

Gujarat High Court

Nitinkumar vs Valsad on 16 December, 2010

Author: Akil Kureshi,&Nbsp

Gujarat High Court Case Information System

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SCA/3970/2010 1/ 3 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL

CIVIL APPLICATION No. 3970 of 2010

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NITINKUMAR
DINESHCHANDRA SONI SHOP NO. 29,30 & 31 & 44 - Petitioner(s)

Versus

VALSAD
MUNICIPALITY THROUGH CHIEF OFFICER & 3 - Respondent(s)

=====

Appearance
:
MR
RR MARSHALL FOR MR ADIL R MIRZA
for
Petitioner(s) : 1 - 2,4 - 45.PETITION WITHDRAWN for Petitioner(s) :
3,
HL PATEL ADVOCATES for Respondent(s) : 1,
MS MAITHILI MEHTA,
AGP for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) :
4,
=====

CORAM

:

HONOURABLE

MR.JUSTICE AKIL KURESHI

Date
: 16/12/2010

ORAL
ORDER

Petitioners have challenged notice of eviction dated 16.3.2010 issued by respondent No.1, Valsad Municipality. They also prayed for a direction for quashing and setting aside the Town Planning Scheme No.1 in so far as the same pertains to lands allegedly owned by the petitioners.

Counsel for the petitioners submitted that the petitioners are the owners of the land allotted by the Government pursuant to the scheme of resettlement. The petitioners have put up small construction and are carrying on their small business since years. He contended that the petitioners could not have been evicted without prior notice and hearing. Notice of eviction dated 16.3.10 is therefore illegal. In support of this contention, he relied on a decision of the Apex Court in the case of Municipal Corporation v. Chalaram and sons, AIR 1997 SC 31.

On the other hand, counsel for the Valsad Municipality relying on the further affidavit dated 1st December 2010 contended that hearing was given to some of the petitioners and that opposition was taken into account and no fresh hearing is necessary.

Having heard the learned counsel for the parties and having perused the documents on record, I find that the petitioners had not been given any opportunity of hearing before seeking their eviction. For implementation of the Town Planning Scheme, as held by the Apex Court, such opportunity was necessary. Though the respondents have produced along with further affidavit in reply dated 1st December 2010, a notice issued to the father of one of the petitioners, such notice does not appear to be for their eviction. The reply of the noticee would reveal that the same was with respect to demolition of the construction put up by him. In any case, the respondents have not produced any notice to rest of the petitioners.

In that view of the matter, the impugned communication dated 16.3.2010 calling upon the petitioners for implementation of the Town Planning Scheme is set aside. It will, however, be open for the respondents to proceed further after giving reasonable opportunity of being heard to the petitioners. The petition is disposed of in above terms.

(Akil Kureshi, J.) (vjn) Top