

Gujarat High Court

Savitaben vs Municipal on 7 July, 2011

Author: Akil Kureshi,

Gujarat High Court Case Information System

Print

SCA/11829/2002 4 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 11829 of 2002

For
Approval and Signature:

HONOURABLE
MR.JUSTICE AKIL KURESHI

=====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To be

referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

=====

SAVITABEN
DAHYABHAI SAVARIYA - Petitioner(s)

Versus

MUNICIPAL
COMMISSIONER & 2 - Respondent(s)

=====

Appearance
:
NOTICE
SERVED for
Petitioner(s) : 1,PARTY-IN-PERSON for Petitioner(s) : 1,
MR MM
TIRMIZI for Respondent(s) : 1,
MS MAITHILI MEHTA AGP for
Respondent(s) : 2,
MR ANSHIN H DESAI for Respondent(s) : 3,
3.2.1,3.2.2

=====

CORAM

:

HONOURABLE

MR.JUSTICE AKIL KURESHI

Date
: 27/06/2011

ORAL
JUDGMENT

1. The petition is filed praying for following reliefs:-

"20(A)Your Lordships may be pleased to issue appropriate writ, order or direction, quashing and setting aside the action of the Resp. No.1 & 2 of not initiating appropriate proceedings against the Resp. No.3 under the law as the same is arbitrary, illegal, null & void.

(B) Your Lordships may be pleased to issue appropriate writ, order or direction, directing the Respondent No.1 & 2, to exercise powers granted under B.P.M.C. Act and under the Prevention of Antisocial Activities Act against the partners of Resp. No.3 and be further pleased to direct the Resp. No.1 & 2 to initiate appropriate criminal proceedings against the Resp. No.3.

(C) Your Lordships may be pleased to issue appropriate writ, order or direction, directing the Respondent No.1 & 2 to ensure that the encroachment are adequately compensated, in the interest of justice.

(D) Your Lordships may be pleased to direct the Respondents to comply the consent decree dtd. 28.01.84 passed by the 2nd Jt. Civil Judge (SD), Junagadh, vide exh.32 in Special Civil Suit No.111 of 1980, by carrying out measurement for the purpose of finding out the extent of the encroachment carried by the Resp. No.3 over the Government land pending admission, hearing and final disposal of this writ petition."

2. Previously though the petitioner was represented by an advocate, it appears that subsequently, the advocate was relieved. The petitioner was not present before the Court today. Her written arguments dated 15.03.2010 are on record.

3. I have perused the written arguments, the pleadings on record and heard Ms.Maithili Mehta, the learned AGP for the State and Mr.Anshin Desai, learned advocate for respondent no.3. From the prayers, it can be seen that the petitioner desires that action be taken against respondent no.3 under Prevention of Antisocial Activities Act. It is her case that respondent no.3 is a builder and influential person and is encroaching municipal/Government lands.

4. Mr.Desai, learned advocate for respondent no.3, however, pointed out that with respect to the same land which the petitioner alleges that respondent no.3 has encroached, respondent no.3 had filed Civil Suit being Regular Civil Suit No.648 of 1992 joining Junagadh Municipality and State Government as defendants claiming ownership and possessory rights of present respondent no.3

over the land in question. In such proceedings also, present petitioner was permitted to intervene and the suit came to be decreed in favour of present respondent no.3 by judgment and decree dated 28.04.2010 passed by the learned Principal Senior Civil Judge, Junagadh. Defendants were prevented from stopping the plaintiffs from carrying out construction on the said land. He further stated that against the judgment and decree dated 28.04.2010, the Corporation also preferred Regular Civil Appeal No.37 of 2010 which came to be dismissed by judgment dated 27.09.2010 passed by the learned Additional District Judge, Junagadh.

5. Mr.Desai, learned advocate, pointed out that the present petitioner had filed a criminal case being C.R. I-12 of 2002 alleging commission of offences punishable under Sections 418, 420 and 423 etc. of Indian Penal Code which was summarily dropped and the summary was also finally accepted by the High Court.

6. The State Government has also filed a reply opposing the petition and contending that no case for taking action under Prevention of Antisocial Activities Act is made out.

7. When the Civil Court has expressed its opinion on the nature of possession and title of respondent no.3 with respect to the land in question, I am of the opinion that the issue is substantially narrowed down. It cannot be stated that respondent no.3 is an encroacher over the land in question. In any case, whether action should be initiated under the provisions of Prevention of Antisocial Activities Act or not must depend on facts and circumstances of a case and it is within the power subjective satisfaction of the Competent Authority whether such an action should be initiated or not. I do not see how the present petitioner as a citizen can insist that action must be taken by the Government under the Prevention of Antisocial Activities Act, particularly when no direct injury or injustice to her is shown.

In the result, the petition fails and the same stands dismissed. Rule is discharged. Interim relief, if any, granted earlier stands vacated.

(Akil Kureshi, J.) rakesh/ Top