate the meetings of the panchayat;

(b) exercise supervision and control over the acts done and action taken by all officers and servants of the panchayat;

(c) incur contingent expenditure upto [fifty rupees] at any one occasion;

(d) operate on the fund of the panchayat including authorisation of payment, issue of cheques and refunds;

(e) be responsible for the safe custody of the fund of the Panchayat;

(f) cause to be prepared all statements and reports required by or under this Act;

(g) exercise such other powers and discharge such other functions as may be conferred or imposed upon him by this Act or rules made thereunder.

From the above reproduction of the portion of Section 47 of the Gujarat Panchayats Act, 1961, it can be clearly seen that Sarpanch exercises the executive power for the purpose of carrying out the provisions of this Act and the resolutions passed by Gram Panchayat. It is also provided that the Sarpanch shall be directly responsible for the due fulfillment of the duties imposed upon

the Panchayat by or under this Act. Sub-Section 2 of Section 47 further makes it clear that the Sarpanch presides over and regulates the meetings of the Panchayat. He exercises supervision and control over the acts done and action taken by all officers and servants of the Panchayat. He is authorised to incur contingent expenditure upto the limit prescribed. He is authorised to operate on the fund of the Panchayat and is responsible for its safe custody. He is also empowered to exercise such powers and discharge such functions as may be conferred or imposed upon him by this Act or rules made thereunder.

Considering the provisions made in Section 47 of the Gujarat Panchayats Act, 1961, it is amply clear that Sarpanch does not have power to make commitments and bindings on behalf of the Panchayat in his personal capacity at least in so far as the question of policy decisions are concerned. The use and enjoyment of gouchar land is a valuable right of the residents of the village, such rights cannot be surrendered by the Sarpanch without even consulting the Gram Panchayat. It is only Gram Panchayat through a validly passed resolution by the elected body that can take a binding decision with respect to its stand on the question of surrendering any part of gouchar land of the village.

7. As noted earlier, land assigned for the purpose of grazing of cattle in the village was hopelessly inadequate. In absence of any controversy regarding the assertions of the petitioner that there were nearly 1000 cattle in the village at the relevant time and total available gouchar land remaining with the village Panchayat was barely about 40 acres, I find that gouchar land available with the Village Panchayat was highly inadequate. It is brought to the notice of this Court by the learned Addl. Government Pleader in some other proceedings that as per the Government standards, generally a ratio of 40 acres of gouchar land for 100 cattle is considered to be adequate. When the available gouchar land was way below the said ratio, it was not possible for the President of the Village Panchayat to agree to grant of land in favour of the private trust without taking Village Panchayat into confidence. His no objection therefore, is wholly inconsequential. There is nothing on the record to establish his presence before the Collector during the hearing of the proceedings in question. His no objection is also nowhere noted by the Collector in his orders. In the result, from the record it is clear that though the land prior to 5th September, 1991 was not bifurcated, Collector proceeded on the footing that land belonged to Padal Panchayat and decided to allot the same to the respondent No. 4. The petitioner who had vital interest of being heard before any such decision was taken was never communicated the existence of such proceedings nor was any opportunity of being heard granted to it. The land was actually allotted to the petitioner Gram Panchayat by a notification dated 5th September, 1991. Long thereafter, the Collector passed order of granting the said land to respondent No. 4 without hearing the Petitioner Panchayat. The presence of Talati-cum-Mantri or silence of the Sarpanch in his personal capacity would in no way bind the Gram Panchayat and people of the village.

8. In the result, I find that impugned orders suffer from clear illegality. The orders at Annexure F-1, F-2 and F-3 dated 6th May, 1992, 19th May, 1992 and 11th March, 1993 respectively are therefore, quashed and set aside . Rule is made absolute with no order as to costs.

9. At the request of the learned advocate for respondent No. 4, this order is stayed upto 18th August, 2005.