

Kiran Kawre

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3288 OF 1992
WITH
CIVIL APPLICATION NO. 2595 OF 1993
WITH
CIVIL APPLICATION NO. 2571 OF 1993

Udharam A. Parwani Since Deceased through ... Petitioners
LRs

Versus

Union of India ...Respondent

Mr. Hitesh Vyas a/w Mr. Chandrashekhar Yadav for the Petitioners.
Ms. Sangeeta Salvi i/b Ms. Seema Sarnaik for Respondent Nos.4
& 9.
Mr. N. D. Sharma for Respondent No.1-UOI.
Mr. Bhagwan Parwani, Petitioner No.1 (3) present in person.

CORAM: G. S. KULKARNI, J.
DATED: 20 January 2023

P.C.

1. This writ petition has been filed inter-alia praying for a direction to the respondent to deliver the vacant and peaceful possession of Survey Nos. 512/5, 512/7, 512/8 and also 190/4 situated in Godhra Village in Panchmahal District of Gujarat State. Issue in the proceedings is in regard to distribution of lands to the evacuee's, under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. On an earlier occasion by an order dated 26 February, 1999, a co-ordinate Bench of this Court had observed that the Department of Revenue of Gujarat Government is prepared to give peaceful and vacant possession of

the property, comprising Survey Nos.512/5, 512/7, 512/8, situated at Panchamahhal on or before 31 March, 1999. Such statement as made on behalf of the Government Advocate on instructions of Shri N. D. Bhat, Under Secretary, Department of Revenue, Government of Gujarat and Deputy Mamaletdar Mr. B. U. Baria who were present in the Court, was recorded. The remaining controversy was in regard to the delivery of possession of the property comprising Survey No.190/4.

2. From the record, it is seen that the petition was admitted on 5 March, 1993 and an interim relief was granted in terms of prayer clause (c) of the petition. For convenience, the prayers in the petition are required to be noted which read thus:-

“a. That this Hon’ble Court be pleased to call for the records and proceedings parties to the subject matter of allotment covered by Exhibit-A and B and after examining the same, issue writ of mandamus or other appropriate writ, order or direction directing the Respondents to forthwith put the Petitioners into possession of the same;

b. That this Hon’ble Court be pleased to issue appropriate writ, order or direction directing the respondents to pay compensation of Rs.50,000/- for having not handed over vacant and peaceful possession of the land for the last several years;

bb. It be declared that the purported order dated 21st June 1978 and purported Sanad dated 28th September, 1978 are nullity and do not affect the right of the petitioner in survey No.190/4 or any other order affecting the petitioner’s right under survey No.190/4, 512/5, 7 and 8 Godhra Kasba Panchamahhal.

c. Pending the hearing and final disposal of the petition, the respondents be directed to forthwith put the petitioners into possession of the lands bearing No.512/5/7 and 8 and 190/4 situate at Godhra-Kasba; Dist. Panchamal Gujrat.

cc. That pending the hearing and final disposal of the petition, the respondents, their officers, servants and persons claiming under

them be restrained by an order and injunction of this Hon'ble Court from carrying out any construction on the lands bearing S.No.190/4, 512/5, 7 and 8, Godhra Kasba Panchamahall of inducting any third party or person in possession or creating any third parties in the said survey numbers.

d. Pending the hearing and final disposal of the petition, the respondents be restrained by an order and injunction of this Hon'ble Court from purporting to allot, transfer or assign the said lands to anyone and if they have done, to cancel the same forthwith or to do any other thing in relation thereto including/changing the name;

d-1. The respondents, their officers, servants and agents be ordered and directed to forthwith deliver the vacant and peaceful possession of survey Nos.512/5/7 and 8 and 190/4 as per order dated 25th March, 1980 to the petitioners.

d-2. That this Hon'ble Court be pleased to further order the respondents, their officers, servants and agents to hand over forthwith the possession of survey No.190/4 as specified in Exhibit-B as per order dated 3rd February, 1966, being Exhibit-A without further delay.

e. Grant such other and further reliefs as the nature and circumstances of the case may require."

3. It also appears from the record that the parties were exploring a possibility of settlement as recorded by this Court in an order dated 02 May, 2013. However, by a further order dated 24 June, 2013, the Court had recorded that settlement could not be brought about. The petition had accordingly remained pending. Then it was listed before this Court on 06 January, 2023 when this Court had passed the following order:-

" Stand over to **20 January, 2023 (H.O.B.)** to enable Mr. Vyas to take instructions in regard to any steps the petitioners may take to transfer the present proceedings before the Gujarat High Court."

4. Today Mr. Vyas, learned counsel for the petitioners on instructions of Mr. Bhagwan Parwani who is a legal heir of petitioner no.1 Parvatibai Wd/o Ammulal Parwani states that there is a dispute *inter se* between the

petitioners and the private respondents, and hence it is not possible to take a joint action on the part of the petitioners to move appropriate proceedings for transfer of the present proceedings to the Gujarat High Court.

5. Considering the nature of the prayers and that the land itself being situated in the State of Gujarat which are outside the jurisdiction of this Court as also the concerned officers are officers of the Revenue Department of the Government of Gujarat who are also subject to the jurisdiction of Gujarat High Court, in my opinion, this Court would not have jurisdiction including territorial jurisdiction to adjudicate this petition. The learned counsel for the respondents also do not dispute this possession or have any objection/ contention in this regard.

6. In the aforesaid circumstance the petition is accordingly disposed of with liberty to the petitioners to present the petition before the Gujarat High Court. Let the petitioners do so, within a period of six months from today. To enable the petitioners to take such appropriate steps for a period of six months from today, the interim order passed on this petition shall continue to operate. Ordered accordingly.

7. All contentions of the parties on the merits of the proceedings are expressly kept open.

8. Needless to observe that the parties are entitled to have all benefits of

the interim orders passed on this petition, as such orders are in no manner disturbed.

9. Disposed of in the above terms. No costs.

10. Interim applications would not survive. The same are disposed of accordingly.

(G. S. KULKARNI, J.)