

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3631 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SORATHIYA SHAMBBU JAKHU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3631 of 2004
MR NV ANJARIA for Petitioner No. 1
Mr. S.N. Shelat, Advocate General with Ms. Maithili
Mehta, AGP for Respondent No. 1,4
NOTICE SERVED for Respondent No. 1
MR NIKHILESH J SHAH for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

CAV JUDGEMENT

Leave to amend granted.

2. In this petition under Article 226 of the Constitution of India the petitioner has prayed for an appropriate writ, direction or order to permanently restrain the respondent Town Planning Authority from evicting the petitioner from building property bearing Municipal No. 151, 151/1 and 151/2 on the land situated in the Sorathiya Naka area near primary school in the town of Anjar, Kachchh. It is also further prayed for an appropriate writ, direction or order directing the respondents No. 1, 2 and 4 to effect appropriate variation in the Town Planning Scheme No.4 framed for the city of Anjar in so far as it adversely affects the petitioner's property. By way of draft amendment, the petitioner has prayed for an appropriate declaration that the petitioner as owner of the properties in question in capacity of owner of superstructures thereon are entitled to allotment of final plot and payment of compensation under Town Planning Scheme and that he is the holder of property entitled to be treated as so entitled under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"). It is also further prayed for an appropriate writ, direction or order to require the respondents to propose an appropriate variation in the Town Planning Scheme No.4 in so far as it relates to the properties in question so as to recognize the rights of the petitioner as owner/occupier under the Act.

3. It is the case of petitioner that he is owner of property bearing Municipal Nos. 151, 151/1 and 151/2 situated in the Sorathiya Naka area, Near Primary School in the town of Anjar, Kachchh and the said building comprises of two shops on the ground floor and residence on the first floor. It is the case of the petitioner that the building was constructed in the year 1989 and the shops were utilised by the petitioner-owner since recently for the purpose of godown and after Earthquake of 2001 in order to have some source of income the petitioner leased two shops to 2 different persons in the month of June 2003. It is the case of petitioners that the land upon which the aforesaid property was constructed is of the ownership of respondent No.3 Anjar Municipality; that the said land was leased to the petitioner and he has put up construction of superstructure on the said land; and thus the petitioner is the owner of the superstructure and the owner of the land is respondent No.3 Anjar Municipality. It is the case of petitioner that after the Earthquake of 26th January 2001 when the Town Planning Scheme No.4 was framed the land in question is reserved and earmarked for commercial plot and at no point of time the petitioner as

owner of the structure was given an opportunity and the Town Planning Scheme is framed and implemented ignoring the rights of the petitioner. It is submitted that as owner of the superstructure the petitioner is entitled to all the rights which are available to the owner of the land under the provisions of the Act inclusive of allotment of final plot and/or compensation. Therefore it is requested to direct the respondents to go for variation. It is further submitted that the petitioner was served with notice for eviction under the guise of implementation of Town Planning Scheme No.4 and therefore the present Special Civil Application has been filed. It is further submitted that the building in question came to be classified in category G-4 after the Earthquake and he has spent substantial amount for the purpose of repairing the house and as the building is incapable of being used the petitioner will be deprived of his property/superstructure. It is further submitted that this building is reconstituted under Final Plot No. 542 in the town planning scheme and the entire plot is reserved for commercial purpose and commercial sale and it is highly arbitrary and unreasonable to take away the existing building and use the plot so constituted for commercial purpose. It is also further submitted that the respondent Area Development Authority cannot be allowed to profiteer at the cost of rights of the petitioner owner and the action on the part of the respondent authorities in seeking to take possession of the existing building of the petitioner and to sell the plot for commercial purpose is highly arbitrary and illegal. It is further submitted that as owner of the superstructure considering the definition of the word "property" the petitioner is required to be considered as owner for all purposes inclusive of benefit under the Act, i.e., for the purpose of allotment of final plot and/or compensation and as the town planning scheme has been framed without giving any notice to the petitioner and/or without giving any opportunity to the petitioner and therefore it is requested to direct the respondents to effect appropriate variation in the Town Planning Scheme No.4 by recognising the petitioner as owner for the purpose of getting all the benefits which are available to the owner of the land under the Act and allow the present Special Civil Application.

4. In response to the notice issued by this Court, Shri S.N. Shelat, learned Advocate General appears with Ms. Maithili Mehta, learned AGP for the State Government. Shri Nikhilesh Shah, learned advocate appears for the Anjar Area Development Authority and Shri Mankad, learned advocate appears on behalf of Anjar

Municipality. An Affidavit-in-Reply is filed on behalf of Anjar Area Development Authority (AADA). In the said reply it is submitted that AADA has followed the procedure as laid down in the Act. It is further submitted that being owner of the superstructure the petitioner cannot be considered to be owner of the land and is not entitled to benefit under the Act as suggested by the petitioner i.e. allotment of final plot and/or compensation. It is also further submitted in the affidavit-in-reply that individual notices as well as public notices have been given; that the town planning scheme has already become final; once the town planning scheme has become final as envisaged under Section 67 of the Gujarat Town Planning Act all lands required by AADA vest absolutely in the Area Development Authority free from all encumbrances with effect from 21.1.2003; notice under Section 67 of the Act for vesting of the land in the Area Development Authority was given to the petitioner; and therefore the petitioner has no right now to continue with possession of the land in question. It is further submitted that as per Section 68 of the Act and Rule 33(1)(a) notice was issued to the petitioner for vacating the land and handing over possession to AADA. It is also further submitted that Asian Development Bank has provided fund for infrastructural development of Town Planning Scheme and as per the terms and conditions of the Asian Development Bank programme the work has to be completed within the stipulated time. It is also further submitted that there is no lease renewed in favour of the petitioner and if the petitioner is owner of the superstructure the petitioner not having any right to continue, on expiry of the lease is required to take away his superstructure. It is also further submitted that it is required to be noted that he has not challenged the non-renewal of his lease. It is also further submitted that the land in question is reserved for commercial purpose for commercial sale and the same is in consonance with provisions of the Act as by selling the said land/plot the Area Development Authority will be getting the amount which will be spent for the purpose of implementation of the Town Planning Scheme and the same is permissible under the law. It is further submitted that because of pendency of the present Special Civil Application Town Planning Scheme No.4 qua the plot in question is not being implemented and therefore it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is not in dispute that land upon which the petitioner constructed the superstructure is of the

ownership of respondent No.3 Anjar Municipality and the petitioner was lessee of the land in question. It is also not in dispute that lease in favour of the petitioner is not renewed and the same is not challenged by the petitioner. Under the circumstances non-renewal of the lease in favour of the petitioner has become final and that at present there is no valid lease in favour of the petitioner. The petitioner has therefore no right to continue with the possession of the plot in question. If the petitioner is owner of the superstructure, on expiry of the lease the petitioner is required to take away his superstructure. It is also required to noted that the Town Planning Scheme has become final. As contemplated in Section 67 of the Act, on implementation of the town planning scheme all lands required by the Area Development Authority absolutely vest free from all encumbrances in the Area Development Authority. In the present case, the preliminary scheme has already become final with effect from 22.1.2003 and therefore on and from 22.1.2003 the petitioner has no right to continue with possession of the land in question as the property in question is already vested with the Area Development Authority. It is also required to noted that the land in question is reconstituted as Final Plot No. 572 and is reserved for commercial purpose for commercial sale. Considering the provisions of the Act, more particularly Section 42 thereof while preparing the Town Planning Scheme to meet with expenses for the purpose of implementation of the Town Planning Scheme certain plots can be reserved by the Area Development Authority for the purpose of selling so that the sale proceeds thereof can be utilized for meeting with the expenses to be incurred for implementation of the Town Planning Scheme. Under the circumstances, the contentions on behalf of the petitioner that the land in question cannot be reserved for commercial purpose and/or for commercial sale and the Area Development Authority cannot have profit cannot be accepted. On the contrary, the reservation of the plot in question for commercial purpose for commercial sale is in accordance with the provisions of the Gujarat Town Planning Act. It is also required to noted that the petitioner was served with notices under Section 67 of the Act and thereafter notice under Section 68 Act and Rule 33(1)(a) of the Town Planning Rules. As held by this Court in the case of Jaswantsingh Mathurasingh And Another vs. Ahmedabad Municipal Corporation And Others, reported in (1992) Suppl. 1 SCC Page 5, individual notices upon the affected person as contemplated under Section 52 read with Rule 26 of the Rules is not required and non-service of individual notices the Town Planning Scheme is not vitiated. It is also required to be noted

that in the present Special Civil Application the petitioner has not challenged the Town Planning Scheme.

6. So far as the contention raised on behalf of the petitioner, that as owner of the superstructure the petitioner is entitled to all the benefits as owner which are required to be given under the provisions of the Act such as allotment of final plot and/or compensation is concerned, in Special Civil Application No. 14579 of 2003 and other cognate matters where the identical question arose, this Court vide judgment and order dated 21st March 2005 considering the provisions of the Act and the Judgment of the Division Bench of this Court, negatived the said contention. In the facts of the present case and for the reasons stated in the aforesaid judgment, the contention on behalf of the petitioner to recognize the rights of the petitioner as owner and to hold that the petitioner is entitled to final plot and/or compensation as owner of the superstructure is not required to be granted and the same is rejected.

6.1. So far as the prayer of the petitioner for direction on the respondents to propose variation under the provisions of the Act so as to recognize the rights of the petitioner as owner is concerned, the said question relating to variation in Town Planning Scheme under the provisions of the Act also arose in the said Special Civil Application No. 14579 of 2003 and other cognate matters where this Court has elaborately dealt with the same in aforesaid judgment and order dated 21st March 2005. For the reasons stated in the said judgment and order also the prayer of the petitioner to direct the respondents to propose variation is also required to be rejected.

7. It is required to be noted that there was vast destruction of lives and damage to property in the area due to devastating Earthquake on 26th January 2001 when people got buried in debris of buildings. Considering the difficulties faced, the Government decided to constitute a Special Planning Committee pursuant to which the Town Planning Scheme No.4 was framed. It is also required to be noted that the Asian Development has provided funds for infrastructural development for town planning schemes and as per the terms and conditions of the Asian Development Bank programme the work is to be completed within the scheduled time and therefore the town planning scheme is required to be implemented as early as possible. In view of the pendency of the present Special Civil Application, though the plot in question is reserved for commercial use for commercial

sale in order to meet with the expenses for implementation of the Town Planning Scheme, the scheme is not being implemented.

8. For the reasons stated hereinabove, there being no substance in the present Special Civil Application the same deserves to be dismissed and is accordingly dismissed. Notice is discharged.

Date: 13.5.2005. { M.R. Shah, J. }
rmr.

At this stage, Shri Anjaria, learned advocate appearing on behalf of the petitioner has prayed to stay the judgment and order passed by this Court for two weeks. Considering the facts and circumstances, more particularly keeping in mind the fact that the Town Planning Scheme is required to be urgently implemented in the interests of the public at large, the prayer to stay the operation and implementation of the judgment is rejected.

Date: 13.5.2005. { M.R. Shah, J. }
rmr.