

Rameshbhai Virabhai Chaudhari vs The State Of Gujarat on 6 September, 2021

Bench: Sanjay Kishan Kaul, M.M. Sundresh

1

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5135 OF 2021
(Arising out of SLP(CIVIL) No. 14222/2019)

RAMESHBHAI VIRABHAI CHAUDHARI

APP

VERSUS

THE STATE OF GUJARAT & ORS.

RES

O R D E R

Leave granted.

The appellant seeks to assail the order dated 12.04.2019 passed by the Division Bench of the Gujarat High Court on a public interest litigation filed under Article 226 of the Constitution of India seeking removal of unauthorized encroachment on the gauchar land of Village Bhandu (Laxmipura), Taluka: Visnagar, District: Mehsana, belonging to Gram panchayat/Government. The petition was dismissed after obtaining affidavit in reply predicated on a reasoning that all the people who are unauthorizedly occupying are from the low income strata of society and are residing there since number of years and thus it would not be appropriate to direct their immediate removal Reason: unless alternative accommodation is provided to them by the State and its authorities in accordance with its policy.

On notice being issued, counter affidavit has been filed by respondent No. 6, Sarpanch of the Panchayat. No doubt a preliminary submission has been raised that even the brother of the appellant is one of the persons who has encroached in the gouchar Land but then that only implies that he has to be treated at par with anybody else who may have encroached.

In our view, what is material is that on survey being conducted, 72 persons have been found to have made encroachment in the gouchar land being Survey Nos in question bearing Nos. 1938/1, 198/2 and 1939. Out of these persons, 3 persons are included in scheduled caste category and the 2 persons are Socially Economically Backward Class. The Scheduled caste persons concerned are stated to have already got benefit of another Government Scheme namely, Amedkar Aavas Yojana. The other encroachers are having residential houses at other places along with agricultural lands

adjacent thereto and are thus not entitled to get any alternative accommodation. The land in question is being used for making shelters for their cattle and not being used for residential purposes. In fact on 07.08.2019, 29 persons are stated to have made a statement that they were keeping cattle on the land while other persons did not appear. Thus only three persons are entitled to the alternative accommodation as stated above. Out of these, one person is stated to be doing ritualistic puja called Pujari and other two persons are stated to be under SEBC category and also coming under poverty line.

In respect of user of the gouchar land it is stated that Government is running Anganvadi, school in the said premises. One cooperative society is running dairy and there is one temple of Hanumanji.

It is trite to say that gouchar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on. Rehabilitation of persons is really not required in the present case as only three persons are entitled to an alternative site as per rules. There is of course some dispute whether the encroachers have made permanent structures or kuchha construction for keeping cattle but be that as it may, the user cannot be contrary to what is being permitted for gouchar land, which is a grazing land.

In view of the aforesaid, a direction is issued to bring the land in conformity with its use by the State Government taking appropriate action within a maximum period of three months from today.

The impugned order is set aside with the direction aforesaid and the appeal is, accordingly, allowed.

The parties to bear their own costs. The Compliance report be filed by the State Government within two weeks thereafter, to be verified by the Registrar of this Court.

.....J. [SANJAY KISHAN KAUL]J. [M.M. SUNDRESH] NEW DELHI,
SEPTEMBER 06, 2021.

ITEM NO.22

Court 6 (Video Conferencing)

SECTION III

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (C)

No(s). 14222/2019

(Arising out of impugned final judgment and order dated 12-04-2019 in WPPIL No. 190/2017 passed by the High Court Of Gujarat At Ahmedabad) RAMESHBHAI VIRABHAI CHAUDHARI Petitioner(s) VERSUS THE STATE OF GUJARAT & ORS. Respondent(s) (FOR ADMISSION and IA No.93099/2019-EXEMPTION FROM FILING O.T.) Date : 06-09-2021 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE M.M. SUNDRESH For Petitioner(s) Ms. Minisha Menon, Adv.

Mr. Amarjeet Singh, AOR For Respondent(s) Mr. Haresh Raichura, AOR Mr. Sejal Mandavia, Adv.

Mr. Saroj Raichura, Adv.

Mr. Kalp Raichura, Adv.

Mr. Ram Bhadauria, Adv.

Ms. Aastha Mehta, Adv.

Mr. A.P. Mayee, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order. The parties to bear their own costs. Pending application stands disposed of. [CHARANJEET KAUR] [POONAM VAID] ASTT. REGISTRAR-cum-PS COURT MASTER (NSH) [Signed order is placed on the file]