

MANU/GJ/0049/1986

Equivalent Citation: AIR1986Guj50, (1985)2GLR71

IN THE HIGH COURT OF GUJARAT

Decided On: 09.08.1984

Appellants: Surat Municipal Corporation
Vs.

Respondent: Rameshchandra Shantilal Parikh and Ors.

Hon'ble Judges/Coram:
A.P. Ravani, J.

Counsels:
For Appellant/Petitioner/Plaintiff: G.N. Desai, Adv.

For Respondents/Defendant: S.H. Sanjanwala and G.D. Bhatt, Advs.

Subject: Constitution

Acts/Rules/Orders:
Constitution of India - Article 50; Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 1, Code of Civil Procedure, 1908 (CPC) - Order 39 Rules 2; Specific Relief Act, 1963 - Section 38, Specific Relief Act, 1963 - Section 39

Case Note:

Constitution - right to live - Article 50 of Constitution of India, Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 and Sections 38 and 39 of Specific Relief Act, 1963 - appeal against Trial Court Order of eviction of hutment dwellers as balance of convenience in favour of plaintiff - economic development cannot be achieved by throwing labour force at mercy of profit seekers - Trial Court failed to take into consideration fact that hutment dwellers who were directly affected by impugned Order not party to proceedings - plight of affected parties not considered by Trial Court - no justification for Trial Judge to pass interim mandatory Order directing municipal corporation to remove hutment dwellers - Order to extent of clearing road by removing hutment set aside.

JUDGMENT

1. When the Sun sets and the shadows of darkness take over the day light, almost all the living beings - birds and animals, domestic as well as stray animals - get a place to lay on their head and pass the night peacefully. Even the snakes and reptiles can find their holes and stay therein without any threat or danger of being removed or thrown away. But that which is natural and usual in the scheme of nature is denied to human beings. After ensuring fundamental right to life, the citizens of this country are being denied the right to exist. Therefore questions arise - which type of society have we created and what do we desire to achieve? Is it obligatory upon the Courts of law to direct concerned executive authority to remove the hutments and clear the public road? Should the ghost of Dicey continue to haunt us and virtually rule our thinking? Is it not the obligatory duty of the Courts to be aware of the constitutional provisions and the aims and objects of the National Plans for socio-economic development?

2. To begin with - facts in brief. By an interim order the appellant-Surat Municipal Corporation has been directed by the Court of 2nd Joint Civil Judge (SD), Surat, to remove the hutments

situated on three sides of a plot in T. P. Scheme Final Plot No. 139 near the Textile Market, Surat. On the land of the public road, hutments have been constructed and the hutment dwellers who came to Gujarat from other States to earn their livelihood are staying therein for last about ten years or more. The plaintiff is trying to develop the plot. He has made some construction and part of the same is let out also. However, he is not able to get the optimum return of the investment made by him. He contended that the Councillors of the Municipal Corporation and members of the Legislative Assembly were obstructing the Municipal Officers (i.e. Municipal Commissioner) and other Police Officers and were not allowing them to remove the hutments and the hutment dwellers who were trespassers on the land of the public road. These hutment dwellers had no right to remain on this land and the Municipal Corporation was duty bound to remove the encroachment. Therefore, he prayed that the State Government and the Municipal Corporation be directed to remove the encroachment and clear the public road.

3. The Municipal Corporation as well as the State Government contended that formerly the hutment dwellers were residing in the land owned by private individuals. Since the private individuals took over the possession of their lands, these persons have been thrown on the road. They could not be disturbed as it was the policy of the Government to help the poor people. In substance, the defendants pleaded their inability to proceed to remove them but at the same time submitted that, attempts were being made to shift them to some other alternative place and therefore, requested that meanwhile no precipitate action be taken.

4. As held by the trial Court, the plaintiff was unable to complete his construction and sell the shops and apartments and, therefore, he was suffering financial loss and was also feeling inconveniences. On this basis, the trial Court found prima facie case and balance of convenience in favour of the plaintiff and directed the appellant-defendant-Municipal Corporation to clear the approach road and to remove the hutment dwellers within a period of two months from the date of the order. Hence this appeal.

5. The trial Court found that "for certain political ends and with a view to get votes from the hutment dwellers", defendants were not ready to take any action. The trial Court also, observed that hutments were increasing day by day and, therefore, "some orders were necessary by the Court which is an independent body". The learned Judge quoted Dicey. The quotation reads: -

"That democracy is good institution and ruled by the people for the people but in this democratic institution of franchise, the ruling persons become weak as they are to stoop to, the wishes of the voters."

(It is not clear from where and from which book of Dicey the quotation has been taken by the learned Judge.)

6. The entire approach adopted by the learned Judge is not only grossly erroneous, but it also smacks of an authoritarian attitude wholly alien to the democratic way of life and spirit. The basic tenets of any democratic form of Government are that a person who sits in the position of power should be accountable to the people and that he can sit in the position of power for a limited and specified period. After the expiry of such specified period, he must seek fresh mandate from the people. Democracy further means that the will of the majority, so long as it does not ignore the interests of minorities and does not become oppressive of minorities, be respected by all concerned, including the persons in power. These are some of the basic tenets of democracy - be it Parliamentary form of Government or Presidential form of Government, but there cannot be any disagreement with regard to these basic tenets of democracy. For the successful functioning of democracy, those who sit in the position of power and those who are accountable to the people, are duty bound to heed to the urges and aspirations of the people articulated through their chosen representatives. Therefore, if the Corporators and M.L.As, have sided with the hutment dwellers and have tried to protect their interest, they have not done anything wrong. On the contrary, had they not protected the interests of hutment dwellers, they would have failed in the discharge of their duties as true representatives of the people.

7. As per the view expressed by the trial Court, situation demanded that some orders be passed, by the Court, which is an "independent body". What is meant by "independent body"?

It only means that. Judiciary is not accountable either to executive or to the legislature. But it does not and cannot mean that a Court can exercise its powers without taking into consideration the constitutional mandate and aims and objectives set forth by the country in the national plans for its socio-economic development. In a society aspiring to be democratic or which claims to be governed by rule of law, no one (mark 'no one', meaning thereby, even the 'Judiciary') can exercise its power without there being corresponding accountability. In democracy, the grant or conferment of power is always accompanied by a charter of accountability. The Courts exercise power and decide cases involving questions of far reaching socio-economic consequences affecting large number of people. Like all other organs of the State, Judiciary also derives its powers from the Constitution and it has got to exercise its powers so as to fulfil the mandate given by the Constitution. Therefore, the first and foremost requirement is that one should become independent of the colonial hangover while deciding questions having socioeconomic consequences, it is not necessary to look at the commentaries of English and American authors. The ghost of Dicey and thoughts of Denning should not be allowed to rule our thinking. Sooner we forget them the better. It is our duty to be aware of the constitutional provisions and the aims and objects set forth in the national plans for economic development. This should guide our approach. Some such important considerations are as follows: -

(i)

The aims and objects set forth by the Constitution. It must be realised that the Constitution aims at establishment of an egalitarian society based on socialist principles.

(ii) The Directive principles enshrined in the Constitution enjoins a duty upon the State (which includes Judiciary also) to secure a social order in which justice - social, economic and political should inform all the institutions of the national life. It also commands that the State should strive to minimise the inequalities in income and should make endeavours to eliminate inequalities in status. (Article 38 of the Constitution)

(iii) The aims and objects set forth in the national plans of economic development, that is to say, Five Year Plans. It should not be forgotten that by successive plans, the country is trying to improve the socioeconomic condition of vast majority of the people of this country.

(iv) There are certain inherent limitations on exercise of certain powers. These limitations arise due to socio-economic set up of the society. When this country became independent, its population was about 40 crores of people. Today, nearly half of the population of this country, meaning thereby, about 40 crores of people, live below the poverty line. These people are also citizens of this country. The Constitution guarantees a fundamental right to them also, i.e. the right to live. If the term "life" has any meaning they are surely entitled to have roof over their heads. This cannot be taken away on the ground that the comforts and benefits of somebody else are adversely affected or that he is not able to make optimum development of the property owned by him

(v) Ultimately the citizens of this country, the vast majority of which lives in huts and hovels and for whom, even to have a look at palatial "cottages" is a matter of dream are the real source of power and strength of the nation. It is they who have conferred power upon their representatives. They are "citizens" not "subjects" of a monarch or that of few "ruling elites". This is what, in essence, democracy means. Democracy does not mean the rule by few, holding powerful economic resources in their hands. At least the Courts should shed off any such misgivings and must be clear about what is meant by 'democracy'. After the enactment of the Constitution, the people crave for the Courts which can comprehend that the might and grandeur of this nation lie in the millions of its citizens and not in few elites who may appear to be in or around the centres of power.

(vi) That the power shall always be exercised reasonably and bona fide and not arbitrarily and/or mala fide. This means that while exercising power, the Court must take into consideration the pros and cons of its decision and order. The Court must take utmost care to see that no decision taken and order passed by it runs counter to the establishment of egalitarian society based on socialist principles. Whenever doubt arises, the Gandhian talisman should be applied, whether its decision would help or hurt the 'Daridra Narayan'? If it is likely to hurt him, the decision has got to be abandoned.

8. If all the aforesaid factors are taken into consideration, the plaintiff has no prima facie case whatsoever so as to override the rights and interests of numerous citizens. The learned Judge is not right when he says that "unfortunately", the labourers from other States have come to Surat and have created the problem of "unauthorised hutments". On the contrary, it is the fortune of the city that there are increased employment opportunities. It is the misfortune of these labourers who have come from other States and who have put their hard labour in building up the city, that their contribution is not recognised by the persons who happen to be in the position of power. Mark "happen to be", for the Municipal Commissioner, police authority and the teamed trial Court Judge, "happen to be" in the position of power by accident only: they are not the representatives of the people. Psychologically they represent only the class interest to which they belonged. They are no, the representatives of the people as understood in a democratic set up of Government. Unfortunately, the learned Judge has forgotten that it is the sweat and blood of these people which has gone into the building up and development of the city.

9. It must be realised that the Constitution guarantees right to life to every citizen of the country. The hutment dwellers have a fundamental right to life. Even if the word 'life' is given the narrowest possible meaning, it should at least be construed as 'right to exist' - exist in the conditions worse than that of the domestic animals. When they claim such right, it may be that the statute law enacted by the legislature may be contravened in some respects. But for them there is a conflict, whether to exist and contravene some provisions of statute law or to abide by the same and flee away to the jungle and ultimately die. When there is such a conflict and people are forced to live on foot-path and roads, it is certainly not the duty of the Courts to direct the executive authorities to remove them from the places where they are staying. Nobody has expected so far that the Courts may provide houses to the teeming millions of this country or that the Court may become an instrument to usher in an era of change and achieve rapid economic development. But it is certainly not expected of the Courts that the right of vast majority of the citizens of this country to exist, which may be worse than animal existence be taken away and their position be worsened by the Courts. In case of such conflict, if the Courts refuse to grant relief prayed for and decline to evict such persons from their hutments, the Courts would be merely following the dictates of the Constitution. In case of conflict between the contravention of statutory law and the enforcement of fundamental right to exist, the provisions of statutory law must yield and the Courts are duty bound to see that the statutory law is not enforced so as to encroach upon the fundamental right of the citizens.

10. It is not understood from where the learned Judge has extracted the quotation from Dicey. It is the teaching of Upanishads "Let noble ideas come to us from all the sides". Therefore, there is nothing wrong if one turns to a foreign author and tries to enrich his knowledge. But it appears that, in the instant case, as it happens in many such cases, the reliance on English Law betrays the colonial hangover and lack of awareness of the Constitutional mandate and that of the socioeconomic philosophy underlying the Constitution. Teachings of Dicey, for that matter principles laid down by English and American Courts, have little value while resolving questions which arise in our country. The socio-economic background of our country and the aims and objects which the nation is striving to achieve are not only dissimilar but are radically different. In our country, political revolution (or to be precise, political democracy) has preceded the industrial revolution. We are a developing country with an avowed object of establishing an egalitarian society based on socialist principles. We cannot achieve economic development by throwing our labour force at the mercy of profit seekers. Our democracy has its roots in the people. It is required to be nurtured and strengthened by the participation of the people and not by restricting its functioning to the superficial level of the few elites in the society.

11. The learned Judge has observed to the effect that when there is a development on the Textile Market side of the city of Surat, it becomes the duty of the executive officers to remove the hutment dwellers either by force or by tactful means or by coercive measures. According to him, road alignment around the Textile Market should be cleared whatever be the consequences. The learned Judge has observed that it was not for him "to advise the Municipal Corporation and officials how this has to be done". The heart of the learned Judge felt aggrieved as the plaintiff (a land owner and contractor) who wanted to develop his land could not do so for last about 10 years. Therefore, he thought that even at an interim stage justice required that a mandatory injunction be given and the hutment dwellers be directed to be removed. It is most unfortunate that the learned Judge did not take into consideration the fact that the hutment dwellers who were directly to be affected by the impugned order were not party to the proceedings. He could not have passed any order against any person, affecting him adversely without affording an opportunity of being heard given to him. It is also a principle of English Law "no man shall be condemned unheard". It is not understood why the learned Judge did not recall the teachings of Dicey, while passing the impugned order which is likely to uproot (and even ruin) innumerable citizens, who are not party to the proceedings.

12. Had the learned Judge thought of the plight of the hutment dwellers, he would have realised that they were living like animals since the time of their forefathers. It does not require any research to understand the abject poverty in which these people are living. Their lot has not been improved at all despite the fact that the nation has taken big strides in the sphere of economic development and has completed six Five Year Plans. The fruits of development have not tinkered down to the lowest level as it ought to have happened. Therefore, when the defendants contended that it was the policy of the government to take measures for the welfare of the poor and they cannot be affected adversely by adopting coercive methods, the trial Court should have considered the same as a valid and genuine ground. No democratic government and so also no Court can ignore the interests of this vast majority of the poor people. Therefore, as far as the balance of convenience is concerned, the learned Judge ought to have seen that on one side (i.e. on the side of the hutment dwellers), there was a question of life and death while on the another side (i.e. on the side of the plaintiff, the plot owner and the construction contractor), there was a question of uneconomic user of the Land. What is important? Life of numerous citizens or light un comforts of few citizens and lessor rate of profit to a builder or a contractor? It is unfortunate that the learned Judge has not approached the question from this angle at all. Certainly the lives of these people who are citizens of this country and who are entitled to all the rights guaranteed under the Constitution, are much more important than the profit or comforts of few individuals. If the Courts are required to choose between the two, the Courts are duty bound to protect the lives of such individuals. From the point of view of balance of convenience also, it cannot be said that the learned Judge was right in holding that the balance of convenience was in favour of the plaintiff.

13. In above view of the matter, there was no justification for the learned Judge to pass interim mandatory order and direct the Municipal Corporation to remove the hutment dwellers within a specified time limit.

14. In the result, the appeal is partly allowed. The order passed by the 2nd Jet. Civil Judge (SD), Surat, below application Exh. 5 regarding clearing of approach road anti removing the hutment within a period of two months from the date of passing of the order, is set aside. However, the Municipal Corporation may give water connection, if it is possible to give the same, without affecting the hutment dwellers in any way. Appeal is allowed to the aforesaid extent with no order as to costs.

15. Appeal allowed partly.