

Gujarat High Court

Urja Industrial Park 9 vs Mamlatdar And Executive ... on 3 May, 2023

Bench: Bhargav D. Karia

C/SCA/5144/2023

ORDER DATED: 03/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5144 of 2023

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URJA INDUSTRIAL PARK 9

Versus

MAMLATDAR AND EXECUTIVE MAGISTRATE, LODHIKA

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Appearance:

MR BHARAT T RAO(697) for the Petitioner(s) No. 1,2,3,4,5,6

MS HETAL PATEL, AGP for the Respondent(s) No. 1,2

SUREN B PATEL(8420) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 03/05/2023

ORAL ORDER

1. Heard learned advocate Mr.Bharat T. Rao for the petitioners, learned advocate Mr.Suren B. Patel for the respondent no.3 and learned Assistant Government Pleader Ms.Hetal Patel for the respondent State.

2. The brief facts leading to the filing of the present petition are as under.

2.1. Respondent no.3 is having factory in the name of Goodwill Consumer Products on land bearing Survey No.47/1 of village Kangashiyali, Taluka Lodhika, District Rajkot admeasuring 8400 sq.mtrs and having factory is having its main entrance on the main Rajkot-Gondal highway. It C/SCA/5144/2023 ORDER DATED: 03/05/2023 is the case of the petitioner that below 10 feet the level of the main highway the factory of the respondent no.3 which has been constructed in the year 1984 and because of low level of the factory, on account of water logging in Monsoon, the compound wall is damaged from 1984 to 2021 almost 37 years and it required repairing and maintenance at regular interval which the respondent no.3 has not carried out.

2.2. It is the case of the petitioners that because of low level of the factory of respondent no.3 from the main road, whenever there is heavy rainfall, water is getting logged and it is not because of any fault but it is due to the fact that the construction of factory of respondent no.3 is at a level of 10 feet below the highway.

2.3. It is the case of the petitioners that by passage of time, surrounding survey numbers to the factory of respondent no.3 viz. Survey No.46, 47 Part, 46/2, 45/3, 45/4 and 45/5 of village Kangashiyali all have been converted into non-agriculture land. Various industries have come up and are fully functional since quite some time. As per Draft T.P.Scheme proposed by Rajkot Urban Development Authority and approved by Govt. of Gujarat, there is 12 meter road provided. The said road has been at C/SCA/5144/2023 ORDER DATED: 03/05/2023 present constructed by the industries from their own resources. Below the said road, the industries have laid 800 mm pipes for disposal of rain water. On the Northern side and on the Eastern side also there is water logging in rainy season. On account of water logging, the compound wall of the factory of respondent no.3 was damaged. It is the case of the petitioners that the respondent no.3 started making applications by taking advantage of his political influence with the party in power. The respondent no.3 made application to the Mamlatdar, Collector and Kangashiyali Gram Panchayat on 16.9.2021.

2.4. Pursuant to the said application, on 12.10.2021 Talati-Cum-Mantri and Circle Officer have prepared panchnama and forwarded it to the Mamlatdar vide forwarding letter dated 13.10.2021, wherein it is stated that water passage was below the road level and there was a road passing parallel and for disposal of water pipes have been laid below the road.

2.5. It is the case of the petitioners that thereafter on 13.12.2021 once again the respondent no.3 met the Deputy Collector and gave copy of application dated 16.9.2021.

C/SCA/5144/2023 ORDER DATED: 03/05/2023 2.6. Pursuant thereto, the Deputy Collector wrote to the Mamlatdar on 23.12.2021 to look into the matter and give reply to the respondent no.3.

2.7. Thereafter Talati and Circle Officer, Lodhika have made Panchnama on 17.2.2022.

2.8. On 23.3.2022 and 19.4.2022 Mamlatdar, Lodhika issued notices to the present petitioners.

2.9. The petitioners filed reply through Lodhika Industrial Association wherein all petitioners signed the reply on 04.05.2022.

2.10. It is the case of the petitioners that the cause of action for the respondent no.3 to file suit before Mamlatdar Court arose on 16.9.2021 and thereafter he made application on 16.12.2021. However he filed application/suit before respondent no.1 Mamlatdar, Lodhika only on 9.9.2022 which was received by the Mamlatdar on 13.9.2022. It is the case of the petitioners that the respondent no.3 intentionally did not join petitioner nos.2 to 7 and only joined petitioner no.1 as party defendant. The Mamlatdar, Lodhika issued notice on 13.9.2022 itself calling upon petitioner no.1 to file reply and fixing date of hearing on 26.9.2022.

C/SCA/5144/2023 ORDER DATED: 03/05/2023 The application was registered as MCourt/RJT/24/2022.

2.11. Respondent no.3 produced alongwith the said application/suit, copy of sale-deed dated 27.9.1984 whereby respondent no.3 purchased 8194 sq.mtrs. land of Survey No.47/1 of village

Kangashiyali from its erstwhile owners and also produced old tippan, copy of layout plan and Measurement Sheet.

2.12. Petitioner no.1 filed reply in the said case wherein one of the contentions is non- joinder of parties as well as proceedings not being maintainable before Mamlatdar, Lodhika in view of the fact that it is non-agriculture land. Alongwith reply petitioner no.1 also produced copy of zoning certificate, copy of part plan issued by RUDA, Copy of Hissa Mapni Sheet of D.I.L.R. and photographs of the properties.

2.13. It is the case of the petitioners that thereafter petitioners applied for certified copy from RUDA of layout plan of Survey No.265/1 total area of land is 8094 sq.mtrs. and net area for N.A. is 4856 sq.mtrs. and proposed T.P. reservation wherein also there is road of 12 meters proposed on the Northern side of factory C/SCA/5144/2023 ORDER DATED: 03/05/2023 of respondent no.3 there is common internal road on western side and in front of Survey No.265/1 there is existing national highway Rajkot- Gondal. Petitioners also obtained zoning certificate, part plan, verification measurement sheet and Hissa Form No.4.

2.14. It is the case of the petitioners that as per provisions of 19(2) of the Act, after filing of the suit, Mamlatdar has to visit site in presence of or after due notice to the parties. However in the present case, Mamlatdar has relied upon the Panchnama prepared prior to filing of the suit on 13.10.2021 and 17.2.2022. The Mamlatdar, Lodhika passed order on 6.10.2022 whereby the Mamlatdar has partly allowed the application and directed that the disposal of waste water through SHELU which is blocked because of obstructions should be removed by petitioners.

2.15. Being aggrieved with the order of Mamlatdar dated 6.10.2022, the respondent no.3 filed Revision Application before Deputy Collector, Rajkot Rural on 10.11.2022 which was registered as Revision Application No.16/2022.

2.16. It is the case of the petitioners that the respondent no.3 did not join petitioner nos.2 to 7 as party respondents in the said revision C/SCA/5144/2023 ORDER DATED: 03/05/2023 also. Petitioner no.1 appeared before respondent no.2 and filed reply on 9.2.2023.

2.17. It is the case of the petitioners that the respondent no.2 Deputy Collector, Rajkot Rural, without issuing notice to the petitioner nos.2 to 7, without considering documentary evidence mechanically came to the conclusion that documents which are produced are against government record and Tippan and therefore trial court has not considered the disposal of natural water and therefore the respondent no.2 Deputy Collector set aside the order of Mamlatdar, Lodhika dated 6.10.2022 and directed to remove the cement road vide judgment and order dated 24.2.2023 vide order in Prak/Appeal/Mam.Court Act/Revision/Case No.16/2022.

2.18. It is the case of the petitioners that on coming to know about the said order, various owners of industries submitted representation to the Deputy Collector, Rajkot Rural requesting to stay the execution, implementation and operation of the impugned order on 6.3.2023.

2.19. Being aggrieved by the order dated 24.2.2023 passed by Deputy Collector, Rajkot Rural in Revision Application No.16/2022, petitioners have preferred the present petition.

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3. In compliance of the order dated 27.04.2023 learned advocate Mr.Bharat T. Rao has tendered the affidavit on behalf of the petitioners wherein it is undertaken by the petitioners that the petitioners will act as per the direction given by the Mamlatdar Lodhika vide order dated 30.10.2022 and do the needful in the matter. The affidavit is ordered to be taken on record.

4. In view of the affidavit filed by the petitioners, the grievance made by the petitioners against the order passed by the Deputy Collector can be redressed by modifying the order passed by the Deputy Collector. Instead of setting aside the order dated 28.09.2022 passed by the Mamlatdar in Mamlatdar Court Case No.24 of 2022, the order passed by the Deputy Collector is modified to the extent that the Mamlatdar Courts order shall be implemented by the petitioners so as to see that no hindrance in future will be caused in flow of water below the cement road which is in existence.

5. Learned advocate Mr.Suren B. Patel for the respondent no.3 submitted that the undertaking of the petitioners to the above effect would suffice if the petitioners take care of hindrance in flow of any type of water below the C/SCA/5144/2023 ORDER DATED: 03/05/2023 road. It was submitted by learned advocate Mr.Patel that the issue with regard to the water logging has arisen because of the construction of the cement road by the petitioners and as the petitioners have filed an undertaking before this Court with regard to the flow of water without any hindrance, the respondents would not have any objection for existence of the cement road in question.

6. In view of the above submissions and consensus arrived at between the parties, the impugned order passed by the Deputy Collector is quashed and set aside and the order passed by the Mamlatdar is restored together with an undertaking filed by the petitioner to abide by such order and assurance given to this Court that the petitioner shall take care that there shall not be any hindrance in the flow of the water because of the existence of the cement road in question.

The petition is accordingly disposed of.

Direct service is permitted.

(BHARGAV D. KARIA, J) URIL RANA