

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1443 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 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 ?
- 5 Whether it is to be circulated to the civil judge ?

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JAYBAN WD/O.KANTILAL MOHANLAL - Petitioner(s)

Versus

PATAN MUNICIPALITY THR' CHIEF OFFICER & 3 - Respondent(s)

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Appearance :

MR MANISH R BHATT for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

MR NV ANJARIA for Respondent(s) : 1,

MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,

RULE NOT RECD BACK for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/05/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the communication dated 25th January, 2006 issued by the Collector, Patan, asking the petitioners to deposit the difference of Rs.

23,72,932.50 ps. within 21 days as well as the order dated 18th January, 2006 of the State Government on the basis of which the aforesaid demand is made.

2. The few facts are necessary for the purpose of determination of the present Special Civil Application. The petitioners were the owners of the land bearing Revenue Survey No. 81 situated at Patan admeasuring 2172.03 sq. mts. of land and it was the case of the petitioners that the possession of the said land came to be taken over by the Patan Municipality without following any due procedure and/or without any acquisition proceedings and the same was challenged by the petitioners by Special Civil Application being Special Civil Application NO.3956/97 and the said Special Civil Application came to be dismissed and against which the petitioners preferred the Letters Patent Appeal No. 984/97 which came to be partly allowed by the Division Bench of this Court by its judgment and order dated 26th September, 2000. Being aggrieved

and dissatisfied with the judgment and order passed by the Division Bench of this Court passed in Letters Patent Appeal No. 984/97, the respondent - Patan Municipality approached the Hon'ble Supreme Court of India by way of Civil Appeal Nos. 8831 - 8832 of 2003 and the same came to be disposed of on consensus between the parties that the Patan Municipality has offered one Final Plot No. 163 admeasuring 1320 sq. mts. of land to the petitioners herein in lieu of their land of Revenue Survey No. 81 City Survey No. 352 admeasuring 2172.03 sq. mts. and the same was on certain conditions and one of the condition being the price to be paid by the petitioners herein for the said Plot No. 163 and the said Civil Appeal came to be disposed of by the Hon'ble Supreme Court of India vide its order dated 9th December, 2004. The said order is reproduced as under :-

O R D E R

"At the hearing, the learned counsel for the parties submitted that the appellant - Patan

Municipality has offered one Final Plot no. 163 admeasuring 1320 sq. mtrs. to the respondent No.1 in lieu of his land of Revenue Survey No. 81 C.S.No.352 admeasuring 2172.03 sq. mtrs. Pursuant to the Resolution of the Patan Municipality dated 9.2.2004. The respondent No.1 has accepted the offer of alternative plot No. 163. The Government of Gujarat has approved the settlement afore-mentioned between the parties, subject to certain conditions, one of the conditions being the price to be paid by the respondent No.1 for said plot No. 163. Learned counsel for respondent No.1 states that appropriate price should be fixed by the Government.

All that we can say is that the Government may fix the appropriate price of the said plot, after hearing both the parties. In view of this settlement arrived at, it is unnecessary to do further exercise in these appeals.

The civil appeals are, accordingly, disposed of.

No Costs."

3.It appears from the record that thereafter proceedings came to be initiated for the

determination of the price of the land bearing Final Plot No. 163 and it appears from the record that the Secretary, Urban Development & Urban Housing Department, by its order dated 19th July, 2005 passed an order to determine the value of the land bearing Final Plot no. 163 considering the market price prevailing as on 9th December, 2004. Thereafter, it appears that the Collector submitted the proposal on the basis of the valuation made by the District Valuation Committee and the Urban Development and Urban Housing Department and determined the valuation of the land bearing Final Plot No. 163 at Rs. 73,60,000 considering the market price of the land in question at Rs.5500/- per sq. mt. which is in commercial zone and determined the valuation of the land bearing Survey No. 81 admeasuring 2172.03 sq. mtrs. of land (original land of the petitioner) at Rs.48,870,67.50 ps. considering the market price of the said land i.e. Land bearing Survey No. 81 at Rs. 2250/- per sq. mts. and accordingly directed the petitioners to pay the difference, which comes

to Rs. 23,72,932.50 ps. and on the basis of the said order, the Collector, Patan, by its order dated 25th January, 2006 has directed the petitioners to pay the amount as per the difference. Being aggrieved and dissatisfied with the same, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Bhatt, learned senior advocate appearing on behalf of the petitioners has vehemently submitted that while directing the petitioners to pay the difference i.e. Rs. 23,72,932.50 ps., the authorities have re-determined the valuation of the land bearing Final Plot No. 163 and has considered the market price of the said land bearing Final Plot No. 163 at Rs.5500/- per sq. mts., however, there is no further re-determination of the valuation of the land bearing Survey No. 81 admeasuring 2172.03 sq. mts. of land which was originally held by the petitioners and the valuation of the said land bearing Survey No. 81 is

considered at Rs. 2250/- per sq. mts. only and therefore, the order passed by the said authorities directing the petitioners to pay the amount as per the difference at Rs. 23,72,932.50 ps. is absolutely illegal. It is also further submitted by Shri Bhatt, learned advocate appearing on behalf of the petitioners, that even the valuation of the Final Plot No. 163 determined by the authorities, more particularly, the Urban Development & Urban Housing Department by impugned order dated 18th January, 2006 is also in breach of principles of natural justice as while considering the market price of the land bearing Final Plot No. 163 at Rs. 5500/- per sq. mts., the said authority has relied upon the report submitted by the Deputy Town Planner dated 9th November, 2005 on the basis of the valuation by the District Valuation Committee and the petitioners are not given the copy of the said report and/or the valuation made by the District Valuation Committee and the authority has relied upon the same without giving any opportunity to the petitioners and therefore, the same is in breach of

principles of natural justice. Shri Bhatt, learned advocate appearing on behalf of the petitioners, has also tried to make submissions on merits with regard to the valuation but for the reasons stated hereinafter, as this Court proposes to remand the matter to the appropriate authority for re-determination of the valuation and therefore, this Court has not considered the same on merits.

5. The learned advocate appearing on behalf of the Patan Municipality Shri Anjariya as well as Shri Dipen Desai, learned AGP, appearing on behalf of the Government authorities while supporting the valuation made by the District Valuation Committee, Deputy Town Planner as well as the authority who has passed order dated 18th January, 2006 has submitted that there is bound to be the difference in the valuation of the land bearing Survey No. 81 (originally owned by the petitioners) and the valuation of Final Plot No. 163 as the land bearing Survey No. 81 was in the residential zone and the land which is allotted to the petitioners being

Final Plot No. 163 is in commercial zone and therefore, it is submitted that the same is not required to be interfered with. They have also further submitted that in fact, the valuation of only Final Plot No. 163 was required to be done and re-determination of the valuation of Survey No. 81 was not required to be done even as per the order passed by the Hon'ble Supreme Court of India and therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the petitioners were the owners of the land bearing Survey No. 81 admeasuring 2172.03 sq. mts. of land against which, the petitioners are allotted Final Plot No. 163 in lieu of that and the same was allotted by a Resolution dated 9th February, 2004 of the Patan Municipality by way of the settlement and the Government of Gujarat approved the settlement

between the parties subject to certain conditions, one of the condition being price to be paid by the present petitioners for said Final Plot No.163 and while disposing of the Civil Appeal, the Hon'ble Supreme Court of India observed that the Government may fix the appropriate price of the said land after hearing both the parties and therefore, the Government was required to fix the appropriate price of Final Plot No. 163. However, when the Final Plot No. 163 was offered to be allotted to the petitioners in lieu of land bearing Survey No. 81 City Survey No. 352 admeasuring 2172.03 sq. mts., the petitioners are required to pay the difference of valuation between the two properties and therefore, for the purpose of determining the amount of difference of valuation of the two property i.e. Land bearing Survey No. 81 as well as Final Plot No. 163, the valuation of both the property are required to be made. It appears that in the present case the re-determination of the valuation of Final Plot No. 163 is only made and it also appears from the record that relying upon

certain documents, more particularly, the report of the Deputy Town Planner dated 9th November, 2005 on the basis of the valuation determined by the District Valuation Committee and the copy of the same is not given to the petitioners and therefore, the re-determination of the valuation of the property bearing Final Plot No. 163 at Rs. 5500/- per sq. mts. is in breach of principles of natural justice. Under the circumstances, to that extent the impugned order dated 18th January, 2006 passed by the Urban Development & Urban Housing Department is required to be set aside and the matter is required to be remanded to the Secretary, Urban Development & Urban Housing Department to re-determine the valuation of the land bearing Final Plot No. 163 as well as Survey No. 81 admeasuring 2172.03 sq. mts. and thereafter to determine the difference, which is required to be paid by the petitioners. At this stage, it is required to be noted that the contention on behalf of the respondents is that there is bound to be the difference in valuation of Survey No. 81 and Final

Plot No. 163 as Survey No. 81 is in the residential zone and the Final Plot No. 163 which is allotted to the petitioners is in commercial zone, however, the same may also be considered by the appropriate authority while taking the final decision with regard to the difference of amount to be paid by the petitioners and while re-determining the valuation of the Final Plot No. 163 and Survey No. 81.

8. For the reasons stated above, the impugned communication/order dated 18th January, 2006 by the Urban Development & Urban Housing Department and the consequential communication/order by the Collector, Patan, dated 25th January, 2006 are hereby quashed and set aside and the matter is remanded to the Secretary, Urban Development & Urban Housing Department, State of Gujarat, for re-determining the valuation of Final Plot No. 163 admeasuring 1320 sq. mts. of land as well as Survey No. 81 City Survey No. 352 admeasuring 2172.03 sq. mts. of land and to decide the difference to be

paid by the petitioners in accordance with law and on merits after giving an opportunity to the petitioners and supplying all the documents/reports of the Deputy Town Planner and/or District Valuation Committee to the petitioners i.e. the document, that may be relied upon by the said Department. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and it is ultimately for the appropriate authority to take an appropriate decision in accordance with law and on merits and to re-determine the valuation of Final Plot No. 163 as well as Survey No. 81 and decide the difference to be paid by the petitioners. The aforesaid exercise be done by the said authority within a period of 6 months from the date of receipt of this order.

9. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R. SHAH, J.)

kdc.