

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. Nos.2-3 In Civil Appeal No.5556/2001@@
CC

BHAVNAGAR MUNICIPALITY, BHAVNAGAR

Appellant (s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent (s)

(For directions)
(With prayer for interim relief)
(With office report)
(With I.A. Nos. 11&12 - Applns. for permission to file annexures
and dispensing with the filing of affidavit and c/delay in filing
the rejoinder affidavit and exem. from filing the affidavit in
support of the application)
With Cont. Pet.(C) No. 297/2001 in CA No.5556/2001@@
CC

Date : 14/01/2002 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant (s) Mr. Altaf Ahmed, ASG
Mr. Bhasker P Tanna, Sr.Adv.
Mr. Anip Sachthey,Adv.
Mr. Rashim Chayya, Adv.
Mr. Umesh Trivedi, Adv.
Ms. Maharook Kerawala, Adv.
Mr. Abhay Kumar,Adv.
Mr. Arijit Prasad,Adv.

For Respondent (s) Mr. Kapil Sibal, Sr.Adv.
(Applicants in Mr. Nirupam Nanavati, Sr.Adv.
IA 2-3) Mr. P.H. Parekh,Adv.
Mr. Haren Raval, Adv.
Mr. Huzefa Ahmadi, Adv.
Mr. Amit Dhingra, Adv.

State of Gujarat Mr. RP Bhatt, Sr. Adv.
Mr. SK Sabharwal,Adv.
Mrs. Nirmala Gupta,Adv.
Mrs. Alka Agarwal,Adv. for
M/s I.M. Nanavati Associates

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

Heard counsel for the parties.

In a writ petition filed by the appellant herein, the High Court passed the following order:

.....L..I.....T.....T.....T.....T.....J.
.SP1

"Rule. To be heard in Ist or 2nd week of September, 1980. Having regard to the important questions arising in the petition, the matter may be placed before the learned Chief Justice for being assigned to a Division Bench. Mr. Chhatrapati waives notice for R.1 to R.7 Mr. Mehta for R- 8 and Mr. A.J. Pandya for R.9 also waive notice of rule. Ad-interim relief vacated on condition that the respondent No.8 will be at liberty to construct at its own risk and costs and the facts of such construction having been raised on the land shall not be a factor in favour of respondent No.8. The above order is made at the request of the learned advocate General who appears for respondent No.8."

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

It appears that the said writ petition was dismissed and against which the appellant filed civil appeal by means of special leave petition. The appeal came up before a Bench presided over by Hon'ble Mr. Justice B.N. Kirpal on 11.5.2001. This Court, after hearing the matter, passed the following order:

.....L...I...T.....T.....T.....T.....J.
.SP1

"I.A.No.3 in CA 1539/2001 :@@
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Modification of this Court's order dated 19th February, 2001 in respect of Surat is allowed as prayed for in prayer (a).

SLP(C)No.....(CC 3673/2001) :@@
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List this special leave petition separately after summer vacations.

Any construction made will be subject to the outcome of this petition."

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

It appears to us that the aforesaid order was consistent with the order dated 24.7.1980 passed in the

contd...3/-

writ petition. Subsequently, the special leave petition came up before a Bench of three Judges presided over by Hon'ble Mr. Justice B.N. Kirpal on 17.8.2001. On that date, the Bench passed the following order:

.....L..I....T.....T.....T.....T.....J.
.SP1

"Delay condoned.
Special leave granted.
Issue notice regarding stay returnable
after six weeks. In the meantime, status
quo as of today shall be maintained."

.....L.....I.....T.....T.....T.....T.....T.....T.....J.

.SP2

Upon the grant of leave, the matter was directed to be listed for final hearing. In between time, the respondents moved an application for vacation/modification of the order dated 17.8.2001. Shri Kapil Sibal, learned senior counsel, appearing for the respondents argued that respondents cannot be placed in a worst position than in what they were on 24.7.1980, even after having succeeded in the case before the High Court. There appears to be some substance in his argument. Mr. Altaf Ahmed, learned Additional Solicitor General, appearing for the appellant, however, argued that subsequently the Bench presided over by Hon'ble Mr. Justice B.N. Kirpal after taking into consideration the order dated 11.5.2001 and hearing the counsel for the parties passed the order on 17.8.2001 and, therefore, the order dated 17.8.2001 is a modified order. After we heard the matter, we are of the view that the propriety demands that these applications be placed before a Bench presided over by Hon'ble Mr. Justice B.N. Kirpal on 17.1.2002.

.SP1

(Neelam Kawatra)
Court Master

(Prem Prakash)
Court Master