

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 163 of 2015

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SUO MOTO....Applicant

Versus

THE STATE OF GUJARAT AND OTHERSOpponents

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Appearance :

MR GM JOSHI, ADVOCATE for the Applicant.

SUO MOTU for the Applicant.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
VIJAY MANOHAR SAHAI
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 10/08/2015

ORAL ORDER

(PER : HONOURABLE THE ACTING CHIEF JUSTICE
MR. VIJAY MANOHAR SAHAI)

1. This suo motu Public Interest Litigation is initiated on the basis of letters dated 2.7.2015, dated 3.7.2015 of Hon'ble Mr.Justice B.J.Shethna, Former Judge of Gujarat and Rajasthan High Court and letter dated 6.7.2015 of Hon'ble Mr.Justice K.R.Vyas, Former Chief Justice, Bombay High Court and Former Judge of Gujarat High Court.

2. Mr.Kamal B.Trivedi, learned Advocate General, states that this Bench should not hear the matter as this Bench was desirous and had been interested in having a plot at Neetibaug Cooperative Housing Society. Further he states that queries have been made from the Collector, Ahmedabad on the letter written by Mr.B.T.Rao, learned Advocate, Mr.B.J.Shethna, Former Judge, Gujarat and Rajasthan High Court and Mr.K.R.Vyas, Chairman, Grievance Redressal Authority for Sardar Sarovar Project Affected Persons, Ahmedabad (Former Honourble Judge, High Court of

Gujarat and Retired as the Hon'ble Chief Justice of Bombay High Court), who have requested the Chief Justice to treat their letter as PIL. Therefore, Mr.Kamal B.Trivedi, states that this Bench is not competent to hear the matter as the Bench has developed perception in the matter.

3. For compliance of the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010, a short enquiry was made into the allegation culled out in the aforesaid letters and for the purpose, Collector Ahmedabad as well as District Registrar of Cooperative Society, Ahmedabad were requested to produce the documents with regard to Neetibaug Cooperative Housing Society along with its translated copies. They have produced the requisite documents. On the basis of such documents, it is thought fit to treat this as a suo moto PIL under the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010. Therefore, to state that any perception has been formed or we are swayed in favour of one party or another is not correct. The anxiety is that justice should be done. Serious complaint has been made in the aforesaid letters and after deliberation with heavy heart, this suo moto PIL has been taken up.

4. This suo moto PIL has been taken up today. It involves judges of this Court, who are performing constitutional duties. This is an era of transparency where everything has to be before the public and no one can claim that they are above law. Similar issue came up before the Bombay High Court in Criminal Public Interest Litigation No.12 of 2011 in the matter between Shri Nitish Deshmukh v. Registrar General, High Court of Bombay and others, wherein the Division Bench of Bombay High Court held that every

judge performing constitutional duty is entitled to have the land for construction of house as a common citizen. This proposition is not disputed. Similar issue came up before the Apex Court in Writ Petition (Civil) No.1096 of 2013, wherein the Hon'ble Apex Court disposed of the petition on 21.2.2014 on the ground to raise the grievance before the concerned Gujarat High Court or Odissa High Court.

5. Now coming back to the facts of the case, Mr.B.T.Rao, learned advocate states that he would be filing an application for intervener and Mr. Amar Singh Chavada, RIT Activist states that he would also become one of the petitioner to support the cause of the PIL raised by the Former Judges of this Court. They may do so by tomorrow by way of filing appropriate application.

6. Since the plot has been allotted to some of Hon'ble Judges, therefore, no one should be heard ex parte against them. Therefore, Hon'ble Judges, who has been allotted the plots, be impleaded as respondents to this PIL. The name of Hon'ble Judges are as under :-

1. Shri Jayant Patel, Sitting Judge, Gujarat High Court.
2. Shri M. R. Shah, Sitting Judge, Gujarat High Court.
3. Shri K.S . Jhaveri, Sitting Judge, Gujarat High Court.
4. Shri Anant S. Dave, Sitting Judge, Gujarat High Court.
5. Shri S. R. Brahmhatt, Sitting Judge, Gujarat High Court.
6. Ms. Harsha Devani, Sitting Judge, Gujarat High Court.
7. Shri K. M. Thaker, Sitting Judge, Gujarat High Court.
8. Shri Rajesh H. Shukla, Sitting Judge, Gujarat High Court.
9. Shri M. S. Shah, Chief Justice, Bombay High Court.
10. Shri D. H. Waghela, Chief Justice, Orissa High Court.

11. Shri A. R. Dave, Sitting Judge, Supreme Court of India.
12. Shri C. K. Thakkar, Former Judge, Supreme Court of India.
13. Shri K.A.Puj, Former Judge, High Court of Gujarat.
14. Shri Ravi R.Tripathi, Former Judge of High Court of Gujarat.
15. Shri J.R.Vora, Former Judge of High Court of Gujarat.
16. Shri J.C.Upadhyay, Former Judge, High Court of Gujarat.
17. Shri A. L. Dave, Former Judge, High Court of Gujarat.
18. Shri P.B.Majmudar, Former Judge, High Court of Gujarat.
19. Shri C. K. Buch, Former Judge, High Court of Gujarat.
20. Shri D.A. Mehta, Former Judge, High Court of Gujarat.
21. Shri D.N.Patel, Former Judge, High Court of Gujarat now Sitting Judge of Jharkhand High Court.
22. Shri R.P.Dholakia, Former Judge, High Court of Gujarat.
23. Ms. R.M.Doshit, Former Judge, High Court of Gujarat.
24. Shri A.M.Kapadia, Former Judge, High Court of Gujarat.
25. Shri M. D. Shah, Former Judge, High Court of Gujarat.
26. Shri Bhagawati Prasad, Former Judge, High Court of Gujarat.
27. Shri H. B. Antani, Former Judge, High Court of Gujarat.

7. Heard Mr.Kamal B.Trivedi, learned Advocate General assisted by Mr.Prakash Jani, learned Additional Advocate General, Ms.Manisha Lav Kumar, learned Government Pleader and Ms.Sangeeta Vishen, learned AGP for the respondents and Mr.B.T.Rao, learned advocate and Mr.Amar Singh Chavada, Activist and Mr.G.M.Joshi, learned advocate for the applicant-High Court of Gujarat.

8. The intention on the part of the Government appears to be pious that those Judges did not have any plot, flat or house, they should be allotted a plot so that after retirement they may settle

down in the house for which the Government has provided the land. The intention of the Government never meant to allot the plots to the Hon'ble Judges for any other purpose. The question, therefore, arises this PIL are as under :

A. Whether the condition mentions that plots have to be allotted to Hon'ble Judges individually though he has to be only a member of Cooperative Housing Society, or the land had to be purchased in favour of Cooperative Society. It has to be developed by the Hon'ble Judges and plots may be allotted to each of the members of Cooperative Society by the cooperative society. The Members of the society would be treated to be eligible for individually allotments of plot which was never which was the intention of the Government prima facie if the plot is to be allotted to individual person or a judge, in such a cases there cannot be any requirement that one must form a cooperative society and be its member.

B. Whether the sale deed has been executed by the Government of Gujarat or Collector of Gujarat in the name of Gujarat High Court Judges, Neetibaug Cooperative Housing Society or individually in the name of a Judges it has been registered individually in the Judges then how it is permissible in law is to be explained by the respondents.

9, According to Advocate General, apart from the plot, the roads development in the boundary wall of the land allotted to the Cooperative Society belongs to the Government and even the party plots belongs to the Government on which the public has got free access because on Government land nobody can be restricted from movement. Mr.B.T. Rao, has pointed out that this is wrong and nobody is permitted to go through this road of the Society and

further party plot is not being permitted to be used by any other person except the members of the residents of the Cooperative Society. If this is the case, how the Government has not charged 40% amount of land, which is charged from other Cooperative Societies has to be explained by the Government.

10. If the internal development of the total area of land in the Cooperative Society exists has been carried out by Ahmedabad Municipal Corporation on their expenses then it should be explained on whose order. Whether it is permissible in law.

11. Mr.Kamal B.Trivedi, Advocate General states that he wants to challenge this order passed today before the Apex Court. Therefore, he prays for two weeks' time. The prayer made by Mr.Kamal Trivedi, learned Advocate General for two weeks' time is rejected looking to the urgency in the matter and looking to the larger public interest.

12. Issue Notice to the respondents today itself in the following order :-

1. The State of Gujarat through Chief Secretary, Government of Gujarat, New Sachivalaya, Gandhinagar.
2. The State of Gujarat, through the Secretary, Revenue Department, New Sachivalaya, Gandhinagar.
3. The Collector, Ahmedabad.
4. Shri Jayant Patel, Sitting Judge, Gujarat High Court.
5. Shri M. R. Shah, Sitting Judge, Gujarat High Court.
6. Shri K.S . Jhaveri, Sitting Judge, Gujarat High Court.
7. Shri Anant S. Dave, Sitting Judge, Gujarat High Court.

8. Shri S. R. Brahmhatt, Sitting Judge, Gujarat High Court.
9. Ms. Harsha Devani, Sitting Judge, Gujarat High Court.
10. Shri K. M. Thaker, Sitting Judge, Gujarat High Court.
11. Shri Rajesh H. Shukla, Sitting Judge, Gujarat High Court.
12. Shri M. S. Shah, Chief Justice, Bombay High Court.
13. Shri D. H. Waghela, Chief Justice, Orissa High Court.
14. Shri A. R. Dave, Sitting Judge, Supreme Court of India.
15. Shri C. K. Thakkar, Former Judge, Supreme Court of India.
16. Shri K.A.Puj, Former Judge, High Court of Gujarat.
17. Shri Ravi R.Tripathi, Former Judge of High Court of Gujarat.
18. Shri J.R.Vora, Former Judge of High Court of Gujarat.
19. Shri J.C.Upadhyay, Former Judge, High Court of Gujarat.
20. Shri A. L. Dave, Former Judge, High Court of Gujarat.
21. Shri P.B.Majmudar, Former Judge, High Court of Gujarat.
22. Shri C. K. Buch, Former Judge, High Court of Gujarat.
23. Shri D.A. Mehta, Former Judge, High Court of Gujarat.
24. Shri D.N.Patel, Former Judge, High Court of Gujarat now Sitting Judge of Jharkhand High Court.
25. Shri R.P.Dholakia, Former Judge, High Court of Gujarat.
26. Ms. R.M.Doshit, Former Judge, High Court of Gujarat.
27. Shri A.M.Kapadia, Former Judge, High Court of Gujarat.
28. Shri M. D. Shah, Former Judge, High Court of Gujarat.
29. Shri Bhagawati Prasad, Former Judge, High Court of Gujarat.
30. Shri H. B. Antani, Former Judge, High Court of Gujarat.
31. The District Registrar of Cooperative Societies, Ahmedabad City.
32. The Municipal Commissioner, Ahmedabad Municipal Corporation.
33. Ahmedabad Urban Development Authority through its Chief Executive Officer.

13. Mr.B.T.Rao, learned advocate has raised an objection that the land which has been allotted to Neetibaug Cooperative Housing Society of Sola originally belongs to gauchar land and pond. However, at this stage, we may not look into till Mr.B.T.Rao files affidavit.

14. Since the respondents are at present the residents of Neetibaug Cooperative Housing Society, we direct the Registry to serve a copy of this order along with a copy of PIL to the respondents to file their reply. Office shall issue a certified copy of this order to counsel for the respective parties on payment of usual charges today. The Collector, Ahmedabad shall remain present tomorrow in the Court along with the translated copy of the record. The Registrar Cooperative Societies, shall also remain present before the Court tomorrow. The Ahmedabad Municipal Corporation shall also file an affidavit explaining as to whether and in what circumstances they have carried out in the internal development of the plot and under whose instructions and under which policy. The Advocate General may also file affidavit in the Court as to whether in every Cooperative society, the Government had taken the policy decision that plots will be allotted individually and one has to be only one of the member of the Cooperative Society and then he would be individually allotted a new plots.

15. Mr.N.D.Nanvati, learned Senior counsel is directed to assist the Court as amicus curiae. Mr.N.D.Nanavati, learned Senior Counsel states that he may be permitted to have a junior counsel with him because he is a Senior counsel. Permission as prayed for is granted. He may appear through his Junior whom may he desire to engage.

16. Copies of the three letters two by Justice and Former Justice B.J. Sethna and one by K.R.Vyas, has been served on Mr. Advocate General assisted by Ms. Manisha Lavkumar, Mr. B. T. Rao and Mr. Chavada.

17. Put up this matter tomorrow i.e. 11.8.2015 before a Bench of which one of us (R.P.Dholaria, J) is not a member after obtaining necessary nomination from Hon'ble the Acting Chief Justice for constituting another Bench. Office shall take necessary steps today so that the matter may be come up tomorrow before the Bench to be constituted by the Hon'ble Acting Chief Justice.

(V.M.SAHAI, ACJ.)

(R.P.DHOLARIA, J.)

Ashish Tripathi

