

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 26410 of 2006**

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REVABEN BHIJIBHAI RATHOD. PERSONALLY AND POWER OF ATTO. &
5....Petitioner(s)

Versus

AHMEDABAD MUNICIPAL CORPO. THRO' MUNICIPAL COMMISSIONER. &
3....Respondent(s)

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Appearance:

MR KV SHELAT, ADVOCATE for the Petitioner(s) No. 1 - 6

MR ROHAN YAGNIK, AGP, for the Respondent(s) No. 3 - 4

MR SATYAM Y CHHAYA, ADVOCATE for the Respondent(s) No. 1 - 2

RULE SERVED for the Respondent(s) No. 1 - 4

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CORAM: HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 23/08/2016

ORAL ORDER

1. This Court vide order dated 14.07.2016 has directed the respondent to remove the encroachments, however, the same has not been removed. Learned AGP has submitted that the encroachers have approached this Court by way of SCAs No.13747/2016 and 13461/2016 and this Court disposed of both these petitions by passing a detailed order. One of such order is reproduced as under:

"1. Heard Mr. Satish Pandya, learned counsel for the petitioners and Mr. Banaji, learned AGP for respondents no.1 and 2 upon advance copy.

2. *Even though in the prayer clause, it is mentioned as notice of July 2016, in fact what is challenged in the petition is the order dated 04.08.2016 under section 61 of the Bombay Land Revenue Code passed by respondent no.2 in Encroachment Case No.9/16. 3. The main contention, which is taken by Mr. Pandya, learned counsel appearing for the petitioners is that considering the Division Bench judgment of this Court, the respondent authorities should provide alternative remedy for alternative accommodation.*

4. *As the order under challenge now is the order under section 61 of the Bombay Land Revenue Code, the petitioners are required to file appropriate proceedings under the Bombay Land Revenue Code before the District Collector, Ahmedabad. If any such appeal is filed, the same shall be considered by the appellate authority on its own merits. The appellate authority is further directed to consider the judgment of the Division Bench rendered in WP(PIL) No.85/13.*

5. *With these observations, the petition is disposed of. D.S. permitted."*

2. Perusal of the aforementioned order shows that this Court has not given any relief to the petitioners as far as their removal from the place in question is concerned. Though in this order there is mention about WP(PIL) No.85 of 2013, however, the order passed in such PIL will have no relevancy in the present case, as in that case some 33 hutment dwellers, who were occupying their respective hutments for the last 70 years, were ordered to be summarily evicted under section 61 of the Gujarat Land Revenue Code. Case of the present encroachers cannot be equated with the said case simply for the reason that they are encroaching upon the land which has been allotted to the petitioner after his land has been

taken into T.P.Scheme No.23 (Sabarmati). Otherwise also, the order passed in WP(PIL) No.85 of 2013 was an order *in personam* and not an order *in rem* which would be applicable in all cases of encroachment which would come in future. It is also brought to my notice that the encroachers of present case have approached the City Deputy Collector, Western Zone, Ahmedabad, challenging the order of eviction passed by the City Mamlatdar. As eviction proceedings are summary proceedings, the Collector will dispose of their objections expeditiously, preferably within seven days, and thereafter vacant possession of final plot No.580, which has been allotted to the petitioner in lieu of his land which has been taken into T.P.Scheme, be handed over to him before the next date. This matter be listed on **13.09.2016.**

3. A copy of this order be given to learned AGP for its onward transmission to the concerned authorities today itself.

(MOHINDER PAL, J.)

KMGThilake)