

ORDER BELOW EX.5 and 15 IN SPECIAL CIVIL SUIT NO.64/

2017 :-

[1]. The plaintiffs have filed the present Special Civil Suit, which is valued at Rs.1,000/- on 12.05.2017 against the defendants to the effect that the defendants have no legal right to brake present bus stand, which is known as new bus stand, and further to held that the act of defendants is against the law under public private partnership and ultra vires, and alongwith the suit, they have also submitted an application at Ex.5 for temporary injunction restraining the defendants, their men, agents, servants, contractors, builders from braking the present bus stand, which is known as new bus stand, and if any illegal permission for pulling down the said construction is granted, then it may be directed to produce before the court. Further, the plaintiffs have also filed present suit in representative capacity, wherein large interest of public is involved, together with the Corporation and its employees; however the opponents intend to ruin the corporation in collusion with each other, and as per the Hon'ble Supreme Court and State Government instruction, no construction can be made on disputed Talavadi land, and the same cannot be used for development purpose, despite that, new bus stand is erected on the disputed land, which has still

not completed 20 years; that as per information of plaintiffs, soil testing report is failed; further the matter is at the stage of filing reply by the defendants, but no any defendants have produced any reply, and if they will succeed in their act, and make more then one floor building, then there is every possibility to cause harm to the public and public property at large, therefore, the plaintiffs have prayed to grant temporary injunction to the effect that the defendant no.3 be restrained from implementing agreement made with the government for present new bus stand, and in support of their case, the plaintiffs have produced following documentary evidence at list Ex.59,61, wherein list Ex.3 includes rule schedule of corporation; details showing land kept on lease through S.T.Corporation, schedule showing right and liability of corporation, chart showing structure of corporation, Avaden patra showing pending demand of Workers of State Transport and Fedration and INTUC

[2]. Then the ld. Advocate for the plaintiffs, Mr.J.G.Talati has submitted Written Arguments at Ex.55, and made oral submissions accordingly, and finally prayed to allow the suit with the costs.

[3]. Then the court issued summons to the defendants and in response to that, the defendant no.1 appeared before the

court and filed Written Statement at Ex.23, wherein he has raised general and common defenses, and in page no.6, he has stated true facts, which are mainly to the effect that the plaintiffs have no right to file such suit, further this Court has no jurisdiction to hear this suit; that the defendant no.1 Gujarat State Road Transport Corporation is autonomous body, constituted under Transportation Act, 1950, and as per provision of that Act, the decisions taken by the state government and instruction given to corporation were implemented, so the dispute raised by the plaintiffs, are regarding policy decision taken by state government, therefore this court cannot interfere in it, so the suit of plaintiff and injunction application deserve to be dismissed.

[4]. The defendant no.1 has further contended that the disputed land was purchased by the Corporation from Nadiad Nagarpalika by registered sale-deed no.868/71 dated 19.03.1971, and just to make land equal, the remaining land was also purchased by registered sale-deed no.321/72 from Nadiad Nagarpalika, even amount for remaining Talav land is also credited in the government on fixed date 07.05.1990, thus, the defendant no.1 is the owner of all these lands of new bus stand, wherein ironic bus port will be made for public and passengers, for which the plaintiffs have no any right

over it.

[5]. The defendant no.1 has further contended that the S.T.Corporation has completed six public private partnership projects sanctioned by Central Government and State Government, and they are active with modern facilities, however, the plaintiffs have filed the present suit, wherein no public interest is involved, and in this connection, different bus stations have been developed by the S.T.Corporation, and as per that, Ahmedabad bus stand is developed at Gita Mandir, Ranip bus stand, Nahrnager Satelite bus Stop, Naroda – Krushnager, thereby burden is reduced on central bus stand, and for that, grant of Rs.2,155.40 crore has been allotted by the state government to make buses and bus stand for modern facilities during the year 2013 to 2018.

[6]. The defendant no.1 has further contended that public private partnership model is prepared for development of bus stand for 90 years lease period, wherein Vadodara is such type of model, and tender for development of such other cities such as Rajkot, Junagadh, Bhavnager, Jamnager, Amrali, Surendranager, Bhuj, Anand – Samarkha, Bharuch, Nadiad, Navsari, Paten, Palanpur and Modasa have been published, and further proceeding is going on. However, without understanding the meaning of work 'public

partnership', the plaintiffs have filed this false suit, which deserve to be dismissed with the costs.

[7]. Further, on service of notices, the defendant no.3 Katir Construction Lt.d., appeared before the court and filed his written statement at Ex.29, wherein he has also raised common and general defenses, and further contended that the S.T.Corporation is a semi government, who has invited public tender in different news paper to make iconic bus stand at Nadiad, which he has filled tender, which was sanctioned, and he was given letter of acceptance by the defendant no.1 on dated 14.03.2017, for which Rs.75 lacs and 15 lacs were given to the corporation as per contract, and its receipts were also produced in this case, therefore, the allegations made in the suit and injunction application Ex.5 by the plaintiffs are false and baseless, therefore, they have got prima-facie case, even balance of convenience is also in favour of defendant no.3, so if the injunction as prayed for by the plaintiffs, will be granted, then the public interest and justice will not be maintained, therefore he prayed to dismiss the suit and injunction application with the costs. Further, defendant no.4 has also orally submitted to consider his submissions as argued out by defendant nos.1 and 3.

[8]. Moreover, ld.DGP Shri P.S.Dhora has submitted a

purshis at Ex.32, and declared that the Written Statement filed by the defendant nos.1,3, be considered as his written statement, therefore, the ld.advocate for the defendants have submitted Written Arguments at Ex.48, and made oral arguments, and finally prayed to dismiss the suit and injunction application with the costs.

[9] Further, ld.advocate for the defendants, has mainly argued at length and further argued that looking to plaint Ex.1, the plaintiff has made allegation against the defendants, but in support of this, he has not given any evidence, so it cannot be believed. Further he argued that looking to present scenario, the State Government has implemented development project to give facilities to Nadiad People, and it is only possible by public policy partnership policy, and this is not first case for the defendants, but the Stage Government and S.T.Corporation have already started such project at different places, and they have got success, and defendant no.3 has given Rs.90 lacs to defendant nos.1,2, copy of cheque are produced at M.31/1 to 31/3, in that event, if the injunction will be granted, then all the works will be stopped, and the defendants will have to suffer huge loss, at present, project will be delayed for unlimited period, and the public at large will have to suffer, therefore he argued that

all three points are in favour of defendants, however the plaintiff do not want to change in Nadiad, therefore, he has filed this false suit with mala-fide intention. He further argued that if such project will be implemented at Nadiad bus stand, then the people of Nadiad City will get modern and scientific equipments such as Inter net, Wi-fi facility, disability facility, trolley luggage, RO water, parking facility, sitting arrangement for men, women, rest room, canteen, CCTV system, office, show room etc., which will be iconic bus stand, and finally he prayed to dismiss the application with the costs.

[10]. Then in order to prove their defences, the defendants have also produced documentary evidence at list Ex.37, 34.1 to 34/17,

[11]. Then in order to decide the controversy between the parties, following points have been raised in this case :-

1. Whether the plaintiff proves that he has got prima-facie case ?
2. Whether balance of convenience and irreparable loss are in favour of plaintiff ?
3. What order ?

[12]. My findings on the above Points are as under for the reasons that follow :-

1. In negative.
2. In negative,
3. As per final order.

REASONS.

[13]. **Point no.1, 2 :-**

Before deciding the application Ex.5 in this case, it is material to note that under O.39, R.1,2 of CPC., this Court has got discretionary power, which has to be exercised in the interest of justice and considering the facts of case. However, at this stage, only prima-facie case is required to be considered, and no evaluation of documentary evidence is required. At the same time, all these points are interconnected with each other, therefore, they are discussed and decided together for the sake of convenience and brevity.

[14]. Then looking to the plaint Ex.1, it appears that the plaintiff has made allegations that different proper procedure have not been followed by the defendant in this agreement, and they are wasting public money; there is also allegation of corruption against the defendant no.3 contractor, but in this regard, he has not produced any evidence. So it can be said that these are only the allegations.

[15]. Before going to the merits of the plaintiff's case, this Court believes that at present, system of society has been changed, life style of people has been changed, even simple needs of people has been changed, all the things have been changed, time is very important for everyone. People want

quick and speedy remedy for benefit or fruits of their labour or work, and that is also not at state level, but national and international level. So, simple but modern procedure has been implemented by the State machinery; scenario has been changed from time to time, due to Internet technology, and due to such changes, Government has to change its policy, just to cope up those changes made in the society, even government has to change its policy and has to implement new public private partnership policy, not in the railway, S.T.Bus, but the area is also going to be changed for public private policy, that too by the support of the people, further the government has privilege, to take any decision in the interest of people as well as State Machinery, and the defendant no.1 is a semi government body, working under the defendant no.2 State Government. So, this Court cannot interfere in the policy decision of State Government and different policy change is also going on everywhere, which can be seen from M.24/2, it appears that at 14 places, such public private policy has been initiated, such as Rajkot, Junagadh, Bhavnager, Jamnager, Amrali, Surendranager, Bhuj, Anand – Samarkha, Bharuch, Nadiad, Navsari, Paten, Palanpur and Modasa, and they have also implemented public private policy at Ahmedabad and Baroda, wherein the State has got good

success from them and earned huge amount, and the State has to take such policy decision in the interest of public at large, in that event, this Court cannot interfere in such policy decision of State Government.

[16]. Further, looking to the Written Statement filed by the defendant no.1 at Ex.23 on page 10, it appears that the government has earned crore of rupees by implementing public private partnership project from the year 2013 to 2018, and it got good result, therefore they started such project at other different places of State, cities and small towns. Further it appears from the record that S.T.Stand and railway are near the new bus stand, and here many people pass and re-pass for whole day and night, therefore there is every possibility of vibration and the public at large will suffer, but this court believes that the interest of public at large should be looked into. Further, looking to M.62/2 sale-deed, it appears that disputed place is near Ratan talavadi, which is known as Ratan Talavai Lakhavad party land, and the plaintiff has also stated that place is known as Talavadi place, then if the place is talavadi, then it is the duty of court to see safety and security of people, as the people may pass and re-pass in the place.

[17]. The plaintiff has mainly alleged allegations against the defendants, that it has not done such project or work with

care and caution, on the contrary, looking to the documentary evidence, it appears that the defendant no.1,2 State Government has properly followed all the procedures as per law, and it has given contract to the defendant no.3, and the S.T.Corporation is a semi government, working under defendant no.1,2, and the defendant no.3 is a construction company contract, and defendant no.3 has taken this contract on behalf of defendant no.2, and looking to M.31/1, it appears that the defendant no.3 has given Rs.75 lacs by cheque to the defendant no.1,2 and looking to M.35/3, the defendant no.3 has given Rs.15 lacs to the defendant no.1,2, thus, huge amount has been given, in that event, it can be said that prima-facie case is more in favour of defendants, then the plaintiff, even balance of convenience is also in favour of defendants then the plaintiff.

[18]. So far as the point of irreparable loss is concerned, this court believes in such way that it is in favour of defendants then the plaintiff, crore of rupees has been given to defendant no.1,2, and the defendant no.3 is a well known company, and he has already started construction work at different places, so if the injunction will be granted in favour of plaintiff, then the work will be stopped and public at large will have to suffer, even defendants will also suffer

irreparable loss, which cannot be compensated in terms of money. Further, if such project will be implemented at Nadiad bus stand, then the people of Nadiad City will get modern and scientific equipments such as Inter net, Wi-fi facility, disability facility, trolley luggage, RO water, parking facility, sitting arrangement for men, women, rest room, canteen, CCTV system, office, show room etc., which will be iconic bus stand,. That can be done if such project at Nadiad bus stand is made by the S.T.Corporation, therefore as discussed above, this court cannot interfere in the policy decision of State Government and Central government whatever may be. Further, when there is public interest in the project of government, this court cannot grant injunction. In the present application also, the plaintiff has merely made allegation, but in support of such allegation, he has not produced any evidence, on the contrary, looking to evidence of defendants, it appears that they have properly and legally sanctioned such project after following due procedure of law, then in comparison to plaintiff, irreparable loss will be caused to the defendants, if the injunction will be granted.

[19] Further, the Hon'ble Gujarat High Court has laid down ratio in Special Civil Application no.10428 of 2017, and considering the same, the plaintiff is not entitled to get any

relief, therefore as discussed above, the plaintiff has not proved all three points in his favour, and they are answered in the negative, and in the result, following order is passed in the interest of justice :-

ORDER.

The application at Ex.5 and Ex.15 filed by the plaintiff is hereby rejected with no order as to costs, and copy of this order may be kept with Ex.15.

Further, the Railway Station is situated near the new bus stand, so vibration of train may affect to the bus stand, therefore the defendant no.3 Katir Construction Company shall have to give undertaking within 15 days for safety and security of public at large.

However, the place, where the new bus stand will be erected, is a Talavadi, so at the time of making construction, the defendant no.3 is directed to take care and caution of safety and security of people at large as well as its building and he shall have to give undertaking within 15 days.

Pronounced in open court today on this __17th__ day of FEBRUARY, 2018.

[Prashant Parmanand Shah.]
PRINCIPAL SENIOR CIVIL JUDGE,
KHEDA AT NADIAD,
JUDI. CODE NO. GJ00665.

SBJ/-.