



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 17025 of 2014

With

SPECIAL CIVIL APPLICATION NO. 17142 of 2014

TO

SPECIAL CIVIL APPLICATION NO. 17143 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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MUKESHBHAI ISHWARBHAI CHAUDHARY & 224....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR KAUSHAL D PANDYA, ADVOCATE for the Petitioner(s) No. 1 - 225

MR PP BANAJI, ASST, GOVERNMENT PLEADER for the Respondent No. 1 in
Special Civil Application No.17025/2014

MR UDIT D MEHTA, ASST, GOVERNMENT PLEADER for the Respondent
No. 1 in Special Civil Application No.17142/2014,

MS SHRUTI PATHAK, ASST, GOVERNMENT PLEADER for the Respondent
No. 1 in Special Civil Application No.17143/2014

MR MAULIK G NANAVATI, ADVOCATE for the Respondent(s) No. 2- 3



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CORAM: **HONOURABLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 02/12/2014

COMMON ORAL JUDGMENT

1. Learned advocate for the petitioners has moved a draft amendment in Special Civil Application No.17025/2014, which is granted and may be carried out within two days.

2. Rule, in each petition. Mr.P.P.Banaji, learned Assistant Government Pleader, waives service of notice of Rule for respondent No.1 in Special Civil Application No.17025 of 2014, Mr.Udit D.Mehta, learned Assistant Government Pleader, waives service of notice of Rule for respondent No.1 in Special Civil Application No.17142 of 2014 and Ms.Shruti Pathak, learned Assistant Government Pleader, waives service of notice of Rule for respondent No.1 in Special Civil Application No.17143 of 2014. Mr.Maulik G.Nanavati, learned advocate waives service of notice of Rule for respondents Nos.2 and 3, in each petition. As similar issues of fact and law arise in all these petitions, with the consent of learned counsel for the respective



parties, they are being heard and decided finally, by a common order.

3. These petitions under Article-226 of the Constitution of India have been preferred, praying for the issuance of a writ of mandamus or any other appropriate writ or direction to the respondent authorities, not to evict the petitioners or to demolish the constructions put up by them, without following due process of law.

4. For the sake of convenience, the facts as obtaining in Special Civil Application No.17025/2014 shall be referred to hereinafter. The prayers made in Special Civil Application No.17025/2014 are as under :

“(A) This Honourable Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction to respondent authority not to evict petitioners and not to demolish the construction of the petitioners situated upon R.S.No.41 Sanjay Nagar-I, Sama, Vadodara without proper inquiry, opportunity of hearing and also without following due process of law.

(B) Pending Hearing and final disposal of this



petition, this Hon'ble court may be pleased to issue direction not to dispossess the petitioners and not to demolish the residential units situated on R.S.No.41 known as Sanjay Nagar-I, Sama, Vadodara.

(C) Be pleased to pass such other and further relief that is just, fit and expedient in the facts and circumstances of the case;"

5. The brief facts of the case as set out in the petitions are that some of the petitioners had purchased land and made structures on the land in question. Special Civil Application No.17025/2014 relates to houses situated at Survey No.41, Sanjay Nagar-I, Sama, Vadodara, Special Civil Application No.17142/2014 relates to houses situated at Survey No.39/2, Sanjay Nagar-II, Vadodara and Special Civil Application No.17143/2014 relates to houses situated at Survey No.40, Indira Nagar, Vadodara. According to the petitioners, they are residing in the said structures for the last thirty to forty years with their families. It is the case of the petitioners that out of 12849 sq.mtrs. of land in Revenue Survey No.41, 11349 sq.mtrs. of land was declared as excess land. However, the possession thereof remained with the original owner. The order regarding mutation of



the name of the original owner in the revenue record was passed and is reflected in the record. It is further averred in the petition that the petitioners learnt from a news item published on 08.11.2014 in the vernacular newspaper "Sandesh" regarding the project under the "Mukhya Mantri Gruh Yojana" and Gujarat Slum Rehabilitation Policy, 2013, upon the land in question. On 14.11.2014, the respondent Corporation pasted a notice in the society to remove the structures within fifteen days from the notice. It is further averred that the petitioners were not granted an opportunity of hearing and due process of law was not followed. The petitioners were allegedly threatened that they would be evicted within fifteen days and the possession of their houses would be taken over. The case of the petitioners is that the land in question does not fall under the Gujarat Slum Rehabilitation Policy, 2013, and the structures upon the land are not huts, as defined in the said Policy, therefore, the respondent Corporation has no authority to issue notices to them or to remove the constructions of the petitioners. The petitioners have therefore, approached this Court by making the prayers, reproduced hereinabove.



6. Mr.Kaushal D. Pandya, learned advocate for the petitioners submits that the land upon which the respondent Corporation is planning to construct houses under the “Mukhya Mantri Gruh Yojana” and the Gujarat Slum Rehabilitation Policy, 2013, does not belong to the State Government, but belongs to a private owner. As such, the respondent Corporation has no right to evict the petitioners from the land in question or to implement the scheme of “Mukhya Mantri Gruh Yojana” by constructing houses.

6.1 That the land in question has not been acquired by the State Government or the respondent Corporation, therefore, it is not covered under the Town Planning Scheme.

6.2 It is further submitted that the petitioners have been taken by surprise by the public notice dated 08.11.2014 that appeared in “Sandesh” newspaper, and no opportunity of hearing had been granted to them before the issuance of the same.

6.3 On the basis of the above submissions, learned advocate for the petitioners has prayed that the



petitions be allowed.

7. Mr.Maulik G. Nanavati, learned advocate for respondents Nos.2 and 3, Executive Engineer, Mukhya Mantri Gruh Yojana Cell and Vadodara Municipal Corporation, respectively, has submitted that the petitioners have no legal right, much less a fundamental right, to approach the Court by way of the present petitions, as they are encroachers upon Government land and are in unlawful occupation thereof.

7.1 That the petitioners are painting a wrong picture before the Court by stating that they are being removed from their houses in an illegal manner, that would render them houseless. This is not at all correct. All the families, including those of the petitioners, who are found to be eligible as per the criteria laid down in the policy of the State Government, are to be given "pucca" houses under the *in situ* rehabilitation Scheme. During the period that the land is being developed and the houses are being constructed thereon, the eligible beneficiaries would be given reasonable house rent of Rs.1500/- per month for availing of alternative accommodation. As soon as



the houses are completed, the petitioners would be shifted back to the newly-built houses. The houses are to be given to the beneficiaries of the Scheme free of cost, therefore, no prejudice will be caused to the petitioners who, in any case, do not have any legal or vested right upon the land in question.

7.2 That all the petitioners, barring one, are eligible under the "Mukhya Mantri Gruh Yojana" for free accommodation, after the houses are constructed upon the land in question. As they are being given reasonable house rent of Rs.1500/- per month in the interregnum, it cannot be said that they would be rendered houseless all of a sudden. In case any of the petitioners are owners of shops, they would be given shops.

7.3 Learned advocate for respondents Nos.2 and 3 has further submitted that the very Notification vide which these areas came to be declared as slum areas, was challenged by one Indrajeet Yadav by filing a petition being Writ Petition (PIL) No.170/2014. A Division Bench of this Court, vide order dated 26.06.2014, has rejected the said petition. The Special Leave Petition (C) No.22522/2014 filed by the



petitioner before the Supreme Court also came to be rejected.

7.4 After the Special Leave Petition was dismissed, the same litigant approached the Division Bench by filing an application for review, being Misc. Civil Application No.2886/2014, that was rejected vide order dated 13.10.2014. While doing so, the Division Bench has stated that "it is not for this Court to decide whether the inhabitants of the areas in question are in lawful occupation, or not."

7.5 It is further submitted that one of the issues urged by the petitioner who filed the Public Interest Litigation was that Sanjay Nagar is not a slum area, as there are no hutments in that area, but houses have been constructed with proper sanitation facilities. The same submission has been made on behalf of the petitioners but would not hold good, in view of the fact that the notification declaring the areas in question has been upheld.

7.6 Mr.Maulik G. Nanavati, learned advocate for respondents Nos.2 and 3 has specifically relied upon the order dated 26.06.2014, passed by the Division



Bench, wherein it is recorded as follows :

“Once it is established that the inhabitants of the said locality are not in lawful occupation of any of the property, we are not inclined to entertain this application because the object of this Public Interest Litigation is to frustrate a lawful action on the part of the State-respondent at the instance of a person who has no legal right to even occupy the said area.”

7.7 It is next submitted by Mr.Nanavati that the contention of the petitioners that the land belongs to a private owner and not the State Government, cannot be looked into by this Court in a writ petition under Article-226 of the Constitution of India. This Court would not make a declaration regarding the ownership or title of the land in question in such proceedings. Moreover, the so-called original owner(s) of the land have not come forward before this Court, therefore, the petitioners cannot make averments on their behalf.

8. Mr.P.P.Banaji, learned Assistant Government Pleader for respondent No.1 in Special Civil Application No.17025/2014 has adopted the arguments advanced on behalf of respondents Nos.2 and 3.



9. This Court has heard learned counsel for the respective parties, perused the averments made in the petitions and other documents on record.

10. The grievance of the petitioners is that they are being asked to vacate their huts/houses constructed in Sanjay Nagar-I, Sanjay Nagar-II and Indira Nagar, which areas are covered by the Notification dated 27.01.2014, whereby these areas have been declared as slum areas, and where houses are to be constructed under the "Mukhya Mantri Gruh Yojana", to be given to the beneficiaries, free of cost. A perusal of the impugned notice dated 08.11.2014 published in the vernacular newspaper "Sandesh", further indicates that the beneficiaries of the "Mukhya Mantri Gruh Yojana" would be granted house rent in the interregnum, till they are given possession of the houses.

11. It is the case of the petitioners that the land upon which the "Mukhya Mantri Gruh Yojana" is being implemented does not belong to the State Government but is of private ownership. A further contention is raised to the effect that the land was not acquired either by the State Government or the Vadodara Municipal Corporation, and is not reserved under the



Development Plan or the Town Planning Scheme.

According to the petitioners, some part of the land has been declared as excess land in the year 1986, but the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976, has not taken possession thereof from the original owner(s).

12. Regarding the above submissions, it is made clear by this Court at the very outset, that any issue regarding the title or ownership of the land cannot be decided in exercise of extraordinary jurisdiction under Article-226 of the Constitution of India. It is significant to note that the so-called original owner(s) of the land has/have not appeared before the Court. The petitioners have not produced even a shred of material on record to indicate that they have any lawful right or title over the land upon which they have constructed huts/houses. It is, therefore, clear that the petitioners are encroachers, or illegal occupants, of the land in question.

13. From the material on record, especially the order dated 26.06.2014, passed by the Division Bench in Writ Petition (PIL) No.170 of 2014, it is clear that the challenge to the Notification dated 27.01.2014, has



been negatived and the areas pertaining to the present petitioners have been declared as slum areas. It is further clear from the said order that the inhabitants of this locality are not in lawful occupation of the property. Though the said order was passed in a Public Interest Litigation and has been confirmed upto the Supreme Court, however, in the present case as well, none of the petitioners has produced any material on record to indicate that their possession over the land in question is legal or they have any right or title thereupon.

14. Be that as it may, it appears that the State Government has now decided to rehabilitate the petitioners under the Gujarat Slum Rehabilitation Policy, 2013, and to this end, a Scheme has been prepared known as the "Mukhya Mantri Gruh Yojana". Under this Scheme houses are to be built and given to the eligible beneficiaries living in these areas free of cost. The petitioners if eligible, are the beneficiaries of the Scheme. Not only that, in the meanwhile, the beneficiaries of the Scheme are to be granted house rent of Rs.1500/- per month. Though the learned advocate for the petitioners had earlier made



a submission before this Court, as recorded in the order dated 24.11.2014, that the petitioners are not beneficiaries of the Scheme, Mr.Maulik G. Nanavati, learned advocate for respondents Nos.2 and 3 has stated upon instructions, that all, except one of the petitioners are beneficiaries.

15. It is, therefore, clear that the present is not a case where the petitioners are being evicted without making any arrangement for alternative accommodation. On the contrary, the petitioners, if eligible, would be the beneficiaries of a Scheme under which they would be given free houses; and in the interregnum, until the houses are constructed, house rent of Rs.1500/- per month.

16. The State Government has come out with a Scheme that is beneficial in nature which takes into consideration the aspect that the petitioners should not be rendered homeless. This Court is of the view that no legal or justifiable ground of challenge exists on the part of the petitioners, against the benevolent action of the respondents. This is especially so, as the petitioners are not in lawful



occupation of the structures on the areas in question.

17. It has been argued before this Court that the petitioners have not been granted an opportunity of hearing and were taken by surprise by the public notice which appeared on 08.11.2014. It is clear from the material on record, especially the affidavit-in-reply filed by respondent No.3, that the areas on which the petitioners are residing have been declared as slum areas by a Notification dated 27.01.2014, and the challenge to that notification, by way of a Public Interest Litigation has been rejected upto the Supreme Court. The petitioners are well-aware that the policy of rehabilitation is to be carried out in the area and the "Mukhya Mantri Gruh Yojana" is to be implemented. As the petitioners of the present petitions number approximately 700, and all other residing in the areas in question may not have approached this Court, the respondents have issued a public notice in the newspaper, which cannot be said to be an unreasonable action, as the names of the respective areas have been clearly mentioned therein.

18. The present is not a case of demolition, for the



sake of demolition, but is a case where the illegal structures put up by the petitioners, who are in illegal occupation of the land, are sought to be demolished only with a view to building new houses for the beneficiaries of the Scheme who are none other than the petitioners, barring one of them. The respondent-Corporation is to build new houses with all basic amenities. The houses are to have two rooms, a kitchen, bath-room and latrine and the beneficiaries of the Scheme would be conferred ownership rights after fifteen years. The idea behind the policy is to provide better living facilities to underprivileged persons, and also to improve the socio-economic and environmental conditions of towns and cities across the State. In the view of this Court, a step such as this by the respondent - State and the Corporation can only be termed as progressive, and does not fall foul of any legal provision. In fact, the petitioners would benefit from the said Scheme as today they are encroachers and their ownership of the houses/constructions is doubtful; whereas they would be given better houses than the ones in which they now reside officially, and the ownership thereof would be granted to them after fifteen years. In the long run,



it is the petitioners who would benefit from the Scheme.

19. A submission has been advanced by the learned advocate for the petitioners that in the event the Court is not inclined to grant the prayers made in the petition, some time may be granted to them to vacate their houses and avail of the benefit of house rent which respondent No.2 is granting.

20. On the other hand, Mr.Maulik G.Nanavati, learned advocate for respondents Nos.2 and 3, submits that there is urgency on the part of respondent No.3 as the grant from the State Government for the purpose of construction would lapse soon. Mr. Nanavati, learned advocate further submits, upon instructions, that several of the petitioners have voluntarily handed over their units and opted to take the house rent of Rs.1500/- per month from respondent No.2.

21. Taking into consideration the above aspects of the case and for the reasons stated hereinabove, this court is not in agreement with the submissions advanced by the learned advocate on behalf of the petitioners insofar as the prayers made in the petitions are concerned. However, the last submission,



regarding granting of time to vacate the houses, can be considered.

Hence the following order:

The petitions stand rejected. However, respondent No.3 shall grant the petitioners a period of fifteen days from today, for vacating their houses on their own. After the expiry of fifteen days, respondent No.3 is free to implement the "Mukhya Mantri Gruh Yojana" upon the land in question.

21. Rule is discharged accordingly, in each petition.

It is clarified that this order shall not come in the way of the respondent Corporation in carrying out proceedings, in accordance with law, in respect of those families who have already vacated their houses and availed of the benefit of house rent.

(SMT. ABHILASHA KUMARI, J.)

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