

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 163 of 2015

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SUO MOTO....Applicant
Versus
STATE OF GUJARAT & 32....Opponents

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Appearance :

MR GM JOSHI, ADVOCATE for the Applicant.

SUO MOTU for the Applicant.

MR ANSHIN H DESAI, ADVOCATE for the Opponent No.22.

MR DHAVAL D VYAS, ADVOCATE for the Opponent No.16.

MR DIPEN DESAI, ADVOCATE for the Opponent(s) No. 25

MR SALIL M THAKORE, ADVOCATE for the Opponent(s) No. 15

MRS VD NANAVATI, ADVOCATE for the Opponent(s) No. 20

NOTICE SERVED for the Opponent(s) No. 1 - 6 , 8 - 11 , 15 - 23 , 26 - 28 , 30 - 33

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
VIJAY MANOHAR SAHAI
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 11/08/2015

ORAL ORDER

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

1. We have heard learned Senior Counsel Mr. N.D. Nanavaty appearing as *amicus curiae* assisted by learned advocate Mr. Rajesh Savajani, who has been requested to assist the Court, learned advocate Mr. B.T. Rao appearing as intervenor, Mr. Amarsinh Chavda, RTI activist residing at 127, Heritage Bungalows, Opposite Science City, Ahmedabad - 60, Mr. Vinod Pandurao Sonkusre, Social Worker, Ex Army Man, residing at 57/667, Mangal Murti Appt., Shashtrinagar, Naranpura, Ahmedabad - 380013. Learned advocate Mr. Jigar Patel appears for respondent No.4, learned advocate Mr. Niral Mehta appears for respondent No.5, Mr. Dipen Desai appears for respondent No.6, learned advocate Ms. Mini Nair appears for respondent Nos.8 and 9, learned advocate Mr. Uday Joshi appears for respondent Nos.10

and 11, learned Senior Counsel Mr. Mihir Thakore assisted by learned advocate Mr. Salil Thakore appears for respondent No.15, learned Senior Counsel Mr. R.S. Sanjanwala assisted by learned advocate Mr. Dhaval D. Vyas appears for respondent No.16, learned Senior Counsel Mr. Mihir Thakore assisted by learned advocate Mr. Darshan Vanandani appears for respondent Nos.18,19 and 30, learned Senior Counsel Mr. S.N. Shelat assisted by learned advocate Mrs Vaibhavi Nanavati appears for respondent Nos.20 and 28, learned Senior Counsel Mr. P.C. Kavina assisted by learned advocate Mr. Anshin Desai appears for respondent Nos.21 and 22, learned Senior Counsel Mr. S.N. Soparkar assisted by learned advocate Mr. B.D. Karia appears for respondent No.23, learned Senior Counsel Mr. Mihir Joshi assisted by learned advocate Mr. D.A. Desai appears for respondent No.25, learned Advocate General Mr. K.B. Trivedi assisted by learned Additional Advocate General Mr. P.K. Jani, learned Government Pleader Ms. Manisha Lavkumar and learned Assistant Government Pleader Ms. Sangita Vishen appears for respondent Nos.1,2,3 and 31 and learned Advocate General Mr. K.B. Trivedi assisted by learned AGP Ms. Sangita Vishen appears for respondent Nos.32 and 33.

2. Rule.

3. Learned Senior Counsel appearing for the respective respondents pray that they may be granted time for looking into the matter. Some of the respondents have been served in the night, some of the respondents have been served in the morning and some of the respondents are still to be served. To enable the counsel for the respondents to take effective steps in this *suo motu* Public Interest Litigation, we pass the following order :-

4. The dispute in this *suo motu* Public Interest Litigation is with regard to allotment of plots by the Government or the Collector to the Hon'ble Judges (present and former) of this Court as well as present and former Judges of the Supreme Court of India as well as former Judges of this Court, who are now working as Chief Justice in other State. Before, we frame the questions which may be answered by the respondents, we may point out few decisions.

5. In Letters Patent Appeal No.1211 of 2013 rendered by the Division Bench of this Court in **Sursinhji Rajput Chhatralay Trust Vs. Bavla Nagarpalika and others decided on 3rd March, 2015**, the Division Bench has held as under :-

"7. In support of his case, learned counsel for the appellant has relied upon the following decisions:

1) Jasvantsinh Laxmansinh Chauhan v. Deesa Municipality, 1995 1 GLH 730, more particularly paragraph 5 thereof, which reads as under:

It is difficult for us to agree with the contention of the learned counsel for the petitioners that in every case where the property is supposed to be disposed of, it can be done only by public auction. There is no provision in Section 65 of the Act to that effect. Of course, the municipality cannot dispose of its property for an ulterior reason or not for the purposes of the Act, nor can it circumvent the provisions of the Act to directly or indirectly give undue benefit to persons or a class of persons. This can, however, not prevent the municipality from considering favourably the demands or the needs of a section of society. Section 65 of the Act contains sufficient safeguards and does not, in our opinion, suffer from the vice of excessive delegation. The challenge to the said provision is without any basis.

2) In a three Judges Division Bench decision of the Apex Court (2012) 10 SCC 1, which has been relied upon by the Division Bench, more particularly paragraphs 108 and 113, which read as under:-

108. Such being the constitutional intent and effect of Article 14, the question arises - can auction as a method of disposal of natural resources be declared a constitutional mandate

under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the Scheme of Article 14. Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms; like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the Article apparent from its plain language.

113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). The said article enumerating certain principles of policy, to be followed by the State, reads as follows:

The State shall, in particular, direct its policy towards securing

a)

b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any Court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on distribution built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing distribution is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word distribution. Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the common good."

5. In another judgment of the Division Bench of this Court in **Sarvesh Atulbhai Gohil v. Jamnagar Urban Development**

Authority and others, 2014 (2) GLH 26, the Division Bench has observed in paragraph 17 as under :-

“17. This petition portrays an extremely sorry state of affairs at the end of the authorities, namely, the Jamnagar Urban Development Authority as well as the Jamnagar Municipal Corporation. We are reminded of the observations made by the Supreme Court in the case of Delhi Development Authority Vs. Skipper Construction Company Private Limited and anr. reported in (1996) 4 SCC 622, in connection with the menace of illegal and unauthorized construction of buildings and other structures. The observations are worth noting.

“ 37. We feel impelled to make a few observations . What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which means the rich and the influential class of the society) have made the property career the sole aim of their life. The means have become irrelevant in a land where is greatest son born in this century said means are more important than the ends. A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes it to 'tackle' or 'manage' it in an appropriate manner. They have developed an utter disregard for law nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, what have we made of our country in less than fifty years? Where has the respect and regard for law gone? And who is responsible for it ?”

6. The Apex Court in **City Industrial Development Corporation v. Platinum Entertainment and others, (2015) 1 SCC 558** has held in para 49 and 50 as under :-

“49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions

and action of the State must be founded on a sound, transparent and well defined policy which shall be made known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land.

50. Furthermore, this Court has already stated in *Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Ors.*, (2011) 5 SCC 29, that the State or its agencies or instrumentalities must give largesse founded on a sound, transparent, discernible and well-defined policy, which should be made known to the public at large and further held that a rational policy of allotting land on the basis of individual applications cannot de hors an invitation or advertisement by the State or its instrumentality, bringing it to the knowledge of public at large so that the eligible persons should not be excluded from lodging their competitive claims.”

7. In view of the aforesaid decisions and looking to the controversy involved in this case, we propose to frame the following questions :-

(i) Whether after allotment of plots to sitting Judges, if still some plots remained vacant, whether it could be allotted to the former Judges of Gujarat High Court or not and whether the vacant plots could be allotted to Judges who were lawyers or subordinate Court Judges at the time of allotment of plots ?

(ii) Whether the Neetibagh Judges' Cooperative Housing Society Limited was allotted land after the Society was formed as a Society, but it did not purchase the land from the Government or from the Collector as

there is no sale deed on record, which is admitted by the Collector, then how the Judges who are Members of the Housing Society were allotted land contrary to the terms of allotment ?

(iii) Whether there is any policy of the Government to allot individual plot at a prime location, if yes, whether any advertisement was issued inviting applications ?

(iv) Whether any Judge or Judges have applied to the Collector, Ahmedabad or the State Government for allotment of plots individually ?

(v) Whether the plot can be allotted to the Judges who are having their own house within the radius of 8 km from the land? Whether such a Judge could be legally allotted land contrary to the policy of the Government?

(vi) Whether a Judge or any individual, who is having house within the periphery of 8 Kms. from the allotted land by the Government, amounts to undue enrichment ?

(vii) Whether Ahmedabad Urban Development Authority or Ahmedabad Municipal Corporation had made internal development of the total area of the land allotted to Neetibagh Judges' Cooperative Housing Society Limited free of cost and under whose orders and why? Whether free of cost development is permissible in law?

(viii) Whether non-registration of sale deed in the name of the Housing Society and allotment of plots in the name of Judges was to defraud the State exchequer by evasion of stamp duty ?

(ix) Under what authority the Secretary of the Neetibagh Judges' Cooperative Housing Society Limited wrote letters to Collector, Ahmedabad to allot plot to "x" Judge and the Collector had allotted plot to "x" Judge has to be explained ?

(x) Whether *Gauchar* land or water bodies could be allotted to a Housing Society or to an individual or individuals for the purpose of construction of house?

8. Learned counsel for the respondents pray that time be granted to them for looking into the matter and respond by way of affidavit, if required, that whether such a Public Interest Litigation would be entertainable or not. We are not inclined to accept the request made by learned counsel for the reason that interest of justice demands that this matter pertains to Hon'ble Judges of this Court and in view of the seriousness, this matter should be decided by a larger Bench and therefore, we refer the entire matter to Hon'ble the Acting Chief Justice for constitution of appropriate larger Bench to hear and decide the same.

9. It shall be open to the larger Bench to reformulate the questions and frame new question since the entire case has been referred to the larger Bench.

10. Learned counsel for the respondents have raised objections against framing of the questions while referring the matter to the larger Bench and they submitted that after giving opportunity of filing their response, only thereafter, the questions should have been framed. We reject the request of the respondents as we are not deciding the matter and we are referring the entire matter to the larger Bench and as per the High Court Rules, the matter is to be referred to larger Bench only after framing the questions, therefore, we have framed the questions.

11. Learned advocate Mr. B.T. Rao has made a request that Neetibagh Judges' Cooperative Housing Society Limited through its Secretary, Sola, Opposite – High Court of Gujarat, Ahmedabad may be impleaded as party - respondent No.34. We implead Neetibagh Judges' Cooperative Housing Society Limited through its Secretary as party – respondent No.34. The High Court of Gujarat through its Registrar General is also impleaded as respondent No.35. Office shall carry out the necessary amendment and implead respondent Nos.34 and 35. **Rule be issued to newly added respondent No.34.** Office is directed to serve the Rule today to all the respondents including the newly added respondents.

12. Since learned counsel Mr. G.M. Joshi is appearing on behalf of High Court of Gujarat, he has waived the service of Rule. He may also file his response.

13. Office has filed a note dated 11.8.2015 indicating that Notice has not been served to respondent Nos.7,12,13,14,24 and 29.

14. Since Rule has been issued today, Rule be served on all the

respondents.

15. Office is directed to place the entire records as well as the the order passed by us today before the Hon'ble the Acting Chief Justice for constituting the larger Bench today, so that the matter may be listed tomorrow i.e. 12.8.2015 at 11:00 a.m. before the larger Bench.

(V.M.SAHAI, ACJ.)

(MOHINDER PAL, J.)

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