

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7295 of 2023**

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MANSURI MUSTAKIMBHAI AIYUBBHAI**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR NISHIT H SHAH(10712) for the Petitioner(s) No. 1****MR SATYAM Y CHHAYA(3242) for the Petitioner(s) No. 1****MS POOJA CHOUDHARY ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 1****MS. BHAVNA D ACHARYA(6406) for the Respondent(s) No. 3****NOTICE SERVED BY DS for the Respondent(s) No. 2**

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 07/07/2026****ORAL ORDER**

1. Heard learned advocate Mr. Satyam Chhaya for the petitioner, learned AGP Ms. Pooja Choudhary for respondent – State and learned advocate Ms. Bhavna Acharya for respondent No.3.

2. The present petition had been preferred *inter alia* seeking intervention of this Court to direct respondent No.3 – Daboi Municipality to act in consonance with their own resolution No.28 dated 27.02.2004 and whereas, it is also requested that the Municipality may be directed not to initiate any coercive

steps without following due process of law. The context of the prayer being that the petitioner and others had filed Regular Civil Suit No.827 of 2003 before the learned Civil Court, *inter alia* requesting that the applicants may be provided accommodation by the Municipality to carryout their business and whereas, it would appear that in view of certain orders passed by the learned Civil Court, a decision had been arrived at by the Daboi Municipality to give shops on rent to the petitioner and others for a period of nine years and whereas, the said shops were given on rent somewhere in the year 2004. It would appear in this regard that from time to time, the rent agreement had been extended and whereas, it appears that now since the Municipality is of the opinion that the public road on which the shops/cabins are located need to be widened, the Municipality did not extend the rent agreement resulting in the petitioner approaching this Court. It also appears that during pendency of this petition, without any reference to this Court, a resolution had been passed by the Municipality, whereby it was decided that the representation of the petitioner, for extension of the rent agreement was directed to be filed.

3. Prima faice, it would appear that the respondent Nagarpalika, ought not to have taken any decision during the

pendency of this petition, more particularly, without first taking permission of this Court, yet, to this Court it would appear that since the decision was without affording an appropriate opportunity to the present petitioner, and since the stand of the petitioner does not appear to have been factored in by the Municipality in the resolution in question, therefore, to this Court it would appear that the said resolution dated 06.09.2023 requires to be interfered with and whereas the issue requires to be relegated back to the Nagarpalika for taking appropriate decision after affording an opportunity to the present petitioner.

4. At this stage, it would be pertinent to note that resolution dated 06.09.2023, is not challenged yet, since the said resolution, has been placed on record of this Court by submitting an affidavit in the month of February, 2026 that is almost 2 ½ years after the said resolution had been passed, this Court deems it appropriate to exercise its extraordinary jurisdiction and set aside the resolution at this stage, inspite of no specific prayers in that regard being made.

5. To be fair to the Nagarpalika it also requires to be mentioned that inspite of the resolution being passed on 06.09.2023, the Nagarpalika has not taken any coercive steps

for attempting to remove the present petitioner and whereas, it is also pointed out by learned advocate Ms. Acharya that even some of the occupiers have not paid their outstanding rent. Learned advocate Mr. Chhaya under instructions would submit that all rent, has been paid up and whereas, in case there is any rent outstanding the same would be paid by the petitioner even before the representation is decided.

6. To this Court it would appear that while it would be within the exclusive domain of the Municipality and other concerned authorities to decide whether the cabins/shops are to be removed for the purpose of road widening, if they are proving as a hindrance to the free flow of traffic on the road in question, yet, the aspect which could not be ignored is the fact that the petitioner has been using the present premises to carryout his business activities, since around last 20 years and whereas it would also appear that the petitioner is a person from the lower strata of society, more particularly, the business being carried out in shop/cabin admeasuring 10 ft. x 10 ft. at the best.

7. Considering such a situation since the removal of the petitioner, if the Nagarpalika is of such an opinion, without providing an alternative accommodation, may impinge on the

constitutional rights of the petitioner for living a life with dignity, to this Court it would prima faice appear that while the Corporation may be entitled to remove the present petitioner in case the Municipality is of the opinion that the road is required to be widen yet, the Municipality shall also take into consideration providing an alternative accommodation to the present petitioner.

8. Having regard to the above observations, on the very short aspect of the petitioner not having been afforded an appropriate opportunity and the principles of natural justice not having been followed, to this Court, following directions would meet with ends of justice.

(i) The impugned resolution dated 06.09.2023 passed by the Daboi Nagarpalika is hereby quashed and set aside.

(ii) The Municipality shall within a week from today, calculate and inform the petitioner as regards any dues of rent to be recovered from the petitioner.

(iii) The petitioner to prefer an appropriate representation to the Nagarpalika for either not removing him from the present location in question and/or granting him some alternative

accommodation and the representation shall be accompanied by a demand draft for the reminder of the rent, if so informed, within a week of the calculation being provided by the Nargarpalika.

(iv) It is clarified that the Nagarpalika would be under no obligation to consider the representation of the petitioner if the rent is outstanding.

(v) The Nagarpalika shall take an appropriate decision on the representation of the petitioner as expeditiously as possible. The Nagarpalika shall also consider giving an opportunity to few representatives of the present petitioner and such other similarly situated person.

(vi) The Nagarpalika while passing a resolution / order shall address every submission made by the present petitioner in the representation.

(vii) In case the decision of the Nagarpalika would be adverse to the interest of the present petitioner, then the order in question shall not be executed for a period of two weeks thereafter, with liberty being reserved in favour of the petitioner to take appropriate recourse under the law.

9. With these observations and directions, the present petition is disposed of as partly allowed.

10. It is clarified that this Court has not made any observation on merits of the matter and whereas all the observations are in aid of the Nagarpalika taking an appropriate decision in accordance with law.

(NIKHIL S. KARIEL,J)

NAIR SMITA V./22-DB