

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 19734 of 2019

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THE CHIEF OFFICER, KARAMSAD NAGARPALIKA
Versus
STATE OF GUJARAT

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Appearance:

MR MEHULSHARAD SHAH(773) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 2,3
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE VIPUL M. PANCHOLI

Date : 13/11/2019

ORAL ORDER

1. Heard learned advocate Mr. Mehul Sharad Shah appearing for the petitioners and learned advocate Mr. U.T.Mishra appearing for respondent No.3 – Caveator.

2. It is pointed out by learned advocate for the petitioners that respondent No.3 has been suspended by the petitioner Nagarpalika by passing resolutions dated 22.09.2014 and 09.05.2016 and thereafter order dated 24.09.2014 came to be passed by the petitioner Nagarpalika, copy of which is produced at page 25 of the compilation. It is submitted that order dated 24.09.2014 by which respondent No.3 has been suspended is challenged by the respondent No.3 by filing Special Civil Application No.5372 of 2016.

Learned advocate for the petitioners has referred an order dated 23.06.2017 passed by this Court in the said petition, whereby, this Court has admitted the petition and issued following directions:

"Rule returnable on 11.09.2017. Learned advocate Mr. Mehul Sharad Shah waives service of notice of rule on behalf of respondent No.3. Learned AGP Mr. Robin Mogera waives service of notice of rule on behalf of respondent – State. Interim relief in terms of para 16(C). Thereby petitioner should be reinstated in the service with immediate effect. However, respondent may depute the petitioner on some post other than the post from which he was suspended. It would be appropriate for the petitioner to co-operate in the proceedings of departmental inquiry. Direct service is permitted."

3. It is further submitted that pursuant to the direction issued by this Court, respondent No.3 has been reinstated on the post other than the post in question. It is further submitted that as per the direction, respondent No.3 has to cooperate in departmental inquiry proceeding.

4. It is further submitted by learned advocate Mr. Shah for the petitioners that thereafter charge-sheet came to be issued to respondent No.3, copy of which is produced at page 34 of the compilation. It is pointed out that said charge-sheet was challenged by respondent No.3 by filing

Civil Application No.8761 of 2016 in Special Civil Application No.5372 of 2016. However, this Court, by an order dated 09.09.2016, rejected the said civil application while granting liberty to respondent No.3 to challenge the charge-sheet in accordance with law by filing appropriate separate proceedings. It is also pointed out that thereafter respondent No.3 has filed Special Civil Application No.15820 of 2016 in which respondent No.3 has challenged the charge-sheet issued by the petitioners.

5. In the aforesaid background, learned advocate for the petitioners contended that now respondent No.3 has challenged the resolutions passed by the petitioners by which respondent No.3 has been suspended by filing Municipal Appeal No.10 of 2018 before the respondent No.2 and respondent No.2, by the impugned order dated 28.08.2019, suspended the resolutions passed by the petitioners and thereby indirectly allowed the petition being Special Civil Application No.5372 of 2016 as well as other petition filed by respondent No.3. It is also contended that the impugned order passed by the respondent No.2 is without jurisdiction and more particularly when the petitions filed by the respondent No.3 are pending before this Court. It is, therefore, urged that this Court may issue notice to the respondents and grant interim relief as prayed for in the present petition.

6. On the other hand, learned advocate Mr. Mishra appearing for the respondent No.3 has submitted that petitioners can challenge the impugned order passed by respondent No.2 by filing proceedings under Section 258(3) of the Gujarat Municipalities Act, 1963 and when the alternative remedy is available to the petitioners, this petition may not be entertained. Learned advocate Mr. Mishra has placed reliance upon the order dated 22.09.2015 passed in Special Civil Application No.15260 of 2015, wherein this Court has observed that when alternative remedy is available, petitioners to avail the said remedy. It is also contended that respondent No.3 has filed Special Civil Application No. 5372 of 2016 challenging the order dated 24.09.2014 on limited ground. Learned advocate has also referred interim order dated 23.06.2017 passed by this Court in the said petition. Learned advocate Mr. Mishra has, therefore, urged that this petition be dismissed.

7. This Court has heard the learned advocates appearing for the parties for grant of interim relief. From the material placed on record, it is revealed that respondent No.3 has challenged the order dated 24.09.2014 passed by the petitioners by filing Special Civil Application No.5372 of 2016 wherein this Court has passed an order dated 23.06.2017, whereby present respondent No.3 is directed to cooperate with the departmental

inquiry proceedings. Now, the charge-sheet is also issued to respondent No.3. The said charge-sheet is also under challenge before this Court and thereafter respondent No.3 has filed Appeal No.10 of 2018 before the respondent No.2 and by way of impugned order, respondent No.2 has suspended the resolutions passed by the petitioners by which the respondent No.3 has been suspended. This Court is, prima facie, of the view that respondent No.2 is not having any jurisdiction to pass the impugned order as the order dated 24.09.2014 passed by petitioners by which respondent No.3 has been suspended is under challenge and pending before this Court in Special Civil Application No. 5372 of 2016. Hence, though alternative remedy is available to the petitioners under Section 258(3) of the Act, in the facts of the present case, issue involved requires consideration.

8. In view of the aforesaid, issue notice to the respondents returnable on 30.01.2020. Learned advocate Mr. U.T.Mishra waives service of notice for respondent No.3 – Caveator. In the meantime, there shall be ad-interim relief in terms of para 8(B).

(VIPUL M. PANCHOLI, J)

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