

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 10025 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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KHASTRIYA THAKOR SEVA MANDAL - Petitioner(s)

Versus

AHMEDABAD URBAN DEVELOPMENT AUTHORITY & 1 - Respondent(s)

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Appearance :

MR VIKRAM J THAKOR for Petitioner(s) : 1,
 None for Respondent(s) : 1 - 2.

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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 petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the action of the respondent - Town Planning Authority to the

allotment of Final Plot No.136 for commercial purpose and then to sale the said land to the respondent No.3 and to deduct excessive land from the original Survey No. 442 of the petitioner - trust. It is also further prayed to direct the respondent authority to allot the Final Plot of original area of 6472 sq. mts. to the petitioner - trust. The petitioner - trust has also prayed for to declare the Vejalpur - Town Planning Scheme No.2 so far as it relates to the allotment of Final Plot No.136 for commercial, to be illegal, null, void, unconstitutional and contrary to the provisions of Town Planning Act. It is also further prayed to hold and declare that the respondent authority has no jurisdiction, authority and power to allot the Final Plot No.136 for public purpose for commercial. It is also further prayed to direct the respondent authority to remove encroachment of road of 6 mts., laid down in the southern portion of Final Plot No.52 or alternatively, to direct the authority to allot the land of 500 sq. mts. from the Final Plot No.136.

2. It appears from the record that the petitioner - trust was the owner of the land bearing Survey No.442 admeasuring 8498 sq. mts. situated at Vejalpur, which they have purchased in the year 1957. It appears from the record that the intention of Town Planning Scheme No.2 - Vejalpur came to be declared in the year 1978 and the Town Planning Officer was appointed and objections and suggestions were invited from the public at large by giving public advertisement in the local newspaper, as required under the provisions of the Gujarat Town Planning Act (hereinafter referred to as "the Act") and in the year 1981, under the Draft Town Planning Scheme, the petitioner - trust was proposed to allot Final Plot No.27 against its Revenue Survey No. 442 Original Plot Nos. 22/1 and 22/2 and by individual notices dated 20th April, 1982, the petitioner was also directed to submit its objections/suggestions. Under the Draft Town Planning Scheme, the petitioner was proposed to be allotted Final Plot No. 27 admeasuring 6472 sq.

mts. of land. It appears that even prior thereto and after the intention was declared, the petitioner submitted representations before the Secretary, Panchayat Rural Housing & Urban Development, and the petitioner was directed to make submissions/objections before the Town Planning Officer by communication dated 18th July, 1979. It appears from the record that before the proposed Draft Town Planning Scheme, 1610 sq. mts. of land came to be acquired from the land bearing Survey No. 442 paiki by the Ahmedabad Municipal Corporation under the provisions of the Land Acquisition Act and therefore, the original holding of the petitioner of Survey No. 442 came to be reduced to that extent and necessary entry was also mutated in the revenue record being Entry No. 4249. Thereafter, after the Draft Town Planning Scheme and before the preliminary Scheme, considering the objections / suggestions submitted by the petitioner, at the time of preparing the preliminary Scheme, instead of Final Plot No. 27, it was decided to allot Final Plot No. 52 to the

petitioner. Thus, at the time when the preliminary Scheme was proposed, the holding of the petitioner of land bearing Survey No. 442 was 6576 sq. mts. of land, against which, it was decided to allot Final Plot No. 52 admeasuring 4603 sq. mts. to the petitioner and it appears that thereafter, the said Town Planning Scheme No.2 - Vejalpur came to be finally sanctioned by the State Government vide Resolution/Notification dated 22nd March, 1991 and the said Town Planning Scheme came to be in existence and implementation w.e.f. 26th March, 1992 and under the finalized Town Planning Scheme, which came to be sanctioned in the year 1991, the petitioner came to be allotted Final Plot No. 52 admeasuring 4603 sq. mts. of land against its original Survey No. 442 Original Plot No. 52. That under the finalized Town Planning Scheme against the original holding of the petitioner i.e. 6576 sq. mts. of land, the petitioner came to be allotted Final Plot No. 52 admeasuring 4603 sq. mts. of land and the remaining land of Survey No. 442 (6576 sq. mts. - 4603 sq. mts) came to be taken under

compulsory deduction under the provisions of the Act and the same was given Final Plot No. 136, which came to be reserved at the time of Town Planning Scheme for commercial sale. Thus, on the finalization of the Town Planning Scheme against the original holding of the petitioner bearing Survey No. 442 admeasuring 6576 sq. mts. of land, the petitioner came to be allotted Final Plot No. 52 admeasuring 4603 sq. mts. of land. Thus, the original Survey No. 442 came to be divided into 2 Final Plots i.e. one Final Plot No. 52 and another Final Plot No. 136. It appears from the record that on implementation of the Town Planning Scheme, the petitioner came to be served with the notices under Section 68 of the Town Planning Act r.w. Rule - 33 of the Rules informing the petitioner with regard to the changes as per the Town Planning Scheme, which is finalized. It appears that even out of the remaining land of Survey No. 442 i.e. the land other than which was allotted to the petitioner, by way of Final Plot No. 52 there is 6 mts. Town Planning Road as well as Final Plot No. 136

reserved for public purpose for commercial reservation by Ahmedabad Urban Development Authority and as stated above, the petitioner came to be served with the notices under Section 68 r.w. Rule - 33 of Rules on 23rd September, 1992. Thus, the Town Planning Scheme has become final in the year 1991 and it has come into existence and implementation since 1992 and even the final notice under Section 68 r.w. Rule - 33 of Rules came to be served in the year 1992. It appears from the record that even inspite of the fact that the Town Planning Scheme came to be implemented and finalized, the petitioner continued to make representations. It appears from the record that thereafter recently in the month of April - 2006, the land bearing Final Plot No. 136 admeasuring 1757 sq. mts. of land which was carved out under the Finalized Town Planning Scheme from the original holding of the petitioner i.e. out of land bearing Survey No. 442 (on compulsory deduction of the land under the Act) was put to auction and it has been sold in favour of the respondent No.3

herein and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3. Shri M.C.Bhatt, learned advocate appearing on behalf of the petitioner has vehemently submitted that there was an arithmetical error with regard to calculating the area of the land which was owned by the petitioner and therefore, the Town Planning Scheme is bad in law. He has also further submitted that at the time when the Draft Town Planning Scheme was proposed, there was no such reservation in Final Plot No. 136 and thereafter, at the time when the preliminary Scheme was proposed, the Town Planning Authority has made substantial variation after the Draft Town Planning Scheme, which is contrary to Section 52 of the Act and therefore, it is requested to set aside the reservation in Final Plot No. 136. It is also further submitted by him that carving out of Final Plot No. 136 from the land bearing Survey No. 442 is without authority under the law. He has also further submitted that

Section 40(jj) of the Act came to be introduced and/or amended for the first time by the Gujarat Act No. 4 of 1986, which came to be published in the Gujarat Government Gazette on 6th February, 1986, which provides, for the allotment/reservation of the land to the extent of 10%, or such percentage as near thereto as possible of the total area covered under the Scheme for the purpose of sale for residential, commercial or industrial use. Relying upon Section 7 of the Gujarat Act No. 4 of 1986. It is submitted that it provides for transitory provisions and as per the same the provisions of the principal Act shall continue to any scheme in respect of which a declaration of intention to make such scheme has been made under Section 41 of the principal Act at any time before 1st January, 1985 as if the said Act had not been enacted, and therefore, it is submitted that when in the present case the intention was declared in the year 1978 i.e. prior to 1st January, 1985 and Section 40 (jj) of the Act came to be introduced for the first time in the year 1986, which provides

for reservation for residential and commercial purpose, the authority could not have reserved Final Plot No. 136 for commercial purpose and therefore, it is requested to grant the reliefs as prayed for. Alternatively, he has also further submitted that even assuming that the Town Planning Scheme has become final and the petitioner is allotted Final Plot No. 52, in that case also, according to Shri Bhatt, learned advocate appearing on behalf of the petitioner, the petitioner is not given the entire peaceful and vacant possession of Final Plot No. 52 admeasuring 4603 sq. mts. of land and there is an encroachment upon the Final Plot No. 52, which is not possible of being removed and therefore, the petitioner should be allotted that portion of the land and/or area to that extent from the land bearing Final Plot No. 136 which according to the petitioner is 500 sq. mts. and therefore, it is requested to grant the reliefs as prayed for.

4. At the outset it is required to be noted that the intention of the Town Planning Scheme No. 2 -

Vejalpur came to be declared in the year 1978 and at the relevant time, the petitioner was the owner of the land bearing Survey No. 442 admeasuring 8498 sq. mts. of land. Out of which 1610 sq. mts. of land came to be acquired under the provisions of the Land Acquisition Act for the purpose of road. Thus, the holding of the petitioner came to be reduced to the aforesaid extent. It is also required to be noted that thereafter the Draft Scheme was proposed and objections/suggestions were invited by giving public notice in the newspaper as required under the Act and the Town Planning Officer was appointed and thereafter the Draft Town Planning Scheme came to be sanctioned by the State Government and thereafter the preliminary Town Planning Scheme was prepared and objections/suggestions were invited and thereafter the proposed preliminary Scheme was sent to the State Government and ultimately, the State Government sanctioned the Town Planning Scheme in the year 1991 i.e. more particularly, on 22nd March, 1991 and the same came to be implemented and came into

existence w.e.f. 26th March, 1992. Under the provisions of the Town Planning Act, on finalization of the Town Planning Scheme it has become part of the Act. Initially, at the time of Draft Town Planning Scheme, the petitioner was allotted Final Plot No. 27, however, on objections/suggestions being submitted by the petitioner, at the time of submitting the preliminary Scheme, it was decided by the appropriate authority to allot Final Plot No. 52 to the petitioner in lieu of his Survey No. 442. It is also required to be noted that under the provisions of the Act, certain percentage of lands, is required to be compulsorily deducted for the purpose of implementation of the Town Planning Scheme and carry out the reservation, and therefore, when the petitioner came to be allotted Final Plot No. 52 admeasuring 4603 sq. mts. of land, the remaining land of Survey No. 442 came to be compulsory deducted under the provisions of the Act and the same was carved out as Final Plot No. 136. So on finalization of the Town Planning

Scheme, the petitioner has no right over the land other than the land which is allotted to the petitioner under the finalized Town Planning Scheme i.e. in the present case, Final Plot No. 52 and more particularly, the petitioner has no right, title or interest in the land bearing Final Plot No. 136 which came to be reserved at the time of finalized Town Planning Scheme for commercial sale. The petitioner came to be served with the notices under Section 68 of the Act r.w. Rule - 33 of the Rules and under the provisions of the Act i.e. the final notice with regard to the finalized Town Planning Scheme and the petitioner came to be allotted Final Plot No. 52 in the year 1992 and the remaining land from the land bearing Survey No. 442 i.e. other than that 4603 sq. mts. of land from the original land bearing Survey No. 442, came to be taken over by the authority in the year 1992 for the purpose of 6 meters road as well as for Final Plot No. 136. In view of the above, when the Town Planning Scheme has become final in the year 1992 and the land bearing Final Plot No. 136 came to be

reserved for commercial purpose in the year 1992, it is not open for the petitioner now to challenge the Town Planning Scheme in the year 2006 which has become final in the year 1991 and which is implemented since 1992 by making a grievance that there was some arithmetical error in calculation and/or the Final Plot No. 136 could not have been carved out from the land bearing survey No. 442 and/or the Final Plot No. 136 could not have been reserved for the reservation for commercial sale.

5. It is required to be noted that at no point of time the petitioner has made any grievance with regard to the arithmetical error as alleged. Under the circumstances, after the Town Planning Scheme has become final in the year 1992, it is not open to the petitioner to make such grievance in the year 2006 with regard to the arithmetical error. So far as the land of Final Plot No. 136 reserved for the commercial sale and the submissions on behalf of the petitioner that in view of the introduction of Section 40 (jj) of the Act in the year 1986 and the

intention was declared prior to 1985 it was not open for the authority to reserve Final Plot No. 136 for commercial sale is concerned, it is required to be noted that as stated above, on finalization of Town Planning Scheme, the petitioner is allotted Final Plot No. 52 admeasuring 4603 sq. mts. of land and on implementation and finalization of the Town Planning Scheme, the remaining land of Survey No. 442 being taken away under the compulsory deduction under the provisions of the Act and on allotting the Final Plot No. 52, the petitioner has no right title, or interest in the said land which was forming part of the land bearing Final Plot No. 136. Under the circumstances, the petitioner cannot make any grievance with regard to the reservation of Final Plot No. 136. It is open for the authority to make reservation for any public purpose and it is required to be noted that at the time when even Draft Scheme was sent, Section 40 (jj) of the Act was already introduced. Be that as it may, the fact remain that on implementation of the Town Planning

Scheme and on compulsory deduction and carving out Final Plot No. 136, the petitioner has no right, title or interest in the land bearing Final Plot No. 136 and even otherwise, as stated above, when the reservation was made in the year 1991-92 under the finalized Town Planning Scheme, it is not open for the petitioner to make any grievance with regard to the same in the year 2006, more particularly, when the land bearing Final Plot No. 136 is already now sold by public auction in favour of the respondent No.3. It is required to be noted that certain lands are required to be reserved by the Town Planning Authority for public purposes and for proper implementation of the Town Planning Scheme and to meet with the expenses and for the implementation of the Town Planning Scheme and for giving other amenities such as, road, drainage, light, etc., and on selling the said plots the authority may get finance. Under the circumstances, the grievance made by the petitioner against the Town Planning Scheme which has been sanctioned in the year 1992 made by way of this petition under

Article 226 of the Constitution of India in the year 2006, more particularly, when the Scheme has already been implemented since 1992, the petitioner is not entitled to any relief in the present Special Civil Application.

6. So far as the submissions on behalf of the petitioner that there is some encroachment in the Final Plot No. 52 either by the authority or by somebody else and the said area of the land should be handed over to the petitioner from the land bearing Final Plot No. 136 is concerned, it is required to be noted that the facts are not very clear. It appears that in the year 1992 the petitioner was served with the notices under Section 68 r.w. Rule - 33 of the Rules and was allotted/handed over the possession of Final Plot No. 52 in the year 1992 and therefore, in absence of any particulars with regard to the alleged encroachment and/or not handing over the possession of the entire Final Plot No. 52, no relief can be granted in favour of the petitioner. However, it

will be open for the petitioner to make an appropriate representation for the same and the same may be considered by the authority in accordance with law and on merits. However, the same would be only qua Final Plot No. 52.

7. In view of the above and for the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R. SHAH, J.)

kdc.