

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 14056 of 2025**

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RATHOD GAFFARMIYA ALLAUDDIN & ORS.**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR MTM HAKIM, LD.ADVOCATE FOR MR RIZWAN SHAIKH(7146) for the****Petitioner(s) No. 1,2,3,4,5,6,7,8****MR. EZZAZUDDIN B HUSENI(18638) for the Petitioner(s) No. 1,2,3,4,5,6,7,8****MR SAHIL TRIVEDI, LD.ASSTT. GOVERNMENT PLEADER for the****Respondent(s) No. 1,2**

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 09/10/2025****ORAL ORDER**

1. This petition is filed challenging Notice issued to all the petitioners individually on 06.10.2025, directing them to remove encroachment on the public road within a period of two days.

2. Heard learned advocate Mr.MTM Hakim for the petitioners and learned Assistant Government Pleader Mr.Sahil Trivedi for the respondent Nos.1 & 2.

3. Learned advocate for the petitioners submitted that Notices dated 06.10.2025 issued to individual petitioners are bad in law since under the said Notices, the petitioners have been given only two days' time to remove encroachment. Learned advocate also disputed earlier Notices issued to the



petitioners to submit that no opportunity was provided to the petitioners to justify their cases. Further, the petitioners are in occupation of the said premises since many years and they are doing their businesses. However, on account of paucity of time, they are unable to produce documents called for by the respondents. Referring to second proviso to sub-section (2) of section 105 of the Gujarat Panchayats Act, learned advocate Mr.Hakim submitted that the said section for removal of obstruction or encroachment on public street and on public site refer to some procedure to be followed and admittedly, in the present case, the said procedure being not followed, the Notices deserve to be quashed and set aside.

3.1 Further, learned advocate has relied on Rule 55 of Gujarat Panchayats (Procedure) Rules, 1997 to submit that for taking any action under section 105 of the Gujarat Panchayats Act, procedure as prescribed under Rule 55 of the Rules have to be followed. Learned advocate relied upon the decision in the case of **Wind World India Ltd. V/s. Shree Tebhada Gram Panchayat** reported in **2023(0) ALJEL-HC-245521**. Learned advocate Mr.Hakim further submitted that there happened some communal incidents in Navratri,2025 in the area, where petitioners' shops are situated and this is offsuit of that incident.



4. Opposing the present petition, learned Assistant Government Pleader Mr.Sahil Trivedi referring to Notice dated 06.10.2025, submitted that Notice at Page-80 was issued by Executive Engineer to petitioner No.1. Similarly, Notice dated 06.10.2025 was issued by Executive Engineer, Dehgam Gram Panchayat to petitioner No.2. Notice at Page-19 refers to earlier Notices dated 09.06.2024, 12.08.2024 and 01.01.2025. Earlier under the said Notices, seven days' time was provided to the petitioners to remove encroachment. Moreover, from tenure of Notice, it is evident that shops are on road and it comes under Road & Buildings Department and therefore, provisions of Gujarat Panchayats Act (Section 105) read with Rule 55 may not be applicable.

4.1 Further, Notice refers to encroachment to be removed and under the said Notice, personal hearing was also provided to the petitioners to produce the documents in support of their claims. Earlier also, pursuant to the Notices issued, the petitioners were granted time and they failed in producing any document in support of the same. Even no documents were supplied pursuant to the Notices dated 06.10.2025.

4.2 Further, no documents have been produced along with



petition to justify their claims. Therefore, action taken proposing demolition of encroachment on road being appropriate, no interference of this Court is required. Further, the petitioners' case fall under exception to the decision of Hon'ble Supreme Court and encroachment needs to be removed as expeditiously as possible because it is creating difficulties in movement of traffic.

5. Considered the submissions and documents on record. It is noticed that the petitioners have been issued individual Notices dated 06.10.2025 directing them to remove encroachment within a period of two days. Under the said Notices, time has been provided to produce necessary documents in support of their rights of property if they have. It is also noticed that the Notice issued to petitioner No.2 refers to earlier Notices and no documents have been produced along with the present petition justifying their rights to the said shops.

6. Further, as submitted by learned Assistant Government Pleader that so far as other encroachment on public road has already been demolished and only petitioners' shops have not been taken for demolition considering pendency of the petition.



7. However, noticing that the petitioners' sole grievance is with regard to procedure not followed and breach of principles of natural justice by not providing sufficient time, , without going into the merits of the matter, following directions are issued:

- (i) Notices dated 06.10.2025 are directed to be treated as Show Cause Notices granting seven days' time, which would end on 16.10.2025, to the petitioners to produce documents in support of their claims, if they have. The hearing shall be provided to the representative of the petitioners.
- (ii) Noticing that allegation of respondent is encroachment on public road and the petitioners failed in justifying their non-encroachment, it is open for the respondents to take appropriate action in accordance with law after 16.10.2025.
- (iii) The parties are directed to maintain status quo till 16.10.2025.

8. With the above directions, the present petition is disposed of. Direct service is permitted.

sd/-

(MAUNA M. BHATT,J)

DIPTI PATEL...