

GJBK020089062025



Regular Civil Suit No. 32/ 2025

ORDER BELOW EXH- 5.

(1) Read the application at Exh.5 and the documents filed by the plaintiff and heard the Ld. Advocate for the plaintiff at length. I also gone through the reply filed by the defendant No.1 at Exh.25 and heard Ld. advocate for the defendant No.1, 2 and 3.

(2) It is pertinent to note that the defendant No.2 & 3 i.e. Deputy Collector and Collector of the Banaskantha failed to file their reply against the application at Exh.5. However, the Ld. A.G.P. Mr. D.H. Chapiya has oppose the contention of the Exh.5 of the plaintiff. He has also endorsed on Exh.5 and objected the prayer clause of the plaintiff in his present application at Exh.5.

(3) It is the contention of the plaintiff that the plaintiff is residing at Gathamam village and having a plot in the village which is allotted by T.D.O under the Scheme of

Free Plot on 28.11.83 by the Government of India. It is further submitted that he has been granted the Sanad of the plot also and thereafter, he has started to reside in the house made by him on the said plot. It is further submitted that at the western side of this house there is an open land admeasuring of 15 x 15 ft. total of 225 sq.ft. and that small plot was remain unused since long. Therefore in an open auction of the said plot he has been allotted the said plot vide A/1/Jamin/Plot on 4.6.11. The plaintiff has also paid the amount of auction i.e. Rs.4935/- on 24.3.11. He has also get the necessary permission of construction and as per plan and permit sanctioned to him on 1.9.12, he has constructed on it and residing in it since last 12 years. It is further submitted that the opponent of the plaintiff by misguiding the authorities filed an appeal before the Deputy Collector which is partly allowed and the Deputy Collector has cancelled the order of T.D.O. in which the plot was allotted to the plaintiff. Against that order the plaintiff has also filed an appeal before Ld. Collector which is also dis-allowed on 3.3.13. Against the said order the present plaintiff has filed a Revision Application before Secretary, Revenue Department, the said Revision Application was also rejected on 8.7.16. Therefore, on 14.12.24 the defendant No. 1, Grampanchayat has given a notice to remove the

construction and remove the encroachment. It is contended that thereafter the defendant No. 1 has also given a notice to the plaintiff to remove the encroachment. Thereafter, the plaintiff has given a notice to the defendant No.1 under section-270 of the Gujarat Panchayat Act. But, the defendant No. 1 trying to remove the construction made by the plaintiff and therefore he has filed the present suit. It is submitted that once a Sanad has been issued it cannot be cancelled by the Revenue Authority, it must be cancelled only by the Civil Court. It is further submitted that the said small piece of land is not objected to any other person but Mr. Panchal Jayantilal Laxmandas who is not residing in the village, to harass the present plaintiff and other people proceeded against the plaintiff in the various forum. It is submitted that the defendants by taking power in the hand, want to destroy the construction made by the plaintiff on which the plot which is legally allotted to the plaintiff. Hence, by filing the present application prayed for interim injunction against the present defendant not to remove his construction till the final disposal of the suit.

(4) It is pertinent to note that during the filing of the reply from the defendants the present plaintiff has filed an application for ad-interim relief to not to destroy or

remove the construction made by the plaintiff vide Exh.22. However the application at Exh.22 ordered to be kept with hearing of the present application i.e. Exh.5.

(5) Vide Exh.25, the defendant No.1 Grampanchayat, Gathamam has oppose the contention of the plaintiff and stated that the statement made by the plaintiff is required to be proved by plaintiff himself. He denied all the contentions raised by the plaintiff and pray to reject the present application at Exh.5.

(6) I have heard Learned advocate for the plaintiff Mr. B.H.Paradiya at length. He has argued as per contention made in the application at Exh.5. He has merely put the press upon the fact that the allotment of the land made to the plaintiff admeasuring 225 ft. is legal one and it is issued by T.D.O through Sanad and Sanad cannot be revoked or re-call by any revenue authority, it must be cancelled by the Civil Court. It is argued that though there is no power to re-call the Sanad the Ld. Collector and the Secretary, Revenue Department wrongly denied the rights of the plaintiff over the plot. It is further submitted that there is no illegal construction nor any encroachment made by the plaintiff. The construction made by the plaintiff is also not obstruct to anybody nor it create any problem to any other person in the village.

It is further argued that the proposed party Mr. Jayantilal Laxmandas Panchal has wrongly initiated the proceedings against the plaintiff. Referring the documents at Mark-4/5 it is argued that the plot admeasuring by 15 x 30 is allotted to the plaintiff and on the western side of the plot there is no construction nor any road is present. Therefore there is no question of any kind of encroachment. It is argued that the original plot which is allotted in the year-1983 to the plaintiff is under possession of the plaintiff and at the western side of that plot the land 15 x 15 is open land, it is not the road. Referring the Mark-4/6 it is argued that the sketch made in the Sanad specifically mentioned that the road passing near the house of plaintiff is after the completion of construction of the plaintiff. The construction made by the plaintiff is not create any kind of hurdle to any other person for passing through this road. It is argued that by some political grudge some persons are wrongly harass to the plaintiff and though there is no reason to remove the construction the defendant panchayat has with malafide intention gave notice to the plaintiff. Hence, Ld. advocate for the plaintiff has pray to grant injunction in favour of the plaintiff and against the defendant.

(7) The Ld. advocate for defendant No. 2 and 3 Mr. D.H.Chapiya is not able to file reply to application at Exh.5. But, he has endorsed his objection on the application and strongly oppose the contention of the plaintiff and argued that the plaintiff has not made any Panchanama to put the real picture of the road on record. The construction made by the plaintiff is really an encroachment after the cancellation of Sanad. The Sanad upon which the plaintiff is relied is also get by way of wrong procedure. The plaintiff and the concerned Panchayat has not followed the right procedure of auction and therefore the Sanad has been rightly cancelled by the authority. It is further argued that the excess construction made by the plaintiff is obstructing to the public on road and therefore pray to reject the application with costs.

(8) The Ld. advocate for the defendant No. 1, Grampanchayat has also oppose the contention of the plaintiff and pray to reject this application at Exh.5.

(9) I gone through all the contentions made by the plaintiff at Exh.5 application as well as the documents produced by the plaintiff at Mark-4/1 to 4/17 and the document at Mark-23/1 to 23/5. I also gone through the judgment produced by the plaintiff in the case of **Govind**

Murji Patel (Kerai) And 2 Ors. vs State of Gujarat And 5 Ors., reported in (2007) 1GLR671.

(10) Considering all the pleadings and submissions from both the side, following issues are required to be determined, to decide this application at Exh.5.

- (1) Whether the plaintiff has a prima facie case ?
- (2) Whether the balance of convenience is in favour of plaintiff ?
- (3) Whether the irreparable loss in terms of money will be caused to the plaintiff; if an interim injunction is not granted ?
- (4) What order ?

(11) The findings to the above issues are as under :

- (1) In the negative.
- (2) In the negative.
- (3) In the negative.
- (4) As per final order.

(12) If we go through the document produced by the plaintiff, vide Mark-4/1 to 4/4 are the notices and correspondence between the plaintiff and Grampanchayat about the removal of construction made by the plaintiff and Mark-4/5 is a Sanad issued in favour of plaintiff which shows that the plot has been allotted in the year-1983 and i.e. the plot No. 2/2. On the north side of plot there is a government

open land and on the southern side of the plot there is a plot no. 2/1 and in the eastern side and western side of the plot there are road passes for the general public. The map mentioned in the back side also shows the situation of the plot allotted to the plaintiff and plot is having 30 Ft. length and 15 Ft. Width. Thereafter, if we perused the another Sanad which is produced by the plaintiff at Mark-4/6 which is allotted on 6th June, 2011 in favour of plaintiff. On the back side of it there is a map which disclose that the newly allotted plot is situated on the western side of the plot which is allotted in the year-1983. While in the Sanad which is earlier allotted to the plaintiff on the western side, there is a path specifically mentioned in the description while in the newly allotted Sanad the road is shown after 15 Ft. from old plot. Further on the northern side of the plot which is allotted to the plaintiff in the year-1983, its mentioned as a open Government land. While in the newly allotted Sanad the house of Dineshbhai Mohanbhai Dhanak has been mentioned on north side. Thus, it is very much clear that the map mentioned in the back side of both the Sanad are mis-match with each other. Further, we peruse the newly allotted Sanad of the year-2011, the four side of the plot are not mentioned in the Sanad as it is described in old Sanad of the year-1983. If we perused the Mark-4/15 i.e. the order of Deputy Collector in Revenue Appeal No. 10/2012, it appears that there are so many irregularities caused in procedure of auction by which the plaintiff has claim to get the Sanad from T.D.O. It is further pertinent to note that in that order Ld. Deputy

Collector has specifically mentioned that the path on the western side of the old plot of the plaintiff is make the way narrow and it also obstruct to the other persons of the street and ultimately Ld. Deputy Collector has cancelled the order of T.D.O of issuance of Sanad in favour of the plaintiff and which is ultimately remain confirmed in the forum of Collector Office as well as before the Secretary, Revenue Department.

(13) It is pertinent to note that as per the argument of defendant No. 2 & 3, it is very much clear that the present plaintiff has filed a Special Civil Application before Hon'ble High Court of Gujarat against the order of Secretary, Revenue Department but the said fact has been suppressed by the plaintiff. Thus, in my view, the present plaintiff do not come with clean hand at the initial stage. However, it is not denied by the plaintiff that he has not moved before the Hon'ble High Court for this dispute.

(14) Thus, as discussed above the newly allotted plot to the plaintiff in the year-2011 cannot be said to be absolute legal and the procedure of allotment is proper and therefore Sanad has been also cancelled by Revenue Authority. Whether it is legal or not that may be decided at the latter stage of the trial. But, at present as discussed above in absence of any Panchanama on record one cannot said that the plot allotted to the plaintiff do not make the path narrow and it is not obstruct to any person.

(15) Further, on perusal of Mark-4/10 i.e. the map and plan of the newly allotted plot to the plaintiff. It is a plan to the newly allotted land only. Therefore, it cannot be believe that the plaintiff has constructed new house on the both the plot. Hence, in my view the plaintiff do not have prima facie case.

(16) The plaintiff has relied upon the judgment of Hon'ble High Court of Gujarat in the case of **Govind Murji Patel (Kerai) And 2 Ors. vs State of Gujarat And 5 Ors., reported in (2007) 1GLR671.** I respectfully read the judgment of Hon'ble High Court in that case, the Sanad has been issued in the year-1985 while the revisional powers are exercised in the year-1994, i.e. almost after 9 years of the date of allotment. Further in that case the procedure of auction, there is no irregularities find by the authorities. While in the present case, the authority has find some irregularities in procedure of auction and issuance of Sanad. In the present case, within the 2 years of the issuance of Sanad, the Sanad has been cancelled in the year-2013, in appeal by the appellate authority. Thus, I humbly agreed and bound by the ratio cited in the judgment of Hon'ble High Court, but, the facts mentioned in that case is different from the present case. Therefore cited judgment cannot helpful to the present plaintiff in this case.

(17) Thus, as discussed above, the plaintiff has got the Sanad in the year-2011 which is cancelled by the appellate authority in the year-2013, on the ground of irregular procedure of auction and as discussed above in the Sanad dated 6.6.2011 do not described the four corner or four side of the plot. Further, the map drafted in the Sanad mis-match with the earlier Sanad issued in the year-1983. Hence, it cannot be said that the Sanad issued to the plaintiff is issued after duly follow-up of lawful procedure. Therefore, in my view the present plaintiff do not have prima facie case.

(18) Further, as discussed above, the present plaintiff already possess a plot from the year 1983 and residing in it by house builded on it and as per the sketch mentioned in the Sanad of year-1983, there are two path from the plot of plaintiff and plaintiff residing in that house. Thus, plaintiff do not fill any inconvenience if an encroachment over path is removed by the Panchayat. Thus, the element of balance of convenience is also not in favour of plaintiff. Further, if the exceeded construction has been removed by the authority the plaintiff can count the loss in terms of money that what loss has been caused to the plaintiff. Thus, element of irreparable loss in terms of money is also not in favour of

plaintiff. Hence, I answer issue No. 1 to 3 in the negative and in reply to issue no.4 I inclined to pass following order.

:- ORDER :-

The application at Exh.5 stands rejected.

No order as to costs.

Pronounced in open court today, i.e. 16th day of September, 2025.

Date :- 16/9/2025
Palanpur.

(M. J. Bihola)
Principal Senior Civil Judge,
Palanpur.
(Code No.GJ00624)