

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4756 of 2026**

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HARDIKKUMAR AMRATBHAI PATEL

Versus

DISTRICT DEVELOPMENT OFFICER &amp; ORS.

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Appearance:

MR DIPAN DESAI(2481) for the Petitioner(s) No. 1

MS SEJAL MANDAVIA ADVOCATE for the Respondent No.1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 16/04/2026****ORAL ORDER**

[1] By way of this petition under Article 226 of the Constitution of India, the petitioner has approached this Court by calling in question the legality and the validity of the order dated 27<sup>th</sup> March 2026 passed by the respondent No.1 – District Development Officer, Mahesana. By the said order, the District Development Officer, Mahesana has rejected the preliminary objection raised by the petitioner against continuation of proceedings under Section 57 of the Gujarat Panchayats Act, 1993 (for short, “the Act”).

[2] At the outset, it is pertinent to note that the very

petitioner had approached this Court by way of R/Special Civil Application No.410 of 2026 challenging the legality and the validity of notice dated 1<sup>st</sup> January 2026 issued under Section 57 of the Act. This Court, however, vide order dated 16<sup>th</sup> January 2026, directed the petitioner to raise the issue of jurisdiction by way of preliminary objection before the District Development Officer, Mahesana. This Court also directed the authority to decide the said preliminary objection by way of separate reasoned order.

[3] Accordingly, the petitioner has raised preliminary objection by way of objection dated 23<sup>rd</sup> January 2026 mainly on the ground that there cannot be any action under Section 57 of the Act against the petitioner for removal of encroachment that was done by way of collective decision of body.

[4] The District Development Officer, Mahesana, however, vide impugned order dated 27<sup>th</sup> March 2026, appears to have not dealt with the said contentions categorically. Upon further perusal of the impugned order, it appears that the District Development Officer, Mahesana has proceeded to decide the preliminary

objection as per the pre-determination motion and without dealing with the submissions on jurisdiction in particular.

[5] In addition to the aforesaid, the Coordinate Bench of this Court, in the case of **Udaysinh Shankarsinh Zala vs. Shri S. D. Vadera or his successor-in-office, Additional District Development Commissioner and others** reported in **1995 (2) GLH 323**, has made the observations in para 3, which reads as under:

*“3. Admittedly, the Panchayat had passed resolutions imposing the levy of toll on animals carrying burden. A copy of the resolution dated 29<sup>th</sup> March, 1990 which is at Annexure "C" shows that earlier it was resolved to charge toll at the rate of Rs. 2/- and objections were invited against that proposal from the public. On 24<sup>th</sup> May, 1990, the District Development Officer by letter at Annexure "D" to the petition had written to the Panchayat that there was no provision in Section 178 of the said Act for imposing tax on vehicles passing through the Panchayat area but the Panchayat could within the limits of Rule 144 decide to impose taxes according to the Schedule, at the "Toll Naka". On 28<sup>th</sup> May, 1990 the Panchayat by its resolution No. 20(1) resolved under the provisions of Rule 144 of the said Rules proposing levy of toll at the rate of 30 paise per*

day which rate is prescribed in the Schedule to the said Rules. The Panchayat resolved to call for objections against the proposed levy. Accordingly, a notice was issued on 18<sup>th</sup> June, 1990 in a local daily "Jansatta", a copy of which is at Annexure "F" to the petition. Thereafter, on 20<sup>th</sup> September, 1990 the Panchayat passed a resolution No. 44 finally imposing toll from 1-10-1990 on each loaded or unloaded vehicle drawn by two or more animals at the rate of 30 paise per day which is the prescribed maximum under the Schedule, prescribed under Rule 144 of the said Rules, By the same resolution the Panchayat authorised the Sarpanch to give a private contract for collection of octroi fixing the upset price at Rs. 21,600/- by referring to the provisions of Section 180 of the said Act under which it could give such contract. The provisions of Section 178(1)(v-a) clearly empower a Gram Panchayat to levy a toll on vehicles and animals used for riding, draught or burden entering the Gram Panchayat which are not liable to taxation under Clause (v) of Sub-section (1). Thus, even though there is a clear provision empowering the Gram Panchayat to impose a toll on animals used for carrying burden as also on vehicles drawn by animals when they enter the Gram, it is surprising that the District Development Officer and the appellate authority should have held that there is no provision in Section 178 empowering the Gram Panchayat to impose such toll. Rule 144 of the said Rules read with the Schedule clearly authorises the Gram Panchayat to impose the toll at the maximum rate prescribed as

*was sought to be done by the resolution dated 20-9-1990. Apart from this aspect of the matter, it is clear from the record that the decision to impose toll was taken collectively by the Panchayat and it cannot be said to be an act of the Sarpanch. Such collective decisions of the Panchayat can never be described as a misconduct on the part of the Sarpanch or an act amounting to abuse of position as a Sarpanch. Even Ijara was authorised to be given by the Panchayat fixing the upset price. The fact, however, remains that the resolution of the Panchayat was suspended by the Taluka Development Officer as a result of which the toll imposed by the Panchayat could not be collected through the Ijardar, On the basis of the resolutions which were passed by the Panchayat to levy the toll, it can never be inferred that the Sarpanch was guilty of misconduct in the discharge of duties or of any disgraceful conduct or that he had abused his powers as Sarpanch. There was, therefore, no occasion for the competent authority to invoke the provisions of Section 49(1) of the said Act against the Sarpanch on these allegations. The impugned orders cannot, therefore, be sustained and are hereby set aside. Rule is made absolute accordingly with no order as to costs.”*

[6]            Keeping in mind the aforesaid, the proceedings initiated by the District Development Officer, Mahesana against the present petitioner appears to be *prima facie* without jurisdiction.

[7] Issue Notice returnable on 8<sup>th</sup> June 2026. Learned advocate Ms. Sejal Mandavia waives service of notice on behalf of the respondent No.1 and shall file reply by the next date of hearing, if she so chooses.

[8] In the meantime, ad-interim relief in terms of para No.6(C) is granted.

Direct service is permitted.

CHANDRESH

**(NIRAL R. MEHTA,J)**