

HIGH COURT OF GUJARAT

BHIKHABHAI KESHAVLAL SHAH

Versus

STATE OF GUJARAT & 11 OTHER(S)

Date of Decision: 05 August 2021

Citation: 2021 LawSuit(Guj) 3180

Hon'ble Judges: [B N Karia](#)

Case Type: Special Criminal Application

Case No: 496 of 2013

Subject: Constitution, Criminal

Acts Referred:

[Constitution Of India Art 226](#), [Art 21](#), [Art 14](#), [Art 19](#)

[Code Of Criminal Procedure, 1973 Sec 160](#), [Sec 144](#)

Final Decision: Petition dismissed

Advocates: [B M Mangukiya](#), [Bela A Prajapati](#), [Pranit Nanavati](#), [Nanavati Associates](#), [H K Patel](#)

Cases Referred in (+): 1

B N Karia, J.

[1] Rule returnable forthwith. Mr. H.K.Patel, learned APP waives service of notice of rule for and on behalf of the respondent Nos. 1 to 4 and Mr. Pranit Nanavati, learned advocate waives service of notice of rule for respondent No. 8.

[2] By way of this petition, the petitioner has prayed for the following prayers;

"(A) Be pleased to admit this petition.

(B) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order and/or direction to direct the police officers, more particularly, respondents no.4 and 5 to provide police protection to the petitioner enabling the petitioner to do his lawful business within the demised premises in precinct of the temple of Ranchhodraiji at Dakor and further be pleased to direct

the respondents to take action against any person who tries to take law in his hand and prevent the petitioner forcibly from entering his rented premises.

(C) Pending admission and final disposal of the present petition, be pleased to direct the respondent nos.4 and 5 to provide police protection to the petitioner enabling the petitioner to enter the premises rented to him, situated within the precinct of Temple of Ranchhodriji, Dakor.

(D) Be pleased to pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice."

[3] The brief facts leading to filing of this petition are as under;

3.1 That the father of the petitioner namely Keshavlal Motilal Shah was given a small piece of land admeasuring 2 Gaj x 2 Gaj inside the temple premises on rent at the rate of Rs.130/- per annum. That the land was given to enable father of the petitioner to sell the temple material like Sakar (Sugar), Makhan (Butter), Ghee no Divo (Wick of Sweet) etc. before 70-80 years and from that day, the land was in possession of his late father. That the temple committee has filed a Civil Suit before the Court of learned Civil Judge Junior Division, Dakor for termination of tenancy right and possession on 04.04.1990 being Regular Civil Suit No.41 of 1990, which is still pending, however, the temple committee is preventing the petitioner from occupying the premises. That the petitioner has approached the police authorities for protection, since the petitioner is being threatened by the chowkidar, police and other security persons of the temple committee. That, different representations were made by the petitioner before the police authority but no response has been received by the petitioner. Therefore, petitioner has filed this petition under Article 226 read with Articles 14, 19 and 21 of the Constitution of India with a request to direct the police authorities, more particularly respondent Nos. 4 and 5 to provide police protection enabling the petitioner to do his lawful business within the premises of Ranchodrayji temple, Dakor and take action against the person, who are preventing the petitioner from doing his business in premises.

[4] This Court has issued notice upon respondents vide order dated 30.09.2013. Thereafter, as per the order passed by this Court on 08.01.2020, respondent Nos. 13 to 18 were added. It appears from the copy of the petition that in fact respondent Nos. 6 to 10 were deleted and respondent Nos. 13 to 18 were added, as endorsed by the petitioner at page 4 of the petition.

[5] Heard learned advocate Mr. B. M. Mangukiya for the petitioner, learned advocate Mr. Pranit Nanavati for Nanavati Associates for respondent No.8 and learned APP Mr. H. K. Patel for respondent Nos. 1 to 4.

[6] Learned advocate Mr. Mangukiya for the petitioner has submitted that the late father of the petitioner has given the land admeasuring 2 Gaj x 2 Gaj in open land inside Ranchhodraiji Temple, Dakor, on rent at the rate of Rs.130/- per annum and he was doing business of temple material on that place and such place was in his possession since last 70-80 years. He has further submitted that temple committee has filed a Regular Civil Suit No.41 of 1990 with a prayer to terminate the tenancy right and the recovery of possession, such suit is pending before the Court of learned Civil Judge Junior Division, Dakor. He has also submitted that no effective steps were taken by the temple committee for conducting said civil suit.

6.1 Mr. Mangukiya, learned advocate for the petitioner has further submitted that petitioner with other tenants have also filed a civil suit being Special Civil Suit No.231 of 1994 in the Court of learned Civil Judge Senior Division, Nadiad apprehending highhanded action on the part of the committee, which was dismissed vide order dated 08.11.2001. It is also submitted that a show cause notice under Section 144 of the Code of Criminal Procedure, 1973 was issued by the Addl. District Magistrate, Kheda @ Nadiad. In the said proceedings, vide order dated 13.03.2003, it was ordered that petitioner shall carryout his business in consultation with the temple committee and shall see that no hindrances are caused to devotees during the rushing days. It is further submitted that, now the petitioner is prevented from entering into the premises, though he is a tenant since last 80 years. That the police officials are physically assaulting him, making it impossible to carry out his business.

6.2 It is further submitted by learned advocate for the petitioner that petitioner has filed a writ petition being Special Criminal Application No.1358 of 2009, which was disposed of by this Court vide order dated 29.07.2010, wherein it is specifically observed that whatever the litigations and disputes between the parties, no one has right to take law into their hands nor any party has right to use police force for any personal grudge. Petitioner has addressed an application to the District Superintendent of Police and Police Sub Inspector on 20.07.2011, wherein it was pointed out that the petitioner has been illegally restrained by the Trustees and they are taking law in their hands and therefore, appropriate action may be taken. It is further submitted that there is no lawful termination of tenancy rights and therefore, the respondents have no right to restrian the petitioner from enering into the said premises to determine rights of tenancy and therefore, petitioner has filed this petition for direction to respondent Nos. 4 and 5 to provide police protection to the petitioner, so that he can do his business within the temple premises.

[7] Learned advocate Mr. Pranit Nanavati for the respondent No.8 has strongly objected the arguments advanced by the learned advocate for the petitioner and

submitted that for same prayer, petitioner has approached this Court by filing Special Criminal Application No.1358 of 2009, wherein this Court was pleased to dispose of the petition on 29.07.2010 ordering that either of the parties cannot take law in their hands.

7.1 Learned advocate Mr. Pranit Nanavati has also submitted that Special Civil Suit No.231 of 1994 preferred by the present petitioner was dismissed by the Court vide order dated 08.11.2001, against which no appeal was preferred by the petitioner. It is further submitted that as per the reply given by the advocate, physical possession of the suit property was handed over by the petitioner and one letter was given to the Manager of the temple committee dated 14.09.2006 stating that all the articles of the petitioner were handed over to the petitioner and receipt thereof was issued by the petitioner on 15.09.2006. That possession of the suit property was handed over by the petitioner and thereafter the petitioner was not continuing his status as a tenant of the suit land. It is further submitted that civil suit is however pending and therefore, remedy may be available to the petitioner in the civil suit and therefore, he has requested to dismiss the petition.

[8] Learned APP appearing for respondent Nos. 1 to 4 submitted that such kind of protection cannot be given to the petitioner for protecting illegal rights. It is further submitted that from the documents produced on record, possession of the subject land was handed over by the petitioner, now and he cannot avail any remedy by using criminal machinery and no police protection can be provided to the petitioner.

8.1 Learned APP has further submitted that petitioner is not entitled to police protection for protecting his civil rights in question, since civil dispute is pending between the parties and therefore, petition is not maintainable. He has relied upon a decision of the Hon'ble Apex Court in case of [P. R. Mulidharan vs. Swami](#), 2006 4 SCC 501 wherein it is observed as under:-

"12 It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which was beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. The respondent no.1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stares on his face. He, therefore, could not have filed a writ petition for

getting the self same issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution of India, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the document alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading petitioner herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye- laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

14. For the foregoing reasons, the impugned judgment cannot be sustained which is set aside accordingly. However, in the event, the first respondent feels that he as a person should receive protection to his life he may make an appropriate representation to the Superintendent of Police who after causing an inquiry made in this behalf may pass an appropriate order as is permissible in law. The appeal is allowed with the aforementioned observations.

19. A writ for "police protection" so-called has only a limited scope, as when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner. And then too in furtherance of the decree or order.

[9] Having heard learned advocate for the petitioner as well as learned APP for the respondent Nos. 1 to 4 and learned advocate appearing for the respondent No.8, it appears from the record produced before this Court that earlier, small piece of open land admeasuring 2 Gaj x 2 Gaj inside temple of Ranchhodraiji, Dakor was given to the father of the petitioner on rent of 130/- per annum for selling certain material like sugar, Makhan (butter), Ghee No divo, Prasad and Magas since about 70-80 years. The father of the petitioner was expired and thereafter, it appears that the petitioner has continued his business in the said premises rented by his father. It also appears that temple committee has filed Regular Civil Suit No. 41 of 1990 before the court of learned Civil Judge Junior Division, for termination of tenancy right and the possession. The aforesaid suit is pending as on today. As per Status Report produced by the petitioner before this Court, it also appears from the record that the petitioner along with other tenants had also filed Special Civil Suit No. 231 of 1994 before the Court of

learned Civil Judge, Senior Division Nadiad apprehended highhanded action on the part of the temple committee and forcibly eviction from the premise of the temple. Admittedly, the Civil Suit filed by the petitioner was dismissed vide judgment and decree dated 8th November, 2001. As per contents of the petition, copy of the judgment and decree passed by learned Civil Judge, Senior Division, Nadiad dated 8th November, 2001 is annexed and marked as annexure "E" at page 48 of this petition. In facts, Annexure "E" is the Pursis filed in Civil Suit No. 39 of 1990 by the plaintiff-Manager of Dakor Temple Committee and others Vs. Nitin Thakorelal Shah declaring that, Government of Gujarat in the year 2003 acquired surrounding land of the Ranchhodraji Temple under the Land Acquisition Act. He has declared that defendant had voluntarily vacated the suit land and therefore, plaintiff did not want to proceed with the suit. He has requested to dispose of the suit by filing this pursis dated 12th August, 2007. However, it was specifically averred that the copy of the judgment and decree passed by learned Civil Judge, Senior Division, Nadiad dated 8th November, 2001 is annexed as annexure "E" and different documents were annexed as annexure "E" by the petitioner. Withdrawal pursis was filed in another suit i.e. Civil Suit No. 39 of 1990 against another defendant, withdrawing about said suit. It also appears from the record that with similar prayer the petitioner had approached this Court in first round of litigation by filing Special Criminal Application No. 1358 of 2009 with Special Criminal Application No. 335 of 2009 wherein, this Court, was pleased to pass the following order on 29th July, 2010 :-

Petitioners contend that they are being prevented from sitting in an open Otala in Dakor temple where in the past they used to sell Prasad. Though the petitions have been filed with prayer to grant police protection to enable them to continue their activities, Counsel for the petitioner, at the outset, stated that the petitioners are not pressing said prayer. However, he submitted that the temple trust authority are using police force to prevent the petitioners from exercising their legal rights. He submitted that the petitioners are being beaten up by the police, which actions must be stopped. Learned counsel for the temple trust vehemently opposed the petition and contended that the petitioners have no legal right to carry on the past activities. Civil litigations have been fought between the parties and the petitioners have no protection of interim or final order in their favour. He, therefore, contended that the petitioners must be relegated to the civil litigation.

I have also heard learned APP for the State.

Since the controversy which now survives in the petition is extremely narrow and since sensitive issues of highly disputed questions are otherwise involved, I confine myself to a limited angle of police force being used against the petitioners. It cannot be denied that whatever be the litigations and disputes between the parties,

no one has right to take law into their hands nor any party has right to use police force for any personal disputes.

If either of the party has civil rights to enforce, the same must be done through the legal means and not otherwise. It would, therefore, be open for the either side to obtain appropriate orders civil courts. However, it is clarified that unless there is breach of peace or likelihood of such breach of peace or reasonable apprehension about commission or likelihood of commission of any offence, the police force shall not interfere or use unnecessary force to quell any legal activities.

With the aforesaid observations, both the petitioners are disposed of . Direct service is permitted.

[10] After passing of the said order in this petition preferred by the petitioner and others, the petitioner made an application on 23rd August, 2010 pointing out that he has been falsely denied the entry in the said premises. Temple committee through its advocate on 3rd September, 2010 answered that the petitioner will not be permitted to enter into the said premises. The petitioner made another communication to all the Trustees on 7th February, 2011 which was answered through their lawyer on 17th February, 2011 stating that possession of the land was handed over by the petitioner on 15th September, 2006. It also appears that one application addressing to the District Superintendent of Police was made on 20th July, 2011 with same contention that he was illegally restrained by the Trustees of the Trust and they are taking law in their hands and therefore, appropriate action be taken against them. Again on 31st July, 2011, another application was made by the present petitioner addressed to the Police Sub-Inspector, Dakor stating that he was assaulted by the persons when he enters in the said premises. It also appears that under Section 160 of Criminal Procedure Code 1973, summons was issued by the ASI of Dakor Police Station informing petitioner to produce the documents in relation to his tenancy rights and appear at Police Station on 2nd August, 2011. As per submission of the petitioner, the statement was recorded by the police. Thereafter, it appears that one notice through his advocate was issued by the petitioner on 8th February, 2012 which was answered by the concerned respondents through advocate on 12th March, 2012. Without touching the tenancy rights as alleged by the petitioner, alleged action of respondents, preventing the petitioner from doing his lawful business in temple premises may be decided by the Civil Court as Civil Suit is pending before the learned Civil Judge at Dakor.

[11] The question which is to be determined by this Court is whether such direction can be passed by this Court to the Police Officer i.e. respondent No. 4 and 5 to provide police protection to the petitioner enabling the petitioner to do his lawful business with

the demised premises in precinct of the temple of Ranchhodraji at Dakor. From the documents produced on record, it appears from the notice corresponding and particularly reply issued to the respondent dated 17th February, 2011 that Special Civil Suit No. 231 of 1994 preferred by the petitioner before the Court of learned Civil Judge, Senior Division at Nadiad was dismissed with cost vide order dated 8th November, 2001 and no appeal was preferred by the petitioner. It was further stated that on 14th September, 2006, the land which is disputed by the petitioner was vacated and the actual possession was handed over. In respect of handing over the possession by the petitioner, one letter was written by the petitioner on 14th September, 2006 stating that all the articles in sealed manner was requested to be handed over and it was accordingly received by the petitioner with acknowledgment receipt under the signature dated 15th September, 2006. As per contention, from 15th September, 2006, the petitioner was not continued as tenant of the suit land. Pendency of the Regular Civil Suit No. 41 of 1990 was also disclosed with the reasons of the pendency of the suit.

[12] In the instant case also, Regular Civil Suit No. 41 of 1990 is pending before learned Civil Court at Dakor. The tenancy rights as alleged by the petitioner in connection with the disputed land may be decided by the Civil Court. Under the shelter of the police protection, from the facts and record produced before the Court, the petitioner cannot be permitted to enter in the the demised premise in precinct of the Temple Ranchhodraji to do his lawful business. When the pleadings of the petition themselves disclose about the fact that disputed questions of facts are involved, therefore, there is no ground for the High Court under Article 226 of the Constitution of India to take upon itself, as dispute is pending before the Civil Court, and therefore, the direction as sought for by the petitioner to the police authorities for the protection of alleged rights of the petitioner cannot be granted. The High Court should not undertake such exercise on the basis of tenancy rights of the petitioner under Article 226 of the Constitution of India. Civil Suit i.e. Regular Civil Suit No. 231 of 1994 preferred by the petitioner before the Court of learned Civil Judge, Senior Division Nadiad was dismissed vide order dated 8th November, 2001. No decree or order were passed by the Civil Court in favour of the petitioner. Petitioner has suppressed the material facts, what were the contents, disputes and prayer in the Regular Civil Suit No. 231 of 1994 filed by him before the Civil Court as well as judgement and order. He has not produced copy of the plaint or judgement of the above civil suit. The writ for police protection cannot be extended to cases where rights have not been determined either finally by the Civil Court or at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order as held by the Hon'ble Apex Court reported in (2006) 4 SCC 501, relied upon by learned APP.

[13] Having considered the said facts, this Court is not inclined to accept the prayer made by the petitioner to provide police protection as prayed for in para 44 of the petition. Hence, this petition is ordered to be dismissed.

No arguments were advanced from the remaining respondents. Rule is discharged.

