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Date of Decision: 16th October 1995

SPECIAL CIVIL APPLICATION NO. 6017 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri J.D. Ajmera, Advocate, for the Petitioner

Shri P.M. Thakkar, Senior Advocate, with Shri M.K. Pawa, Advocate, for Respondent No. 1

Shri K.G. Vakharia, Senior Advocate, with Shri Tushar Mehta, Advocate, for Respondents Nos. 2 and 3

Respondent No.4 served

Shri S.P. Dave, Asst. Govt. Pleader, as instructed by Messrs. Purnanand & Co., for Respondent No. 5

Shri S.P. Dave, Asst. Govt. Pleader, for Respondents Nos. 6 & 7

CORAM: A.N. DIVECHA, J.
(Date: 16th October 1995)

ORAL JUDGMENT

The order passed by the Collector of Surendranagar (respondent No. 7 herein) on 1st July 1995 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No. 7 disposed of the case instituted by the petitioner herein against Resolution No. 2 passed by the Town Planning Committee of the Surendranagar Urban Development Authority.

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the Town Planning Committee of Surendranagar Urban Development Authority by its resolution No. 2 approved the plans of construction submitted by respondents Nos. 2 and 3. It appears that the petitioner was aggrieved thereby. He thereupon invoked the jurisdiction of respondent No. 7 under sec. 258 of the Gujarat Municipalities Act, 1963. It appears to have been registered as Case No. 7 of 1993. By an undated order passed therein, respondent No. 7 came to the conclusion that the building plans were sanctioned according to law and nothing more was required to be done. Its copy is at Annexure I to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning its correctness.

3. The grievance of the petitioner against the impugned order at Annexure I to this petition is two-fold. In the first place, it has been urged that no opportunity of hearing was given to the petitioner before passing it. Secondly, it has been submitted that respondent No.7 relied on the surveyor's report without furnishing its copy to the petitioner. These two grievances voiced by the petitioner have remained uncontroverted. It is not the case of the respondents or any of them that an opportunity of hearing was given to the petitioner or that the surveyor's report was furnished to him. Learned Counsel Shri Vakharia for respondents Nos. 2 and 3 admits that the petitioner was not heard in the matter nor was he given a copy of the surveyor's report. In that view of the matter, the impugned order at Annexure I to this petition can be said to have been passed in contravention of the audi alteram partem rule. It cannot therefore be sustained in law.

4. It may be mentioned that a copy of the impugned order at Annexure I to this petition was not given to the petitioner. What was conveyed to the petitioner was only an intimation thereof by an order passed on 1st July 1995. Its copy is at

Annexure G to this petition. It appears that the impugned order at Annexure I to this petition was submitted to this court in a sealed cover in the previous proceeding by means of Special Civil Application No.. 7623 of 1993. The petitioner has levelled allegations of ulterior motive against respondent No. 7 for not giving a copy of the impugned order at Annexure I to this petition to the petitioner. It is the case of the petitioner that its copy was given to respondents Nos. 2 and 3. I think these allegations need not be dealt with seriously for the simple reason that respondent No. 7 was required to give his decision in a sealed cover before this court in the previous proceeding. Respondents Nos. 2 and 3 have categorically denied receipt thereof or its knowledge prior to production of the sealed cover before this court. It is possible that respondents Nos. 2 and 3 might have obtained its copy from some other source and respondent No. 7 might not be responsible for supplying its copy to these two respondents even if the petitioner's case is believed. Be that as it may, the fact remains that the impugned order at Annexure I to this petition cannot be sustained in law.

5. In view of my aforesaid discussion, I am of the opinion that this petition deserves to be accepted and the impugned orders passed by respondent No. 7 at Annexure I to this petition deserves to be quashed and set aside. The matter deserves to be remanded to respondent No. 7 for restoration of the proceeding to file and for his fresh decision according to law after giving an opportunity of hearing to the petitioner and also after supplying a copy of the surveyor's report.

6. In the result, this petition is accepted. The order passed by respondent No. 7 at Annexure G and also at Annexure I to this petition are quashed and set aside. The matter is remanded to respondent No. 7 for restoration of the proceeding to file and for his fresh decision according to law. Since the matter is old, respondent No. 7 is directed to dispose it of as expeditiously as possible preferably within one month from the date he comes to know of this judgment of mine. It is open to the petitioner or any of the respondents to produce a certified copy of this judgment of mine before respondent No. 7 and the period of one month for disposal of the proceeding will start from that date. Any final decision passed by respondent No. 7 against the petitioner will not be implemented for a period of one week from its date subject to the condition that it would be open to respondent No. 1 to process the plan submitted by respondents Nos. 2 and 3 without finally sanctioning them for a period of one week. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

