

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2355 of 2025**

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IRFAN MOHAMMED MOLVI

Versus

DEPUTY COLLECTOR AND SUB DIVISIONAL MAGISTRATE OLPAD &
ORS.

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Appearance:

MR ASPI M KAPADIA(1865) for the Petitioner(s) No. 1

MS DELSHAD A KAPADIA(10238) for the Petitioner(s) No. 1

MS SUMAN MOTLA, LD.ASSTT. GOVERNMENT PLEADER for the
Respondent(s) No. 1

MR SIDDHARTH R KHESKANI(9483) for the Respondent(s) No. 2,3,4

MR SHYAMAL BHIMANI for respondent No.5.

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 18/08/2025****ORAL ORDER**

1. This petition is filed seeking to quash and set aside the communication dated 08.01.2025 by Deputy Collector to Taluka Development Officer (Annexure “F” Page-24); communication dated 28.01.2025 by Taluka Development Officer to the Sarpanch and Talati-cum-Mantri (Annexure “G” Page-25); and Notice dated 15.02.2025 (Annexure-K) issued by Talati-cum-Mantri to the petitioner. It is case of the petitioner that communications/Notice dated 08.01.2025, 28.01.2025 and 15.02.2025, alleging encroachment on Gamtal land, are erroneous and deserve to be quashed and set aside.

2. Heard learned advocate Mr.Aspi Kapadia for the petitioner; learned Assistant Government Pleader Ms.Suman

Motla for respondent No.1; learned advocate Mr.Siddharth Kheskani for respondent Nos.2, 3 and 4 and learned advocate Mr.Shyamal Bhimani for respondent No.5.

3. Learned advocate Mr.Aspi Kapadia for the petitioner invited attention of this court to communication dated 08.01.2025 (Annexure-F Page-24) and submitted that the said letter by Dy. Collector was sent to remove encroachment of 6 feet road on Gamtal Land, however there being no encroachment, the communication deserves to be quashed and set aside. Similar is the allegation in communication dated 28.01.2025 by Taluka Development Officer to the Sarpanch wherein also, reference of 6 feet encroachment on road is made and therefore, the letter dated 28.01.2025 also deserve to be quashed and set aside. Thereafter, Notice dated 01.02.2025 alleging encroachment on 6 feet road on Gamtal land was issued, which deserves to be quashed and set aside. The said Notice dated 01.02.2025 was issued under section 105 of the Gujarat Panchayats Act directing the petitioner to remove encroachment, failing which, appropriate action under the provisions of the Act was indicated.

3.1 Learned advocate for the petitioner submitted that lastly the petitioner was served with the communication dated

05.03.2025. In the said communication, it is referred that whether the encroachment was done on Gamtal land or otherwise, could not be ascertained as no map is available and thus allegation of encroachment on Gamtal land is made without any supporting documents, and therefore the Notices deserve to be quashed.

3.2 Learned advocate for the petitioner relied upon all three communications/Notice to submit that the Notice refers to only 6 feet encroachment. Accordingly, report was directed to be considered. Moreover, encroachment referred is only of Tar fencing and iron sheet and there is no construction on land, which can be considered as encroachment and therefore, Notice deserve to be quashed and set aside.

3.3 Learned advocate for the petitioner submitted that after notice dated 08.01.2025 Annexure “F”, (page 24), another Notice dated 28.01.2025 (Annexure “G” Page-25) was issued. In response to the same, petitioner filed detailed reply wherein allegation of encroachment was denied. In the said reply, it was stated by the petitioner that earlier also, there was no road available and at the instance of allegation of respondent No.5, action was initiated. Further, though reply was filed along with necessary documents, another Notice dated

01.02.2025 (Annexure “H”, Page-26) was issued. In the said notice, reference of earlier Notices was made.

3.4 Further, the allegation of encroachment is erroneous because from communication dated 05.03.2025 of Talati-cum-Mantri, Samrod, District: Surat, it is evident that on account of non-availability of map available of public road or otherwise could not be ascertained. Thus, when no map is available with respondent Nos.3 and 4, the allegation of encroachment was made without any basis and without any proof that earlier there exist a public road and now it is encroached by petitioner. Actually, action taken was pursuant to the complaint of respondent No.5 dated 12.08.2024 under the provisions of the Gujarat Land Grabbing (Prohibition) Act, 2020 (hereinafter referred to as “Land Grabbing Act”).

3.5 Learned advocate Mr.Aspi Kapadia for the petitioner by referring to complaint filed by respondent No.5, submitted that from the complaint made under Land Grabbing Act, it is evident that it refers to 6 feet road, which is alleged to be encroached by the petitioner. The property in question is enjoyed by petitioners since time of their ancestors. Further, the petitioner is ready to remove encroachment of 6 feet and therefore, this petition deserves to be allowed.

4. On the other hand, learned advocate Mr.Siddharth Kheskani for respondent Nos.2, 3 and 4 submitted that it is true that genesis of present proceedings is complaint filed by respondent No.5 under the provisions of Land Grabbing Act. After verifying the complaint, Notice dated 08.01.2025 was issued to the petitioner to remove encroachment made on the public road. The said Notice dated 08.01.2025 was followed by various Notices and the petitioner was directed to remove encroachment, failing which, appropriate action under the provisions of the Act was indicated. Despite that, no action was taken by the petitioner to remove encroachment.

4.1 Further, from the complaint dated 12.08.2024 of respondent No.5, it is evident that it refers to encroachment made on house No.166. The complaint states that after house No.166, the government land ends. Thereafter, there is 6 feet road and 6 feet road is available to public since many years. After crossing the public road, there is encroachment of 19-20 feet by creating compound wall on public road. The complainant had stated that encroachment on public road deserves to be removed. Thus, detail complaint was filed to initiate action to remove encroachment, may be under the provisions of The Land Grabbing Act, but the allegation of

encroachment remains. Against complaint dated 12.08.2024, detailed explanation was filed by the petitioner. The usage by the petitioner on said land is not in dispute. Accordingly, the petitioner was called upon to give his explanation by issuance of Notice dated 04.11.2024. Therefore, contention raised that the petitioner was not given opportunity of hearing is not correct. Under Notice dated 04.11.2024, the petitioner was provided an opportunity of hearing to produce necessary documents. In response, the petitioner filed his reply on 25.11.2024.

4.2 Thereafter, one another Notice was issued on 03.12.2024 (Annexure R-3, Page-131). Then, after considering reply of the petitioner the Notice from Taluka Development Officer to Sarpanch/ Talati-cum-Mantri of Gram Panchayat was issued. In the said Notice, reference of 19-20 feet encroachment was made. Report was called from Talati-cum-Mantri of Gram Panchayat by Taluka Development Officer. In report dated 19.12.2024, it was revealed that construction done by the petitioner was not done after having due permission. Further, a huge gate was constructed in front of house No.166, without any permission.

4.3 It is true that on account of non-availability of map,

earlier encroachment on 6 feet road or otherwise could not get ascertained. However, usage of road by public has been referred by village people. Further, the petitioners are not disputing construction done against house no.166 however, the encroachment is in form of construction of wall and huge gate. This aspect has been once again supported by the order passed under the provisions of the Land Grabbing Act, which refers to encroachment done by the petitioner. Therefore, Notice dated 08.01.2025 was issued after following due procedure and after considering the complaint filed by respondent No.5 under the provisions of the Land Grabbing Act, after due verification of documents, as also report and panch rojkam by Talati-cum-Mantri. Moreover, there is an encroachment of 19-20 feet, which has been referred in the Notice dated 15.02.2025 followed by another notice and therefore, the petition deserves to be rejected.

5. Learned advocate Mr.Bhimani for respondent No.5 supported the arguments canvassed by learned advocate Mr.Sidhharth for respondent Nos.2 to 4 to submit that the action taken is in consonance with the provisions of the Act and therefore, judicial interference of this court is required to be remitted. Moreover, it is true that initiation was pursuant to the complaint of respondent No.5 however action was

pursuant to the provisions of the Act and after providing an opportunity of hearing to the petitioner. After taking cognizance of the complaint filed by respondent No.5, action was initiated and there is no illegality as alleged and therefore, the petition deserves to be rejected.

6. Considered the submissions and documents on record. From the documents annexed with the petition, it is noticed that communications/Notice dated 08.01.2025, 28.01.2025, 01.02.2025 and 15.02.2025 are pursuant to the complaint filed by respondent No.5 under the provisions of Land Grabbing Act. It is noticed that respondent No.5 had made allegation of Land Grabbing. In the complaint by respondent No.5 dated 12.08.2024, allegation of encroachment of 19-20 feet of Gamtal Land was made. The said complaint refers to encroachment after House No.166. It also refers that on government road, encroachment was done. In response to the complaint, detailed reply was filed, followed by Notice dated 04.11.2024 “R-2”, wherein the petitioner was directed to remain present to give response and to produce necessary documents therefore, submission that the petitioner has not been provided opportunities of hearing, is not correct. The contention of petitioner that action initiated was pursuant to the complaint under Land Grabbing Act and no action was initiated under

the provisions of Gram Panchayat Act 1993, is not acceptable because in the opinion of this court when the action was initiated and inquiry was conducted to ascertain encroachment or otherwise, no separated inquiry is needed and thus there is no error by the authority in relying upon inquiry report pursuant to complain under Land Grabbing Act. Similar is the case with regard to calling upon petitioner to produce documents and grant of personal hearing. Reply was permitted to be filed and hearing was granted to meet with the allegation of encroachment. It is true that the petitioner responded to the Notice, however no documents were produced and it is case of the petitioner that there is no encroachment. The reliance placed by petitioner that no Map was available will not help the petitioner to prove that there is no encroachment of 19 to 20 feet on public road. Thereafter, creation of compound wall and iron gate by the petitioner is evident from the photo graph and therefore, allegation of encroachment over and above road appears to be correct.

7. From the affidavit of respondent Nos.2, 3 & 4, it is evident that under the Notice dated 03.12.2024, encroachment on public road of 19-20 feet was referred by creating compound wall. It also refers 6 feet road. Therefore, merely

one line referred in the report that earlier map was not available, cannot be read in isolation.

8. From the report dated 19.12.2024 and supporting document, it is evident that the said report refers to construction done without any development permission. Moreover, it also refers that opposite to Flat No.166, gate and compound wall are made without development permission. That construction of compound wall in house No.166 and against house No.97 is also without development permission. Only reference of 6 meters road is made as no map available. The encroachment is supported by communication dated 01.01.2025 of Taluka Development Officer. The Deputy Collector, by order dated 08.01.2025 directed the Taluka Development Officer to initiate appropriate proceeding in relation to encroachment made on public road and therefore, action is in accordance with the provisions of the Act. Thus, the action taken is after having report from the concerned authority and noticing that encroachment made is of 19-20 feet on public road supported by evidence as referred herein above; in the opinion of this court, no interference is called for and therefore, the present petition deserves to be rejected and the same is rejected.

9. After dictation of the order, learned advocate Mr.Aspi Kapadia for the petitioner requested for continuation of interim relief granted earlier by this Court vide order dated 24.02.2025 for further period of 3 weeks.

10. Considering that earlier this court vide order dated 24.02.2025 has granted interim relief, the same is directed to continue for further period of 4 weeks from the date of receipt of this order.

(MAUNA M. BHATT,J)

DIPTI PATEL...

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DIPTIBEN PIYUSH PATEL(HC00191), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 25/08/2025 12:43:48