

[link to top](#)

LAWS(GJH) 2015 4 181

HIGH COURT OF GUJARAT

Coram :- K. M. THAKER, J.

Decided on 2015 April 29

Special Civil Application No. 1798 of 2015

Thachraj Co Operative Housing Society Ltd

VERSUS

STATE OF GUJARAT

Advocates:

PRATIK P. THAKKAR, SHRUTI PATHAK, DEEPAK P. SANCHELA

[-] Referred Judgments (1)

[VITHALBHAI CHHAGANBHAI VS. STATE OF GUJARAT \[2008 1 GLH 656\] \[REFERRED TO\]](#)

[-] Cited At (1)

[THACHRAJ CO OPERATIVE HOUSING SOCIETY LTD VS. STATE OF GUJARAT \[LAWS\(GJH\)-2015-4-181\]\[REFERRED TO\]](#)

[-] Referred Acts:

[GUJARAT MUNICIPALITIES ACT, 1963 , S. 185 , S. 185\(2\)](#)

Citations:

LAWS(GJH) 2015 4 181,

Expert View:

A. : - by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and, if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be

liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule 1, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance___ .

- B. Having gone through the provisions of Section 185 and particularly sub -sections (1) and (2) of Section 185 of the Gujarat Municipalities Act, in our view, for the reasons that follow, the power of the Chief Officer under sub -section (2) of Section 185 to remove obstruction or encroachment is not confined to obstruction or encroachment made after establishment of the Municipality - (i) Sub -section (1) of Section 185 contains penal provisions for prosecuting, convicting and punishing the person who has put up any obstruction or any encroachment in any municipal area___ . (iii) The words "such obstruction or encroachment" in sub -section (2) of Section 185 are only a compendious expression for 'Sany wall, or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction" used in clause (a) of sub -section (1), and, 'Sany box, bale, package or merchandise, or any other thing" used in clause (b) of sub -section (1) of Section 185___ .
- C. I say and submit that the Chief Officer is required to take permission under the provisions of Section 185(2) from the Collector and hence, he may seek permission from the Collector if so required___ I respectfully say that, yet, if the government will say that the land in question is belongs to municipality in that case municipality is ready to remove the encroachment by way of following due procedure as stated in provision of law, therefore, it can not be said that municipality is diverting its responsibility___ 3,84,000/ - developing pumping station,therefore every land can not be considered a land of municipality even though the land belongs to limit of municipality, even looking to the another resolution of the government dated 17/7/1993 it is responsibility of the talati, circle inspector, city serve superintendent and mamlatdar Etc___ Learned AGP submitted that from the details and documents placed on record by the In - charge Prant Officer, it becomes clear that the land in question is within local limits of the Nagarplaika and that therefore, it is the duty and obligation of the Nagarpalika to take necessary steps in accordance with law for removing encroachment___
- D. Learned AGP submitted that from the details and documents placed on record by the In -charge Prant Officer, it becomes clear that the land in question is within local limits of the Nagarplaika and that therefore, it is the duty and obligation of the Nagarpalika to take necessary steps in accordance with law for removing encroachment.
- 19.

JUDGMENT / ORDER

1. HEARD Mr. Thakkar, learned advocate for the petitioners, Mr. Sanchela, learned advocate for the respondent No.2, and Ms. Pathak, learned AGP for the respondent State.

2. IN present petition, the petitioners have prayed, inter alia, that: -

"8(A) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction, directing the respondent corporation to forthwith remove the illegal construction and encroachment made on the public road and a canal parallel to the public road situated at southern side of revenue survey no.1123 at mauje village Mansa, in the interest of justice; (B) YOUR LORDSHIPS may be pleased to direct the respondents to submit Action Taken Report before this Hon'ble Court in pursuance to various representations and complaints made by the petitioner, pending the admission, hearing and final disposal of this petition;"

3. TO support and justify the relief prayed for in the petition, the petitioners have stated, inter alia, that: -

"3.1 The petitioners submit that owing to such encroachment, made on the road' villagers having their] approach though the subject road are being suffered undue hardship. The, petitioners submit even otherwise the said encroachment also disturbs the residents of the societies situated nearby the subject road. The petitioners submit that the residents residing near to the subject road pursued with various authorities to inquire about the status of the encroachment and actions taken by the authorities by making representations as well as applications under the RTI Act. On the basis of replies received, the petitioners have gathered some details which are being placed in this petition for the consideration of this Hon'ble Court.

3.2 The petitioners submit that the encroachers had not only block the approach road to 3 villages, but also creates hindrance to the residence residing near the said road by carrying out in human activities such as slaughtering of pigs on the subject road. The petitioners submit that residence of Thachraj society by letter dated 25.12.2012 informed the Chief Officer of Nagar Seva Sadan, Mansa regarding slaughtering of pigs by brutally killing them, which also spreads a bad odor throughout the nearby areas. The petitioners submit that it was also pointed out that the encroachers are also indulged in liquor consumption and other immoral activities and requested the authority to take immediate action...

3.3 The petitioners submit that the petitioner no.3 made an application on 3.1.2013 to respondent no. 2 under Right to Information Act, the respondent no. :2 vide reply dated 29.1.2013 confirmed that there is no recognition or permission by the authority -to the encroachers, and thus the same is not legal. The authority also confirms no water supplies or electricity provided by the authority. and also confirms. The authority however suggests to get information from_ Police Authorities on. the aspect of slaughtering animals on the subject road.

3.4 The petitioners submit that the petitioners no.3 by letter dated 14.06.2013 made written grievance to

the Police Authorities as no action were taken by the authority for stopping illegal slaughtering of animals on the subject road.....

3.5 The petitioners submit that the petitioner no.1 made an application to respondent no.4 on 10.07.2013 regarding removal of the encroachment on the ground of nuisance being caused by the encroachers by consumption of liquor and damaging the protection wall of the Society. The petitioners submit that on such representation of the society the respondent no.4 forwarded the same in original to the respondent no.2. The petitioners submit that however the respondent no.2 to take necessary steps on the application. The petitioners submit that however the respondent no.2 vide its letter dated 23.07.2013 forwards the same to the Police Inspector, Marisa stating the said area comes under the jurisdiction of the Talati, Mansa.

3.6 The petitioners submit that the petitioner no.1 also made detailed representation dated 12.12.2013 to respondent no.3 for removal of the encroachment on the public road.

3.7 The petitioners submit that to the utter shock and surprise the dated 21.12.2013 informs respondent no.2 that the subject respondent no.3 by letter road comes under jurisdiction of respondent no.2 and request respondent no.2 to take necessary action on the said application.....

3.8 The petitioners submit that by way of detailed representation dated 30.12.2013 by petitioner no.2 the encroachment on the subject road.

3.9 The petitioners submit that by letter dated 31.12.2013 and 03.01.2014 the petitioner no.1 requested respondent no.4 and the Taluka Swagat (State Wide Attention on Grievances by Application of Technology) to consider the issue of removal of illegal encroachment by way of Taluka Swagat programe....

3.10 The petitioners submit that by another application for removal of illegal encroachment of petitioner no.2 to respondent no.4 the respondent no.3 forward the same to respondent no.2 . stating that the same comes within the powers of respondent no.2. Similarly upon application of petitioner no.1, the respondent no.2 vide letter dated 13.01.2014 informs the Society to move to Talati, Mansa for removal of the encroachment.

3.11 The petitioners submit that the respondent no.4 informs respondent no.2 that by letter dated 17.01.2014 that the said process of removal of encroachment is to be carried out by respondent no.2.

3.12 The petitioners submit that at this stage the it was found that few encroachers are holding two voters ID in different wards one at the Kapuri Chock and other at the place of encroachment. The petitioners submit that an application under RTI was made by petitioner no.3 to respondent no.2 and respondent no.4 for details of proof of documents for issuing such Voters IDs and also details of legal steps taken for

issuing such Voters IDs. The petitioners submit that however the application was forwarded to respondent no.2 by Public Information Officer of respondent no.2 to respondent no.4 by letter of January 2014 and thereafter the information is yet not received by the petitioners....."

3.13 The petitioners submit that again by letter dated 15.02.2014 the respondent no.2 wrote to respondent no.4 stating that the subject road comes in jurisdiction of respondent no.5 and the action of remover of encroachment will be initiated by respondent no.5....."

The petitioners are aggrieved by the alleged inaction on the part of the respondents as a result of which, the alleged encroachment caused over public land / road is not removed and any actions for removal of such encroachment are not taken by any respondents.

4. ACCORDING to the petitioners, the members of the society have made certain representations to the respondents, however, none of the respondents have taken any steps and petitioners are being tossed around between different authorities and they are made to go from caesar to caesar's wife.

5. THIS case appears to be a classic illustration of ego or indifference of statutory authorities in view of which the statutory duties and functions required to be discharged by the respondents are not being performed rather they are thrown out of the window.

6. THE petitioners have alleged that near the society and on public land / road, some of the villagers have caused encroachment and several illegal or antisocial activities are being carried on which causes nuisance, hardship and inconvenience to the members of the petitioner society and the villagers. It is also alleged that the persons who have encroached upon and put up illegal and unauthorized construction are also consuming / selling liquor and slaughtering activities are also carried out.

7. THE petitioners have further alleged that when the petitioners approached the respondent No.2, the said respondent No.2 informed the petitioners that it is the duty and function of the respondent No.1 or other authorities to take appropriate actions, including action of removing encroachment. According to the petitioners, the respondent No.1, on the other hand, prays that the area in question is within the jurisdiction of the respondent No.2, i.e. Nagarpalika, and that therefore, the duty and function of removing the encroachment is that of the respondent No.2.

8. ON the said and such other grounds, allegations and counter allegations, the respondents have been delaying or avoiding actions, more particularly actions to remove encroachment. In such background, the petitioner society has preferred present petition.

9. EVEN during hearing of the petition, the respondents continued to pass on the buck and continued to shift the responsibility from one to other authority. Consequently, the Court had to pass order dated 27.3.2015 asking the Superintendent, Dy. Collector and Mamlatdar as well as the Talati to remain present in the Court.

During hearing of the petition, the respondent No.2 i.e. Chief Officer who was present in the Court surprisingly took up adversarial stand and informed the Court that the Nagarpalika will take appropriate

action for removing encroachment only if the respondent No.1 declares that the area in question is within the jurisdiction of the Municipality and the land is not Government land. Respondent No.2 submitted that according to the Nagarpalika, the land in question is of respondent No.1, i.e. Government, and that therefore, he is not obliged to take any action with reference to the said land, including the action of removing encroachment over the said land. The Court found the stand taken by Chief Officer respondent No.2, more particularly his reply to the Court viz. he and / or the Nagarpalika will take action only if the respondent No.1 declares that the land in question is not of the respondent No.1 Government, to say the least, unbecoming of an officer of Nagarpalika, more particularly officer in the rank of Chief Officer of the Nagarpalika. Since the response of the Chief Officer of the Nagarpalika was conveyed to the Court by learned advocate, the Court, so as to confirm that there may not be any error in communication by learned advocate, desired that the Chief Officer respondent No.2 may file affidavit and put his stand and reply on record. In response to the said instruction, the Chief Officer of the respondent Municipality filed affidavit dated 15.4.2015. In the said affidavit dated 15.4.2015, the respondent No.2 has averred and stated, inter alia, that: -

"4. I respectfully say that, yet, if the government will say that the land in question is belongs to municipality in that case municipality is ready to remove the encroachment by way of following due procedure as stated in provision of law, therefore, it can not be said that municipality is diverting its responsibility."

In the said affidavit, the respondent No.2 has also stated that: -

"3. I further respectfully say that, even for sake of argument it may consider that the land in question is under the limit of municipality in that case also if the land is belongs to government, municipality has to purchase then land from the government as per the government resolution dated 27/1/2005, even for the purpose of developing Road and recently very municipality has paid rs.3,84,000/- developing pumping station, therefore every land can not be considered a land of municipality even though the land belongs to limit of municipality, even looking to the another resolution of the government dated 17/7/1993 it is responsibility of the talati, circle inspector, city serve superintendent and mamlatdar Etc. to remove the encroachment, if the land is belongs to government. At this stage it is also desire to say that looking to the latter dated 24/3/2015 passed by the collector it is specifically stated to the Dy. Collector, mamlatdar, city survey superintendent as well as chief officer mansa to look into if there are nay encroachment on the government land."

10. THE respondent No.2 repeatedly submitted that the area / land where alleged encroachment is caused / put up is Government land and that therefore, the respondent Nagarpalika will not take any action for removing the encroachment, however, if the respondent No.1 declares and clarifies that the land / area is that of Municipality or within the Municipality, then only, respondent Nagarpalika will take necessary actions. The Court is of the view that in light of relevant provisions, it is rude

and lacking in propriety as well as sobriety to give such reply and take such stand in the Court when local resident/s request that statutory function may be performed and the encroachment which causes nuisance and hardships to so many person.

11. LEARNED advocate for the respondent No.2 tried to justify the stand of the respondent No.2 by placing reliance on the provision under section 202 of the Gujarat Land Revenue Code, 1879, which reads thus: -

"202. Collector how to proceed in order to evict any person wrongfully in possession of land. - Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz. : -

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and, if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule 1, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance."

12. ON the other hand, In -charge Prant Officer has filed affidavit dated 10.4.2015 and stated that: -

"7. I say and submit that the present petition is preferred by the petitioner seeking directions of the Hon'ble Court to direct the respondent corporation to forthwith remove illegal construction and encroachment made on public road and a canal parallel to the public road situated at southern side of revenue survey no.1123 at Mansa. I say and submit that the petitioner has in the prayer clause itself sought directions against the concerned respondent Nagarpalika to remove encroachment. However, be that as it may, I would at this point, point out certain factual and legal aspects in the affidavit in reply.

8. I say and submit that the area in question is a residential area, situated within the local limits of Mansa Nagarpalika. ... I say and submit that a bare perusal of the development map would indicate that the land in question is located within the local limits of Mansa Nagarpalika. Hence, the required action with respect to removal of encroachment is required to be taken at the end of the Mansa Nagarpalika.

9. I say and submit that looking to the current position of the land in question where the alleged encroachment is made, the same would indicate that at present there is no canal as claimed in the petition. However, instead, a public road of RCC cement which is constructed by the Nagarpalika stands as

on date. The encroachment which is made is on the public road as well as the sides of the public road."

From the said affidavit, which gives out that the land / area in question is within the authority / control / jurisdiction of the Nagarpalika. In light of the said fact the reference to section 202 is ill -founded and the said respondent is unjustifiably taking shelter under said provision.

13. THE said deponent has relied on the provision under section 185 of the Gujarat Municipalities Act and contended that the respondent No.2 not only has the requisite power and authority, but is also required to remove encroachment in view of the provisions contained under the Municipalities Act, more particularly under section 185 of the Act. In his affidavit, the Incharge Prant Officer has also further stated that: -

"11. I say and submit that as per Section 185(2), the Chief Officer shall have power to remove any encroachment or obstruction in any open space not being a private property. The said sub -section further provides that irrespective of whether such space is vested in the municipality or not, the Chief Officer is empowered to remove such encroachment and obstruction. It is most respectfully submitted that the sub -section further provides that if the space is vested in the Government, the permission of the Collector is required to be taken.

12. I say and submit that in background of the aforesaid provisions contemplated under the Gujarat Municipalities Act, 1963, when the Chief Officer is empowered to remove any construction within the municipality, it is incumbent upon the Chief Officer to take appropriate actions at his end to remove such encroachment. If at all, the land is vested in the State Government, he is required to take necessary permission from the Collector for removing such encroachment. I say and submit that the authority cannot brush aside these provisions under the statute and shy away from his duty and shift the burden upon the Government authorities.

13. I say and submit that it is not that the Government authorities want to shift the burden upon the Nagarpalika and wants to run away from their responsibility. I say and submit that the State authorities have been repeatedly communicating the Nagarpalika, more particularly, the Chief Officer to do the needful and remove encroachment. Copies of the communications dated 20.07.2013, 12.03.2015 and 25.03.2015 addressed by the Mamlatdar, ... I say and submit that the Chief Officer is required to take permission under the provisions of Section 185(2) from the Collector and hence, he may seek permission from the Collector if so required."

14. AT this stage, it is pertinent to mention that the said In -charge Prant Officer filed the said affidavit before respondent No.2 filed the above referred affidavit dated 15.4.2015. Despite that the respondent No.1 has taken the said stand in his reply and inspite of the above quoted averments and statements by the In -charge Prant Officer in the affidavit dated 10.4.2015, the respondent No.2 made the above quoted statements in his affidavit dated 15.4.2015 and also repeated the said stand during submissions at the time of hearing.

15. IN view of the details mentioned by the Incharge Prant Officer in his affidavit, more particularly the averment that, "I say and submit that the area in question is a residential area, situated within the local limits of Mansa Nagarpalika. A copy of the revised map of the development plan of Mansa is annexed herewith and marked as "Annexure RI. I say and submit that a bare perusal of the development map would indicate that the land in question is located within the local limits of Mansa Nagarpalika", it emerges that the area / land in question i.e. the place where the alleged encroachment is put up is within the local limits of the respondent No.2. Despite this position, the respondent No.2 has taken up the above mentioned stand.

16. IN view of the stand taken by the respondent No.2, appropriate action in accordance with law to remove the encroachment if any are not being taken.

17. IT is pertinent to note that neither the respondent No.2 nor the respondent No.1 and / or the respondent No.4 and / or the respondent No.5 have disputed or denied the fact that there are encroachments which are put up over public land / road.

Thus, actual need is to take steps in accordance with law and as per the provisions under the Act to remove the encroachment. Instead the statutory authorities are trying to shirk off the responsibility and statutory obligations and instead of performing and discharging their functions and duties, they, even before the Court, are shifting the responsibility from one to another.

18. AT this stage, it is relevant to take into account the submissions by learned AGP for the respondent No.1. Learned AGP submitted that from the details and documents placed on record by the In -charge Prant Officer, it becomes clear that the land in question is within local limits of the Nagarplaika and that therefore, it is the duty and obligation of the Nagarpalika to take necessary steps in accordance with law for removing encroachment. Learned AGP further submitted that in view of provision under section 185 of the Act, even if the land in question is Government land, but if it is within the limits of the Municipality/Nagarpalika, then, the Municipality / Nagarpalika are statutorily obliged and duty bound to take action for removing encroachment. In view of the said submission by learned AGP, it would be appropriate to take into account relevant provision under section 185 of the Act. The said provision reads thus: -

"Section 185 - (1) Whoever in any area after it has become a municipal borough, (a) shall, have built or set up, or shall build or set up, any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, or (b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise, or any other thing, in any public place or street or in or upon any open drain, gutter, sewer or aqueduct in such place or street shall be punished with fine which may extend to fifty rupees and with further fine which may extend to ten rupees for every day on which, such projection, encroachment, obstruction or deposit continues after the date of first conviction for such offence. (2) The chief officer shall have power to remove any such obstruction or encroachment, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open space not being private property, whether such space is vested in the municipality or not; provided that if the space be vested in Government the permission of the Collector shall have first been obtained; the expense of such removal shall be paid by the person who has caused the said obstruction or encroachment, and shall be recoverable in the same manner as an amount claimed

on account of any tax recoverable under Chapter IX. (3) to (5)"

With regard to the said provision, it would be appropriate to take into account the observations by Hon'ble Division bench in the case between Vithalbhai Chhaganbhai (since Decd.) v. State of Gujarat Thr Secretary and Ors., 2008 1 GLH 656. In the said decision, the Court after making reference in paragraph No.6 of section 185 of the Act, observed in paragraph No.7 of the decision, inter alia, that: -

"7. Having gone through the provisions of Section 185 and particularly sub -sections (1) and (2) of Section 185 of the Gujarat Municipalities Act, in our view, for the reasons that follow, the power of the Chief Officer under sub -section (2) of Section 185 to remove obstruction or encroachment is not confined to obstruction or encroachment made after establishment of the Municipality -

(i) Sub -section (1) of Section 185 contains penal provisions for prosecuting, convicting and punishing the person who has put up any obstruction or any encroachment in any municipal area. Hence, the power to prosecute a person for putting up any obstruction or encroachment cannot be conferred on the Chief Officer for any obstruction put up or encroachment made prior to the establishment of the Municipality. As per the settled legal position and also the constitutional provision, no person can be prosecuted, convicted or punished for an act which was not an offence on the date of commission of that act. It is in consonance with the said principle that sub -section (1) provides that a person may be convicted or fined for putting up any encroachment or obstruction "in any area after it has become a Municipal borough (Municipality)".

On the other hand, the power to remove obstruction or encroachment conferred by sub -section (2) is an administrative power and therefore, there was no question of confining such power to obstructions or encroachments made after establishment of the Municipality.

(ii) While the penal power under sub -section (1) is to be exercised qua a person "whoever" has put up any obstruction or made any encroachment, the administrative power under sub -section (2) is to be exercised in respect of the obstruction or encroachment itself without making it necessary to investigate as to who made such obstruction or encroachment. The emphasis in sub -section (1) is, therefore, on removal of obstruction and encroachment and not on punishment of any person as such.

(iii) The words "such obstruction or encroachment" in sub -section (2) of Section 185 are only a compendious expression for 'Sany wall, or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction" used in clause (a) of sub -section (1), and, 'Sany box, bale, package or merchandise, or any other thing" used in clause (b) of sub -section (1) of Section 185.

(iv) The power of removal conferred on the Chief Officer under sub -section (2) is not only in respect of obstruction and encroachment in any public place or public street, but also on any open space not being

private property, whether such place is vested in the Municipality or not. If the contention of the learned counsel for the petitioner were to be accepted, the Chief Officer would have the power to remove any unauthorised obstruction or encroachment, put up before or after the establishment of the Municipality, in any open space not being private property, but such power of removal of unauthorised obstruction or encroachment would not be available where it is in any public place or street or in or upon any open drain, gutter, sewer or aqueduct in such place or street. There is nothing in the provisions of sub -section (2) of Section 185 to indicate that the power of the Chief Officer to remove obstruction or encroachment would be available only in cases of obstruction or encroachment made after establishment of the Municipality.

(v) In short, the words "such obstruction or encroachment" in sub -section (2) of Section 185 are only a compendious expression for various kinds of obstructions and encroachments and the legislature did not make any reference to any time frame for the obstructions and encroachments covered by subsection (2) of Section 185.

19.1 Thus, after taking into account the provision under section 185, more particularly sub -section (2) of section 185, which provides, inter alia, that the power of chief officer to remove unauthorised obstruction or encroachment is not limited only to the space vested in the municipality, but it extends to the space vested in government also, subject to permission by the government, the Division Bench in the above quoted decision, particularly in paragraph No.7(iv) clearly observed and clarified that the power of chief officer is not restricted to encroachment or obstruction only in the area / space vested in the municipality. In this view of the matter, the approach of the respondent No.2 is not only misconceived and arbitrary, but it also ignores and defies the provision under section 185 of the Act which the respondent No.2 is obliged to abide by. Despite this position, the respondent No.2 took up above mentioned stand and adamantly stuck to it. The respondent No.2 also tried to rely on some circulars issued by government. The said attempt of the respondent No.2 is also unjustified, inasmuch as, apparently the said circulars are general instructions issued for the purpose of clarification and guidance for performing duties under the Land Revenue Code and by any stretch of imagination, the said circulars cannot be, and could not have been, construed to mean that the said instructions will override statutory provision.

Said stand by respondent No.2 reflects nothing but his reluctance to take action and to hide behind anything which comes into his hands ignoring that such circulars which are issued with reference to the provisions under the Land Revenue Code and for the authorities under the said Code, in any case cannot be made applicable to statutory provision under section 185 of the of Municipalities Act and such administrative instructions cannot override statutory obligations. A person who is holding responsible post of chief officer with Nagarpalika and has enough experience, is expected to atleast know such position before taking up such stand in the Court.

19. IN this view of the matter, it appears that present petition can be disposed of with following directions : -

20.1 The District Collector, being head of the administration of the district, will look into the matter, more particularly the stand and approach taken by the respondent Nos.4 and 5.

20.2 Likewise, the Director of the Municipalities will examine the papers of this case, particularly the response by the Chief Officer of Mansa Nagarpalika and the stand taken by him in connection with the petitioners' request for removing the encroachment and also the reply given by him and stand taken by him during Court proceedings.

20.3 The Collector and the Director of the Municipalities, after examining the matter, more particularly the stand taken by the respondent Nos.2, 4 and 5 will, if found necessary and appropriate after examining the case, take appropriate actions against the said officers for not performing the statutory duties and for taking such stand before the Court.

So far as the respondent No.2 is concerned, the Director of the Municipality will also call for the reply / response from the Chief Officer with reference to his stand before the Court viz. only if the respondent No.1 State declares / clarifies that the land is not of the Government, then, the respondent No.2 will take action for removing the encroachment.

20.4 In view of the reply affidavit dated 10.4.2015 filed by the In -charge Prant Officer, more particularly the details mentioned in paragraph Nos.7 to 13 (Page 95 to 100 of the petition) and also having regard to the provisions under section 185 of the Act and in view of the observations by Division Bench in the above referred decision, the respondent No.2 will initiate necessary steps and actions, of course, in accordance with the provisions under the Act and after following procedure prescribed under the said Act and Rules framed thereunder and after issuing notice and granting opportunity of hearing to the concerned / affected persons, necessary and appropriate steps to remove the encroachment may be taken. If necessary, permission from Government may be requested for and the Government shall take necessary steps and actions without delay after such request is received.

20.5 In view of the fact that section 185 of the Act contemplates requirement of permission from the State Government, the respondent No.2 may submit appropriate application to the competent authority of the respondent No.1 who, will consider the application immediately and pass appropriate orders as may be required in the facts of the case.

20.6 Thereafter, the respondent No.2 will take appropriate actions as may be required in light of the facts of the case and in light of the details / allegations by the petitioner i.e. details about the alleged encroachment mentioned in the petition as well as in their application / representation submitted from time to time.

20.7 As mentioned above, appropriate action for removing encroachment, if any will be taken in

accordance with law and applicable Rules and after identifying the encroachment and after issuing notice to the concerned / affected persons and after granting opportunity of hearing and after independently taking decision with regard to the encroachment i.e. as to whether there is any encroachment or not.

20.8 The actions, if required, shall be taken in accordance with law and after complying the requirements prescribed under the Act and the Rules framed thereunder as early as possible and preferably within four months.

With the aforesaid observations and directions, present petition stands disposed of.

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