

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.5767 of 2019
With
CIVIL APPLICATION (DIRECTION) NO.1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 5767 of 2019

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HEMANT RAMESHCHANDRA RUPALA

Versus

UNION OF INDIA THRU THE SECRETARY

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Appearance:

MR DILIPKUMAR U PRAJAPATI, ADVOCATE for the Petitioners

MR HARDIK MEHTA, AGP for the Respondent No. 5

MR D C SEJPAL(1322) for the Respondent(s) No. 4

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR SATYAM Y CHHAYA(3242) for the Respondent(s) No. 6

NOTICE SERVED BY DS for the Respondent(s) No. 3

SERVED BY RPAD (N) for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 07/06/2022

ORAL ORDER

1. The present writ petition has been filed seeking the following prayers :

"9.1 To direct respondents to open the road in question as per the Ministry of Defence direction and policy decision dated 21st May, 2018 (Annexure-A).

9.2 Pending admission, hearing and final disposal of this petition, it may be directed the respondents to open the road in question as per policy decision dated 21st May, 2018 (Annexure-A)."

2. As the prayers suggest, the petitioners are seeking opening of the road, as per policy decision dated 21.05.2018 (Annexure-A) issued by the Ministry of Defence.

3. Learned advocate Mr.Prajapati, appearing for the petitioners has submitted that the respondent defence authorities have unauthorziedly and illegally blocked the road, which have caused a great hardship to the petitioners to approach their society / homes.

3.1 Learned advocate for the petitioners has placed reliance on the Standard of Procedure (SoP) / letter dated 21.05.2018, in support of his submissions and has submitted that as per the said SoP, all the roads, which are situated in the cantonment area, are required to be open and they can only be closed in certain contingencies, after inviting public opinions. It is submitted that the road, in question, which leads to their society has been illegally closed by the respondent authorities, without following the SoP, as prescribed in the letter dated 21.05.2018 and hence, such decision may be set aside.

3.2 Further reliance is also placed by the learned advocate for the petitioners, on the communication dated 02.05.2019 written by the Deputy Assistant Director General (Cantts). He has also placed reliance on the communication dated 04.10.2018 written by the same authorities and has submitted that as per the report of the respondent authorities, the bullock cart road, which was closed for civilian public, may be opened.

3.3 Learned advocate Mr.Prajapati, has also placed reliance on the provisions of Section 258 of the Cantonment Act, 2006, which pertains to the closing and opening of streets. It is submitted by him that the street which falls in the cantonment area cannot be closed for the reason other than the security reason and without giving public notice inviting objections and suggestions from the general public and hence, the action taken by the respondent authorities closing the *kachha* road is required to be quashed and set aside. It is also submitted that over the time, the road in question was *Nala* and it has been converted into *Kachha* track in approaching the Sabarmati

River and is also used by the villagers as bullock cart road. It is submitted by him that initially the said land was used for firing range and thereafter, considering the growth of residential area in Hansol, the firing range was shifted from the land acquired in 1960 to old original Cantonment land near CSD Depot and thereafter, all the roads, except the cart track roads were closed permanently for the construction of army family residential quarters on the land acquired in 1960. Thus, it is submitted that as per the procedure envisaged by the Defence Ministry on 21.05.2018, the Army Administration is required to open the road.

3.4 Learned advocate Mr.Prajapati, has further submitted that the petitioners had earlier approached this Court by filing Special Civil Application No.4980 of 2011 and allied matters, in which, the Court had passed the interim order directing the respondent authorities to lift the barricades and to open the road, which was subject matter of challenge before the Division Bench in Letters Patent Appeal No.1052 of 2011. By the order dated 08-09/12/2011, the Division Bench has set aside the interim order passed by the Coordinate Bench.

3.5 Learned advocate Mr.Prajapati, has very fairly submitted that thereafter, by the order dated 30.06.2016, all the matters were disposed of as having become infructuous, in view of the statement of the counsel appearing for the petitioners, however, liberty was reserved in favour of the petitioners to revive the matters in case of difficulty.

3.6 Learned advocate Mr.Prajapati, has further submitted that in view of the subsequent development i.e. after issuance

of communication in 2018, they have filed the present writ petition seeking prayers as noted hereinabove. Thus, it is submitted by him that the action of the respondent authorities is contrary to their own policy and hence, the bullock cart road is required to be open so that they can have a short access to their society.

3.7 Learned advocate for the petitioners has placed reliance on the decision of Allahabad High Court in the case of Janardan Sharma and others vs. Administrative Commandant Station Head Quarter and othrs, 2015 SCC Online All 6333.

4. In response to the aforesaid submissions, learned advocate Mr.Sejapal, appearing for the respondent No.4 has submitted that the policy on which the reliance is placed by the petitioners will not apply in the present case, as the said policy dated 21.05.2018 refers to the closure and opening of the roads situated in the cantonment area, whereas, the land in question belongs to the defence and the same cannot be opened. It is submitted by him that the Division Bench, in the order dated 08-09/12/2011 has categorically held that the land, in question, is categorized as A-1, as per the Cantonment and Administration Rules, 1947, which is reserved for specific military purpose. It is submitted by him that A-1 defence land can neither be used for any purpose whether its a *Kachha* or a constructed road and it is for exclusive and absolute use for army forces only. It is submitted by him that alleged cart track is not permitted to be used by any local authority or by the cantonment, and hence, such a road will not fall within the domain of the aforesaid policy decision. Learned advocate for the respondent No.4 has further submitted that all the

communications reveal that the land in question is of defence land and there is no categorical decision taken by the Ministry of Defence to open or allow any public to use the roads situated in the defence land, that too class A-1 category. Finally, it is submitted that the petitioners cannot reagitate the issue after the observations made by the Division Bench, as the status of the land or the road in question has not changed for all these years and hence, the writ petition may not be entertained.

5. I have heard the learned advocates for respective parties to the *lis*. I have also perused the relevant documents.

6. It is not in dispute that the writ petitioners / residents of the same society had approached this Court by filing Special Civil Application No.4980 of 2011 and allied matters seeking similar prayers of lifting barricades and opening of the *Kachha* road. It appears that by the interim order the Coordinate had directed the defence authorities to lift the barricades and to allow the said petitioners/ residents of the society to use the *Kachha* road. The interim order passed by the Coordinate Bench was challenged before the Division Bench in Letters Patent Appeal No.1052 of 2011 and allied appeals. By the order dated 08-09/12/2011, the Division Bench has held thus:-

"24. We shall firstly deal with the question whether the land in question is Army land or not and whether it falls in the Category A-(1) or not. In this context, as recorded by us earlier, it is not in dispute that as on today, land in question is Army land. Reliance is placed on section 48A of the Town Planning Act to show that it would vest absolutely in the appropriate Government free from all encumbrances once the Draft Scheme has been sanctioned by the State Government. At this interim stage, this will not change the complexion of the issue for the reason that the disputed property is still not de-notified to be Army property and possession of it is also not taken by the Ahmedabad

Municipal Corporation as implementing authority of the TP Scheme.

24.1 So far as the category of the land in question is concerned, classification of category is made in Cantonment Land Administration Rules 1937. In Chapter II Clause 5, A-1 land is defined thus, class "A"(1) land means the land which is actually used or occupied by the military authorities, for the purposes of fortifications, barracks stores, arsenals, aerodromes, bungalows for military officers which are the property of the Government, parade ground, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in paragraphs 419, 421 and 425 of Regulations for the Army in India and other officials requirements of the Military Authorities. It has been vehemently contended that there is nothing on record to show that this disputed land is falling in category A-(1). Technically it may be so but material on record would certainly indicate that the land in question falls in category A-1. Undisputedly, the land in question is part of the cantonment area which was formerly used for the purposes of fortifications, barracks stores, arsenals etc. near to which Army officers residential quarters are constructed. Therefore, this land can be said to have been used for the purposes of bungalows of military officers strictly sensu they are not bungalows but they are quarters. Therefore, at this prima facie stage, we find that the land in question is Army land of category A-1 in actual possession of the Army authority.

26.1 There is specific averment that the land is Class A-1 land of the Army. It is also denied that the disputed land is the only space which would provide ingress and egress to the petitioners to reach to their site or home. It is also averred that the claim of piece of land being used as a road for about 35 years is false as Maruti Bungalows came into existence in 2006 and other developers have come to the site even more recently.

27. It is also stated in the affidavit as can be seen that the objections have been raised for proposed 30 meters road which is running along the Army and defence land and installations and due to the security issues, State Government has deleted that portion of the highway and bridge as per the notification that stands today. Even the Municipal Commissioner in his meeting dated 8.8.2011 with the local military authority had agreed to the Army security concern. These aspects, if they are not controverted, have to be accepted at their

face value particularly when they are coming from the responsible Army officials.

30. From what is discussed herein above, what emerges is;

1. Disputed land is part of the cantonment and is an Army land of category A-1, prima facie.

2. This land is in physical occupation of the Army.

3. None of the petitioners have been able to show any right over the property of any nature.

4. What is contended is their convenience and difficulties faced on account of non-implementation of the Town Planning Scheme by the respondent Corporation.

5. TP Scheme takes its own time in being implemented.

6. Town Planning Scheme is only Draft TP Scheme sanctioned by the Government wherein the disputed land is shown as part of the TP Road for which the Corporation is negotiating with the Army authorities and no conclusion is yet arrived at. Both the Army authorities and the Corporation assert their according to their interpretation but the fact still remains that the land in question is in occupation of the Army.

7. The Army authorities have genuine security concern

8. The petitions are admitted and pending and are yet to be finally decided.

31. Now, therefore, the question would be whether the convenience of citizens in absence of any right over the disputed property can outweigh the established right of Army authorities over and above the disputed land particularly when there are serious security concern and whether this court should exercise extraordinary jurisdiction under Article 226 of the Constitution of India and direct the Army authorities to permit passage of the citizens. The answer that any Court can give would be in negative. Once the passage is open, passage would be open to all and would include passage by person who may be a threat to the security of Army or may be a nation as a whole. We do not find any substance in the averment that the petitioners have been using this land for a long time for the reason that Maruti Society has come into existence only in the

year 2006 and the other petitioners who are developers have moved in even more recently. It also cannot be over looked that any prudent man before purchasing the property would examine question of accessibility to the property and in the instant case, from the maps produced on record, it is clear that the Town Planning Road available from eastern side of Maruti Bungalows and touches the main road. Other properties which are being developed by the petitioners and located just near Maruti Bungalows have also their access through that road. Petitioner in Special Civil Application No. 9778 of 2011 is also similarly situated We therefore do not find that this is the only road through which the petitioners will have access to their property. May be that this road, if it is opened will provide an easy access to their property but in absence of any right on the disputed land, merely on the legal fiction and at the risk of security, they cannot be permitted passage by giving mandate to the Army authority to permit passage. In our view, therefore, petitioners in Special Civil Application No. 9196 to 9199 and 9210 so also 9778 of 2011 are not entitled to any interim relief.

31.1 We are also of the view that the learned Single Judge has erred in granting the interim relief permitting passage to the private respondents in the Letters Patent Appeals. Therefore, that part of the impugned order is liable to be set aside. We may observe that the fact that the Army authorities are permitting use of Tarapor Road cannot, in any manner, be used to justify passage through the land in question, firstly, because there is permissive use and secondly, because two locations are apart by about one and half kilo meter and would carry different considerations. It is for the Army authorities to determine which area is sensitive or more prone to such hazard or which area is not or through which way to a permit passage and whether or not to permit such passage. It is their discretion and in absence of any right of any party, mandate cannot be issued."

7. The Division Bench, after examining the necessary provisions of the Cantonment Land Administrative Rules, 1937, and the nature of the land, in question, has categorically held that the said land falls under Class A-1 of the land, which is actually used by the military authorities for the purpose of fortifications, barracks stores, arsenals, aerodromes, bungalows for military officers which are the property of the

Government, parade ground, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens etc. The Division Bench has also held that technically there may not be anything to show that the land in question falls in the category of A-1, but the material on record would certainly indicate that the land in question falls in the category of A-1 and has been part of the cantonment area, which was formally used for the purpose of fortifications, barracks stores, arsenals, aerodromes, bungalows for military officers, which are the properties of the Government, are constructed. Thus, there is specific finding with regard to the land belonging to the defence and falls under the category of A-1. The Division Bench has also recorded the finding that the land was physically in occupation of the army and none of the petitioners have been able to show any right over the property in any nature. It is also observed that the army authorities have genuine security concerned. Finally, it is recorded by the Division Bench that it is for the army authorities to determine which area is sensitive or more prone to such hazard or which is not or through which a passage can be permitted or not and it is their sole discretion and in absence of any right of any party, a mandate cannot be issued.

8. The present writ petition has been premised only on the letter dated 21.05.2018, which prescribes the SoP for closure of roads in cantonment. It refers to the "closed roads" in the cantonments. As held by the Division Bench, the land in question is a defence land of category A-1 and the said SoP does not remotely prescribe the procedure for the land of defence, which falls in the category of A-1 as per the Rules. Hence, the reliance placed by the petitioners on the communication dated 21.05.2018 is misconceived. In view of

the aforesaid observations made by the Division Bench and the communications which are referred by the petitioners, more particularly, dated 02.05.2019 and 04.10.2018, which specifically indicated that there is a bullock cart road and a *Nala* road which is used by the public. It is not the road constructed by the cantonment, but is a cart road which is converted from a *nallah* (sewer). There is no constructed road, either by the defence or by the cantonment. It is pertinent to note that the status of the land in which the same falls has not been altered for all these years. It remains the same after passing of the judgment by the Division Bench. Thus, in facts and the circumstances of the case, neither the provision of section 258 of the Cantonment Act nor the SoP of letter dated 21.05.2018 will apply to the land belonging to category A-1 of the defence land. Hence, this Court is not inclined to grant any relief to the petitioners, as it is in the absolute domain of the respondent authorities to exercise their discretion with regard to opening or closing of the road which falls in the defence area. The reliance placed on the decision of Allahabad High Court in the case of **Janardan Sharma and others (supra)** by the learned advocate for the petitioners will not come to rescue to the present petitioner, in view of the observations made by the Division Bench, which have become final as the same has not been challenged by the residents of the society before the higher forum.

9. In view of the above observations, the present writ petition fails and the same is accordingly rejected. Notice is discharged. Civil application for direction would not survive and it stands disposed of accordingly.

(A. S. SUPEHIA, J)

MAHESH BHATI/23