

Gujarat High Court

Bhupatbhai Oghadbhai And Ors. vs State Of Gujarat And Ors. on 19 July, 1995

Equivalent citations: (1996) 1 GLR 600

Author: B Kirpal

Bench: B Kirpal, H Gokhale

JUDGMENT B.N. Kirpal, C.J.

1. This is a typical case of an unequal battle between the 'haves' and the 'have nots'.
2. The brief facts are that a Resolution dated 31st of July, 1981 was passed by the Gram Panchayat, at Kudavasan, District Amreli in which it was stated that frequent application were being received from Schedule Castes and other backward class people for allotting them cultivable land. The request which was made by this resolution was that land measuring 93 acres and 39 gunthas be converted from gaucher to Government waste land and in its stead, government waste land be converted to gaucher land. Based on this Resolution, the Collector passed an order, after taking into account the report of the Mamlatdar and Deputy Collector, on 18th August, 1982, whereby seven survey numbers were removed from the head of 'gaucher land' and were shown as 'Government Waste Land' and against this, Government waste land admeasuring 60 acres and 20 gunthas was reserved as gaucher land for the said village.
3. The effect of the aforesaid was that there was a decrease of gaucher land by about 33 acres but a larger area of land was now made available by rehabilitating the downtrodden people of the village.
4. It is at this stage that the 'haves' have filed the present writ petition, challenging the aforesaid decision of the Collector. The learned single Judge dismissed the Writ Petition, inter alia, holding that no appeal under Section 290 of the Gujarat Panchayats Act, 1961 had been filed against the said Resolution dated 31st of July, 1981 and the Resolution had become final.
5. Against the dismissal of the Writ Petition, the present appeal has been filed, it has been contended by the Learned Counsel for the appellant that the Resolution dated 31st July, 1981 was illegal and, in fact, was not passed. It is alleged to have been concocted. This is an allegation of fact, which could not have been investigated under Article 226 of the Constitution and the learned single Judge was right in holding that the same could have been challenged, but in fact was not, by filing an appeal.
6. It was then contended that the land which has now been ordered to become part of the waste land, is not going to be used for the benefit of the downtrodden. In support of this contention, reference was made to paragraph 10 of the Writ Petition, in which it is alleged that the District Collector has issued a public notice, inviting the public at large to make an application for grant of plots from these lands. It is submitted by the Learned Counsel that no reply to the writ petition having been filed, this fact goes uncontroverted.
7. It is not unusual that the Government, obviously due to negligence, chooses not to file reply despite years having elapsed. Negligence of the Government, however, by itself should not be a reason for applying the laws of pleadings blindly, specially when the equitable jurisdiction of the Court is

sought to be invoked in an effort to nullify the order of the authorities which, prima facie, is for the benefit of the weaker section of the society in the village. If the allegation made in paragraph 10 of the writ petition was correct, then it was the duty of the appellant to have annexed with the writ petition or even with this Appeal a copy of the alleged public notice. This apart, neither in paragraph 10, nor any other part of the writ petition or Appeal are any particulars given with regard to the date when the alleged public notice was issued and in what manner it was issued. We, therefore, do not accept this allegation to have been proved for the purpose of setting at naught the order of the District Collector.

8. It was then submitted relying upon the decision in Nabipur Gram Panchayat and Anr v. State of Gujarat and Anr., , that before passing an order, the District Collector ought to have seen as to what it will have with regard to the grazing land. In that case, the order under Section 96(4) of the Gujarat Panchayats Act, 1961 had been passed, whereby some grazing land was resumed for the purpose of construction of huts for members of the weaker section of the society. This order was passed against the wishes of the Gram Panchayat and the learned single Judge came to the conclusion that the Collector had failed to apply his mind with regard to the actual requirements of the grazing land for the people of the village and the actual availability of grazing land to them. According to the present appellant, as per the writ petition, 680 acres of land are required for gaucher land.

9. Under Section 96(4) of the Gujarat Panchayats Act, 1961, where an open site or vacant or grazing land, which is vested with the Government, has been vested by it in a Panchayat, then it is lawful for the State Government to resume that land if required by it for any public purpose. This is a case of cattle versus human beings. Where the land is not abundant, but there are a large number of landless people who do not have any place to stay or to cultivate, it would be in the public interest to give land to them even at the expense of a part of grazing land. This is precisely what has been done in the present case. It was the request of the Panchayat contained in the Resolution dated 31st of July, 1981, which was rightly accepted by the Collector, and the gaucher land of 93 acres and 39 gunthas was made available for rehabilitation of the scheduled castes and backward class people and the grazing land was reduced to 60 acres and 20 gunthas. We find it difficult to agree with the learned single Judge in Nabipur Gram Panchayat's case that reducing the grazing land for the benefit of providing land to the scheduled castes and backward classes or other downtrodden people of the village would be bad in law, as not being for a public purpose. In fact, the public purpose would demand a balancing of the need of the two and obviously, the balance must tilt in favour of the human beings. In any case, in Nabipur Gram Panchayat's case, it was the Panchayat which was challenging the order of conversion, but here, it is the Panchayat which has requested for such conversion. In our opinion, Nabipur Gram Panchayat's case does not seem to have been correctly decided. In the present case, the learned single Judge had, of course rightly distinguished the decision in Nabipur Gram Panchayat's case.

10. for the aforesaid reasons, we do not find any merit in this appeal and the same is dismissed.

No order in Civil Application No. 1471 of 1995.