IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 229 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMBHAI R PATEL

Versus

COLLECTOR

Appearance:

MR RA PATEL for Petitioner.

Mr. B.Y. Mankad for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2002

ORAL JUDGEMENT

The petitioner in this petition under Article 227 of the Constitution of India has challenged the legality and validity of the order passed by the respondent-Collector on 9th December 1992 withdrawing the N.A. permission granted to the petitioner in respect of the land bearing Final Plot No. 266 admeasuring 1194 sq.meters of T.P. Scheme No. 6 of Anand, District-Kheda on the ground of alleged breach of conditions laid down

in the order dated 31.12.1998 granting N.A. permission.

2. The brief facts, giving rise to the filing of present petition are that the petitioner's agricultural land bearing Survey No. 863 and 864 admeasuring 14 acres and 16 gunthas was put to Town Planning Scheme by the Anand Nagarpalika and accordingly the same was given F.P. No. 226 in T.P. Scheme No.6 of Nagar Palika for the residential purposes by Anand Urban Development Authority. The development permission was issued by the said authority in favour of the petitioner on presentation of the plan and the said plan was duly approved by permission No. 453 dated 22.3.1998.

3. The petitioner has further contended that on receipt of the development permission, the petitioner had approached the respondent-Collector for having non-agricultural permission under Section 65 of the Bombay Land Revenue Code and the said permission was granted to the petitioner by the respondent-Collector, vide his order dated 31st December 1988. The petitioner, thereafter, started construction but due to financial constraints the construction was not completed and hence the respondent-Collector has passed an order against the petitioner cancelling the permission, imposing a penalty and removing the construction made by the petitioner. The petitioner has challenged this order of the respondent-Collector passed on 9-12-1992 on the ground that the said order is ab initio, null and void in view of the specific provisions contained in the Gujarat Town Planning and Urban Development Act, 1976, [hereinafter referred to as "the Act"].

4. The petitioner has further contended that the order passed by the respondent-Collector is erroneous and bad in law inasmuch as the authority has acted in the field wherein the jurisdiction is specifically barred by the Act. Section 117 of the said Act specifically speaks about the authorised construction and necessary permission, and the petitioner has obtained both the permissions as required by law and hence there was no breach whatsoever in any nature and therefore there was no question of taking any steps under the Bombay Land Revenue Code [hereinafter referred to as "the Code"], against the petitioner. The petitioner has further submitted that the jurisdiction to decide as to whether the construction made is unauthorised construction or regular construction, would be decided by the Town Planning Authority under the Act keeping in mind the provisions contained in Section 117 of the Act and not by the Collector as per Section 66 and 67 of the Code.

5. The petitioner has further contended that the basic object behind the provisions of Section 65 of the Code is to see that the construction may not be made at random but it may be made to some extent regularly and therefore the Legislature had imposed liability on the Collector to see that construction be made regularly. However in the petitioner's case, it was necessary to develop the town also and therefore special provisions have been made by enacting the Act and all the powers for regular construction have been given to the Town Planning Authority and it is for this reason only the development permission has been issued by the Town Planning Authority. The petitioner has lastly submitted that where the development permission has been granted by the Town Planning Authority the respondent Collector has only power to fix up the N.A. assessment as required by law and he has no power whatsoever to ask from the petitioner as to whether the approved plan has been revised before any actual construction has been made. According to the petitioner there was no provision under the Code to ask the petitioner to get revised plan. The revised plan can be issued only by the Town Planning Authority and not by the Collector, where such land is part of the Town Planning Scheme. Since the petitioner's land is part and parcel of the Town Planning Scheme No.6 the necessary permission from the Town Planning Authority was obtained and thereafter no notice was ever issued by the Town Planning Authority for any breach of the development permission and hence the action taken by the respondent-Collector is bad in law and required to be quashed and set aside.

6. I have heard Mr. R.A. Patel, learned advocate appearing for the petitioner and Mr. Mankad, learned A.G.P. appearing for the respondent Collector. I have also gone through the pleadings made by the petitioner and the documents attached therewith. No affidavit-in-reply was filed by the respondent-Collector. Mr. Patel has drawn my attention to the provisions contained in Section 117 of the Act, which read as under:

"117. Notwithstanding anything contained in any other law for the time being in force -

(a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact

that permission, approval or sanction required under such other law for such development has not been obtained."

On the basis of this provision, Mr. Patel has submitted that the land in question has not only been included in T.P. Scheme, but in the Final Town Planning Scheme, the land has been allotted Final Plot No. 206 of T.P. Scheme No.6 and that plot has been allotted to the petitioner and the petitioner has also been granted permission to put up construction on that plot. Mr. Patel, the ld. advocate produced, for my perusal, necessary permission issued by the Chairman, Anand Area Development Authority, Anand. This certificate indicates that the land in question has been constituted in the F.P. No. 266 in T.P. Scheme No.6 and the same has been allotted to the petitioner, and the petitioner has been granted permission to put up construction thereon as per the plan submitted by him. On the basis of this certificate, N.A. permission was granted by the respondent on 31.12.1988. Though the petitioner did not require any permission under Section 65 of the Code, the same was granted to the petitioner but now it is not open for the respondent Collector to withdraw the said permission on the ground of alleged breach of terms and conditions contained in the order granting such permission.

7. In support of his submission, the ld. advocate, Mr. R.A. Patel for the petitioner has relied on the decision of this Court rendered in Special Civil Application No. 6024 of 1990 dated 28th February 1992, wherein the respondent-Collector was directed to fix the N.A. assessment for the land which was belonging to the very Town Planning Scheme No.6 of Anand Municipality and based on the order passed in that petition, it was urged by the ld. advocate for the petitioner that the order passed by the Collector in the present case is not maintainable. Mr. Patel has further relied on the decision of this Court in the case of Karimbhai Kalubhai Belim & Others Vs. State of Gujarat & Anr., reported in (1996) 37(1) GLR Page 659, wherein the petitioners obtained the development permission under Sec. 29 of the Gujarat Town Planning & Urban Development Act, 1976, and by virtue of Sec. 117 thereof, the petitioners were not required to obtain any other permission under any other law after having obtained the development permission under Sec. 29. It is held in the said case, that once the development permission is granted under Section 29(1) of the Act, Sec. 117 thereof come into operation. It obliterates requirement of any other permission under any

other law. Even permission under Sec. 65 of the Code would not be necessary with respect to a land if the development permission under Sec. 29 of the Act is obtained. In that view of the matter, no condition could have been imposed in the development permission for obtaining permission under Sec. 65 of the Code. To insist on such permission by means of such condition would tantamount to rendering nugatory or set at naught the effect of Sec. 117 of the Act. This cannot be permitted to be done. Such condition in the development permission will have to be ignored.

8. Mr. Patel, the ld. advocate for the petitioner has further submitted that the above decision was followed in the case of Motiben Somaji & Ors. Vs. State of Gujarat & Anr., reported in (1996) 37(2) GLR Page 286, wherein it is held that as per the provisions of Section 117, once the development permission is obtained under Sec. 29 of the Act, then it is not necessary to obtain permission under Section 65 & 66 of the Bombay Land Revenue Code, or under any other such law. The Court has further held in the said decision, that it is not in dispute that the disputed land is forming part and parcel of town planning scheme and is under final plot No.16. There is no dispute about the fact that permission was granted by AUDA on 19th March, 1994 for development of the disputed land. Therefore, Sec. 117 of Gujarat Town Planning and Urban Development Act, 1976 will be attracted and it is not obligatory for the petitioners to obtain permission under Sec. 65 or 66 of the B.L.R. Code. The provisions of Sec. 117 of the Act will prevail. Based on the provision of Sec. 117 of the Act as well as the aforesaid decisions of this Court, Mr. Patel, the ld.advocate for the petitioner has urged that the order passed by the Collect is null and void, without jurisdiction and hence deserves to be quashed and set aside. It is, however, to be noted here that the provisions of Sec. 117.A of the Act is deleted by the Amendment Act of 1999. Prior to such deletion, an L.P.A. No. 151/96 was filed before this Court for the purpose of proper interpretation of Sec. 117 of the Act. However, the Division Bench of this Court (Coram: K.G. Balakrishnan, C.J. and S.D. Dave, J.), vide its order dated 2.7.99 has held that because of the deletion of the provisions contained in Sec. 117A of the Act by the Amendment Act of 1999, the interpretation of the said provisions is not required. Since the petitioner's case id governed by the provisions as contained in the Act prior to their deletion, the judgments referred to and relied on by the petitioner squarely apply to the case of the petitioner.

9. Mr. Mankad, the learned AGP appearing for the respondent has submitted that the petitioner has violated the terms and conditions of the development permission as well as the order passed by the Collector granting N.A. permission and hence the respondent-Collector has rightly withdrawn the NA permission and imposed the fine. He has further submitted that the petitioner has not given any reply to the notice nor he has shown any willingness to pay the fine and in such a situation there was no other alternative for the respondent-Collector but to cancel the permission and make an order for the removal of the unauthorised construction. He has further submitted that the petitioner has got an alternative remedy and the order of the Collector can be challenged in appeal before the Revenue Secretary and hence the present petition deserves to be rejected on the ground of having an alternative remedy.

10. I have considered the arguments of both the ld. advocates appearing for the respective parties and I am of the view that the petitioner's case is squarely governed by the three decisions referred to hereinabove. Once a development permission is granted to the petitioner and the land belonging to the petitioner form part of the Town Planning Scheme and final plot is also given to the said land, it is not obligatory on the part of the petitioner to obtain the permission under Sec. 65 and 66 of the Code. Here, in the petitioner's case, the permission is already granted by the respondent-Collector on the basis of the development permission and such a permission was withdrawn on the ground of alleged breach of terms and conditions contained in the development permission as well as the order granting NA permission. When the permission under Sec.65 of the Code is not at all required, there is no question of withdrawing the said permission by the District Collector and hence the Collector is not justified to pass such order of withdrawing the NA permission. As regards the respondent's objection of alternative remedy, it is true that normally once the petition is admitted after considering all the aspects, the Court would not entertain a ground of alternative remedy at the time of final disposal of the petition. The petitioner cannot be normally driven to another forum after expiry of the period of more than 10 years. But when a question of jurisdiction on the competence of authorities passing order which is in challenge, is involved, the Court may exercise its discretion and decide the matter, instead of sending the petitioner before another Forum. For this reason, I am not finding any substance in the arguments canvassed by the learned AGP appearing on behalf of the

respondent.

11. Having regard to the facts and circumstances of the case and having considered the legal position and the discussion made hereinabove, I am of the view that the impugned order passed by the Collector deserves to be quashed and set aside, and accordingly the order dated 9.12.1992 marked at Annexure "C" to the petition is hereby quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

[K.A. Puj, J.]

rmr.