

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 122 of 2007
In
SPECIAL CIVIL APPLICATION No. 15460 of 2006
WITH
LETTERS PATENT APPEAL No. 123 of 2007
In
SPECIAL CIVIL APPLICATION No. 14517 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

Sd/-

HONOURABLE MR.JUSTICE K.A.PUJ

Sd/-

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2.	To be referred to the Reporter or not ?	NO
3.	Whether their Lordships wish to see the fair copy of the 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

JAGDISH BHAGAT GURU VASUDEV PRASADDASJI & 3 -
Appellants
Versus
STATE OF GUJARAT & 3 - Respondents

Appearance :

MR SB VAKIL, SENIOR ADVOCATE WITH MR BS PATEL
WITH MR CHIRAG B PATEL for Appellants.
GOVERNMENT PLEADER for Respondent No. 1.

None for Respondent No. 2.

MR HARIN P RAVAL for Respondent No. 3.

MR SN SHELAT, SENIOR ADVOCATE WITH MR MITUL
SHELAT for Respondent No. 4.

MR PRASHANT G DESAI for Respondent No. 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 30/11/2007
COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellants - original petitioners, namely, JAGDISH BHAGAT GURU VASUDEV PRASADDASJI and others in Letters Patent Appeal No. 122 of 2007 and the appellants - original petitioners, namely, GOPINATHJI DEV MANDIR TRUST and another in Letters Patent Appeal No. 123 of 2007 have filed these Letters Patent Appeals under Clause 15 of the Letters Patent challenging the order dated 02.09.2006 passed by the Learned Single Judge of this Court in Special Civil Application No. 15460 of 2006 & Special Civil Application No. 14517 of 2006 whereby the Learned Single Judge has dismissed the said petitions and confirmed the order dated 27.06.2006 passed by the learned Joint Secretary, Urban Development and Urban

Rural Housing Department in revision application, who in turn confirmed the order passed by the Collector, Bhavnagar, in exercise of powers vested in him under Section 258 of the Gujarat Municipalities Act, 1963 in an appeal challenging the Resolution No. 137 (21) dated 30.05.2005 passed by the General meeting of the Gadhdha Nagarpalika, the respondent No.3 herein.

2. The brief facts giving rise to the present appeals are that the respondent No.4 i.e. Shri Bochasanvasi Akshar Purshottam Swaminarayan Sanstha, Shahibaug, Ahmedabad had given an application to the Administrator of Gadhdha on 07.08.2002 for allotment of 3 roads which were declared as public street and also used as public street for the last more than 200 years. On receipt of the said application, the respondent No.3 Municipality passed a Resolution on 12.07.2004 for inviting objections for closure of three streets. The respondent No.2 i.e. Collector, Bhavnagar however informed the respondent No.3 Municipality that unless the public street is closed under Section 146 of the Gujarat Municipalities Act, 1963, no decision could be taken and only after taking the decision and following

the procedure laid down under Section 65 (2) of the Act, the land could be allotted. Pursuant to the Resolution dated 12.07.2004, public notice was published by the Gadhdha Municipality in the daily newspaper and objections were invited. In all 7 objections were received in the prescribed time limit and two objections were received beyond the period of limitation. In the meeting held on 30.05.2005, Gadhdha Municipality has passed the following resolutions :-

“It is unanimously resolved that the proposal for prior approval is to be forwarded to the Government through the Collector, Bhavnagar as per the provisions of Section 65 (2) of the Gujarat Municipalities Act, 1963 and the valuation of the prevalent market price of the lands of the roads is to be done through the Town Planning and Assessment Department, Bhavnagar and having deposited the price of the land, the lands of road nos. 1-2 and 3 for the development and use is sold on permanent basis to Shri Bochasanvasi Akshar Purshottam Swaminarayan Sanstha as requested by them subject to the aforesaid conditions.”

3. The conditions prescribed in the Resolution are as under:-

- 1) "To sell the lands of road Nos. 1 to 3 as requested by Shri Bochasanvasi Akshar Purshottam Swaminarayan Sanstha subject to objections.
- 2) The new road is to be given by the Sanstha near the Darwaja and in between the Darwaja and Vegetable Market having the same width as of the present road near the Vegetable Market.
- 3) The present Darwaja near the Vegetable Market is to be kept in the same condition as of the present."
4. The said resolution was challenged by the petitioners before this Court in Special Civil Application No.12600 of 2005. While disposing of the said petition on 04.07.2005, the Learned Single Judge of this Court has observed that it is not necessary to entertain the present petition at this stage since the final decision with regard to the controversy involved in the present petition has not yet been taken by the authorities. The Court further observed that the final decision that may be taken by respondent No.1 with respect to Resolution dated 30.05.2005 shall not be implemented for a period of 15 days of its communication to the petitioners.
5. The Collector, Bhavnagar has considered the Resolution

passed by the Gadhda Municipality as well as the objections raised by the petitioners and others against the said Resolution and passed a detailed order on 26.10.2005. Before confirming the Resolution of the Gadhda Municipality, the Collector Bhavnagar has carefully gone through the entire facts of the case and the application filed under Section 258 of the Gujarat Municipalities Act, 1963 and sufficient opportunities of being heard have been given to the concerned parties. He has also gone through Resolution No. 137 (21) passed by the Gadhda Municipality in its General meeting held on 30.05.2005 whereby it was resolved to sell the land of the impugned roads to Shri Bochasanvasi Akshar Purshottam Swaminarayan Sanstha as per their request along with the objections received in pursuance of the Notification issued under Section 146 (1) of the Gujarat Municipalities Act, 1963 on condition that instead of same, new roads besides darwaja and in between the darwaja and vegetable market as per the width as of the present road near the vegetable market be provided after obtaining prior permission of the Government under Section 65 (2) of the Gujarat Municipalities Act, 1963 and after recovering the market

price of the land of the road, the resolution was to be implemented. He has, therefore, not accepted the prayer made by the present petitioners in their application under Section 258 of the Act.

6. Being aggrieved by the said order of the Collector, three petitions being Special Civil Application No. 23329, 23331 & 23332 of 2005 were filed before this Court. In these petitions, a statement was made by the learned Assistant Government Pleader on behalf of the State Government that in terms of provisions contained in Section 146 of the Act read with Section 65 (2) of the Act, the State Government would in exercise of power under Section 261 of the Act, may inquire about the legality of the decision of the Municipalities. A submission was also made that independently of the said situation, under Section 264 of the Act, the decision of the Collector dated 26.10.2005 would be open to revision by the State Government. The Court, therefore, found appropriate to dispose of all the three petitions vide its order dated 24.01.2006 and directed that the State Government shall initiate the above exercise suo-motu by issuing notice to all interested parties and the same

exercise shall be completed within a period of 4 weeks from the date of the order and till the entire exercise was completed, Resolution of the Municipality dated 30.05.2005 was ordered to stand suspended and would not be acted upon.

7. The Joint Secretary (Municipalities), Urban Housing and Urban Rural Housing Department, Sachivalaya, Gandhinagar has considered the entire matter and objections raised were also taken into consideration and vide his detailed order dated 27.06.2006, came to the conclusion that there was no justification in interfering with the impugned order of the Collector dated 26.10.2005. He has observed in his order that the Gadhdha Municipality, after issuing the public notice of 30 days under Section 146 (1) of the Act in the newspaper and after receiving objections and having considered the said objections has taken a decision and the said decision has been confirmed by the Collector under Section 258 of the Act. The right of ingress and egress to the property of the objectors was not affected and when it was not affected, then the decision taken by the Municipality in the interest of village Gadhdha does

not require interference. He has further observed that it cannot be believed that losses caused by going on the road which is not liked by some objectors and it cannot be said that it obstructs to him. The elected representatives have taken the decision unanimously keeping in mind the public interest and ordinarily, the said decision is to be given priority, especially when the decision taken by the Municipality is in accordance with the provisions of the law, it would be just and proper in the public interest to confirm the same.

8. The above order of the Joint Secretary was challenged before the Learned Single Judge of this Court in Special Civil Application Nos. 15460 of 2006 and 14517 of 2006. While dismissing the said petitions, the Learned Single Judge has shown only limited indulgence by observing that suffice it to say that while considering the matter for grant of permission under Section 65 of the Act, the authorities shall examine the aspects of regulation of the traffic during the period when Samaiya/procession is to be carried on during the period when ceremony of Jaljalani is to be performed once or twice in a year. If the existing road is sufficient, it may not call for putting

condition. If the same is not sufficient, it would be for the authority to provide for such condition so that the general public may not be put to any undue hardship during the period when once or twice such procession is to be undertaken every year. Subject to this observation, since no case was made out for interference, the Learned Single Judge has dismissed the petitions.

9. It is this order of the Learned Single Judge which is under challenge in the present appeals.

10. Mr. S. B. Vakil, learned Senior counsel appearing with Mr. B.S. Patel for the petitioners has submitted that under the provisions of Section 146 of the Act, any public street, which is declared as such, cannot be de-notified without following due procedure. The resolution dated 30.05.2005 was passed without following any procedure. He has further submitted that the allotment of land of roads to the respondent No.4 is violative of Article 14 of the Constitution of India. Under the provisions of Section 65 (2) of the Act, the Municipality can not lease or sell off the land under Section 146 (1) and grant a lease of immovable property for more than ten years and

the Resolution can be passed only after obtaining previous permission of the Government. However, the Resolution is passed for obtaining permission which is against the statutory provisions contained in proviso to Section 65 (2) of the Act. The roads for which the resolution was passed are in use for the last more than 200 years and except the roads in question, the residents thereon have got no other way for going to river Ghela. The appellants and others have filed the objections but without dealing with the same and giving any opportunity of being heard, the resolution was passed. The resolution was passed by the respondent No.3 in complete disregard of the earlier order passed by the Collector on 25.09.2003. The road in question is connected with sentiments of lakhs of devotees not only from the State of Gujarat or India but Internationally and there are many devotees who worship the soil on the road as Lord Swaminarayan has stayed for about 29 years at Gadhda in Swaminarayan Temple and the roads has been used by Lord Swaminarayan regularly for going to river Ghela. He has further submitted that on the roads which are ordered to be closed, the Trust has got properties and the tenants are residing thereon. For

tenants there is no other way for going to river Ghela and hence, the resolution is passed without any application of mind.

11.Mr. Vakil has further submitted that as per the settled principles of law, the land of the Municipality cannot be sold to any individual or institution without public auction. The respondent No.4 had made demand and by fixing market value, if the same is to be sold, then it would be arbitrary and contrary to the constitutional provisions, especially when the Municipality, being a State within the meaning of Article 12 of the Constitution of India is not entitled to sell the land without public auction. He has, therefore, submitted that illegal action of the Municipality which is confirmed by the District Collector as well as by the Joint Secretary deserves to be set at naught. He has further submitted that both the orders passed by the Collector as well as by the Joint Secretary clearly reveal that there is a need of the road. The respondent No.4 has accepted the terms for providing alternative road of the same size. It is, therefore, clear that ignoring the sentiments of lakhs of disciples of Swaminarayan temple and inconvenience of

the public at large, the respondent authorities have tried to help the private institution which is apparently arbitrary and against the law settled by this Court as well as by the Hon'ble Supreme Court. Mr. Vakil has, therefore, submitted that the respondent authorities as well as the Learned Single Judge of this Court have clearly committed an error in approving the action of the respondent No.3 Municipality in allotting the land of the roads to the respondent No.4 Trust. He has, therefore, submitted that the impugned orders are required to be reversed and the appeals be allowed accordingly.

12. In support of his submission that statutory power to do certain things in certain way must be done in that way or not at all, Mr. Vakil has relied on the decisions of the Hon'ble Supreme Court in the case of J. N. Ganatra V/s. Morvi Municipality, (1996) 9 SCC 495, Babu Verghese and others V/s. Bar Council of Kerala and others, (1999) 3 SCC 422, S. Ramanathan V/s. Union of India and others, (2001) 2 SCC 118, Dhanajaya Reddy V/s. State of Karnataka, (2001) 4 SCC 9.

13.Mr. Vakil has also relied on the decision of the Hon'ble Supreme Court in the case of Ramchandra Murarilal Bhattad and others V/s. State of Maharashtra and others, (2007) 2 SCC 588 in support of his submission that statutory authority exercising statutory power must assign reasons.

14.Mr. Vakil has further submitted that action without power has no validity and for that purpose, he relied on the decision of the Hon'ble Supreme Court in the case of Marathwada University V/s. Seshrao Balwant Rao Chavan, 1989 (3) SCC 132.

15.Mr. Vakil has further submitted that notice required under a statutory provision intended to protect public interest i.e. not for individual benefit cannot be waived. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of State Bank of Patiala and others V/s. S. K. Sharma, (1996) 3 SCC 364, Rajendra Singh V/s. State of M.P. And others, (1996) 5 SCC 460, M. C. Mehta V/s. Union of India and others, (1999) 6 SCC 237.

16.Mr. Vakil has further submitted that denial of hearing cannot be justified because the decision is subject to review or appeal. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of Institute of Chartered Accountants of India V/s. L. K. Ratna and others, (1986) 4 SCC 537.

17.Mr. Vakil has further submitted that the petitioner was not a party to the proceedings under Section 258 before the Collector nor did the Collector give to the petitioner any opportunity to be heard. The State Government's power under Section 261 are available with reference to matters for which its sanction, approval or consent is required under the Act. No such Government sanction, approval or consent is required for discontinuance or stopping of a public street under Section 146. Lastly, Mr. Vakil has submitted that the State Government's consideration under Section 264 of objections filed under Section 146 is no substitute for Municipality's consideration under Section 146 nor would rectify the infirmity in the Collector's order.

18.An affidavit-in-reply is filed on behalf of the respondent

No.3 - Gadhda Municipality. Mr. Harin Raval, learned advocate appearing for the respondent No.3 has submitted that the appeals filed by the appellants are misconceived in law as well as in facts and, therefore, deserve to be dismissed as untenable. A perusal of the order of the Learned Single Judge would clearly go to show that the petitions were treated as filed under Article 227 of the Constitution of India. In view of the said fact, the present appeals which are preferred by the appellants under Clause 15 of the Letters Patent are not maintainable in as much as no appeal preferred against an order passed in a petition under Article 227 of the Constitution of India would be maintainable and, therefore, the present appeals are clearly incompetent and untenable and, therefore, deserve to be dismissed on this ground alone. He has further submitted that the appeals filed by the appellants have become totally infructuous in view of the fact that after the judgment having been rendered by the Learned Single Judge on 02.09.2006, various subsequent events have taken place which are subject matter of a challenge in Special Civil Application No. 6552 of 2007 filed by Shri Gopinathji Dev Mandir Trust and another and, therefore, the

present appeal deserves to be dismissed. Mr. Raval has further submitted that the respondent No.4 forwarded the proposal dated 07.08.2002 for grant of land admeasuring 9702 Sq. Ft. equivalent to 1078 Sq. Yds. Similarly, by another proposal of even date, a request was made for grant of 5687 Sq. Mts. equivalent to 631.81 Sq. Yds. for the purpose of respondent No.4. Similarly, by third proposal of even date which was proposed by the respondent No.4 for grant of 461.60 Sq. Mts. equivalent to 551.80 Sq. Yds. of land was forwarded for its purpose. On 26.11.2002, a proposal was forwarded for consideration of the Collector, Bhavnagar requesting him to grant permission for closure of the road on permanent basis in accordance with the Gujarat Municipalities Act. On 18.12.2002, the Collector intimated the then Administrator of the respondent Municipality that after following necessary procedure under Section 146 (1), the land would be disposed of after passing necessary resolutions. It was further intimated that the same would require prior approval of the Government under Section 65 (2) of the Act. On 02.07.2004, a reminder was made by the respondent No.4 Trust with respect to its earlier three proposals

dated 07.08.2002. On receipt of the same, on 12.07.2004, a resolution was passed by the General Body vide Resolution No. 97 (17) and a public notice was issued on 23.07.2004. On receipt of the objections, which included some favouring the proposal and some objecting to it, on 19.08.2004, the Collector, Bhavnagar addressed a communication to the Executive Kothari of Shri Gopinathji Dev Mandir Trust to the effect that further action would be taken in accordance with law after receipt of the report. The matter was taken up for consideration on 30.05.2005 by a resolution of the General Board meeting of the Municipality and after considering the objections, it was decided to sell the land as proposed to the respondent No.4. Shri Gopinathji Dev Mandir Trust approached the Collector against the said resolution No. 137 (21) under Section 258 of the Act and also approached this Court by way of Special Civil Application No. 12600 of 2005 which came to be disposed of by an order dated 25.07.2005. In view of the dismissal of the writ petition, by an order dated 25.07.2005, said Trust and another were heard and proceedings instituted under Section 258 of the Act were disposed of by order dated 26.10.2005 and application of

the said Trust was rejected and Resolution dated 30.05.2005 was upheld. Thereafter, three petitions were filed before this Court as indicated above which came to be disposed of by judgment and order dated 24.01.2006 and directions were issued thereunder. In view of the directions issued, the proceedings under Section 264 of the Gujarat Municipalities Act, 1963 were decided after hearing the parties by judgment and order dated 27.06.2006 and the order of the Collector dated 26.10.2005 was upheld. Thus, the cumulative effect thereof was that Resolution No. 137 (21) of the respondent Municipality dated 30.05.2005 was sustained. Thereafter, against the order dated 27.06.2006, other two petitions being Special Civil Application Nos. 14527 of 2006 and 25460 of 2006 were filed which came to be disposed of by order dated 02.09.2006. In view of the one direction given therein, proposal was forwarded by the office of the Collector dated 29.11.2006, seeking prior sanction of the Government under Section 65 (2) of the Municipalities Act. Urban Housing and Urban Development Department of the State of Gujarat, vide order dated 29.01.2007 granted such permission under Section 65 of the Act.

In view of the said order of the State Government, the Collector passed consequent order dated 20.02.2007 for payment of sale consideration amounting to Rs.17,24,738/-. The respondent No.4 has made the payment of the said amount to the respondent No.3 Municipality on 21.02.2007. In view of the receipt of the sale consideration and the above referred orders, the respondent No. 3 Municipality has executed a registered document of sale bearing No. 185/07 dated 07.03.2007 and has put the respondent No.4 in possession of the land in question by drawing regular panchnama. The consideration has been duly received by the respondent No.3 Municipality and registered document of sale has been executed and the respondent No.4 was put into possession by the respondent No.3.

19.Mr. Raval has further submitted that in view of the developments that ensued in Gadhda town, though the respondent No. 3 Municipality had already earlier passed resolutions, accepted sale consideration and also executed registered document of sale and after everything was completed, circulating resolution No. 207 (1) dated 16.03.2007 was passed. Thereafter a meeting

was held on 23.03.2007. There was no agenda at that time for consideration of circulating Resolution No. 207(1) in the meeting of the respondent Municipality. From the Chair, a proposal was moved to confirm the circulating Resolution No. 207 (1) dated 16.03.2007 and in view of the said proposal having been made from the chair and supported by 21 members, Resolution No. 211 (4) was passed in the said general meeting of the respondent Municipality on 23.03.2007. On 12.04.2007, the respondent Municipality has received an order of the Collector passed under Section 258 (1) of the Act whereby the circulating Resolution No. 207 (1) dated 16.03.2007 was suspended. He has, therefore, submitted that nothing survived in the appeals and the appeals deserve to be dismissed.

20. An affidavit-in-reply is filed on behalf of respondent No.4. Mr. S. N. Shelat, learned Senior Counsel appearing with Mr. Mitul Shelat has submitted that in view of the concurrent findings given by all the authorities below as well as the Learned Single Judge, no interference is called for by this Court while exercising its appellate jurisdiction under Clause 15 of the Letters

Patent. He has further submitted that in view of the subsequent developments which have been narrated in the reply filed by the respondent No.4 as well as respondent No.3 Municipality, this Court should not entertain the present appeals challenging the Resolution of the Municipality which has been confirmed under Section 258 of the Act. The sale deeds have been executed and the appellants are not justified in making any grievance in the appeal proceedings. The appellants have not approached this Court immediately after the order passed by the Learned Single Judge on 02.09.2006. The appeal was taken up for admission hearing only in January 2007. He has, therefore, submitted that the appeals may be dismissed summarily.

21. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings as contended in the petitions as well as affidavits filed from time to time and during the course of pendency of the petitions before the Learned Single Judge as well as the documents attached therewith and after having gone through the impugned orders passed by the authorities below and having carefully considered

the authorities cited before the Court, we are of the view that the impugned order passed by the Learned Single Judge does not call for any interference while exercising our appellate jurisdiction under Clause 15 of the Letters Patent. The Learned Single Judge has considered almost all points raised before him and arrived at the just and proper conclusion looking to the facts and circumstances as well as considering the relevant statutory provisions. While considering that the dispute arose between the parties in light of the provisions contained in Section 146 and Section 65 (2) of the Gujarat Municipalities Act, the Learned Single Judge has observed that the Municipality published the notice in the newspaper inviting objections within a period of 30 days and, therefore, one month time was given for submitting the objections. The Municipality tentatively decided to discontinue the roads in question and after having received and considered the objections, it has resolved to sell the land to respondent No.4 Trust with objections. The resolution of the Municipality, when challenged before the District Collector under Section 258 of the Act was duly considered by him and after hearing the parties, the District Collector has approved the resolution of the

Municipality. When the said order was challenged before the Revisional authority of the State Government under Section 264 of the Act, the Revisional authority has considered not only the resolution but also the order passed by the District Collector under Section 258 of the Act and after hearing all the parties, had approved the said resolution and confirmed the order of the District Collector. When three authorities have given concurrent finding and arrived at a particular decision, which decision has been confirmed by the Learned Single Judge while exercising his writ jurisdiction under Article 227 of the Constitution of India, it is hardly open for this Court to upset the said decision and to take a different view in the matter. The Learned Single Judge has also considered the whole matter from the point of view that whether the powers exercised by the authorities are malafide or in an arbitrary manner. No case was made out to this effect either before the Learned Single Judge or before us and, therefore, we do not find any infirmity in the order of the Learned Single Judge while holding that when two authorities above the Municipality i.e. the District Collector as well as the State Government, have considered the objections and have found it proper not to

upset the decision of the Municipality, it would not be a case to interfere in a petition under Article 227 of the Constitution of India, more particularly, when there is no allegation of malafide or extraneous consideration. One of the arguments canvassed before the Learned Single Judge as well as before us is that the objections raised against the resolution of the Municipality beyond the prescribed period have not been considered and that as such, the said objections cannot be treated as the objections filed beyond the prescribed period and hence, the resolution passed by the Municipality is contrary to the provisions contained in the Act. The Learned Single Judge has dealt with this aspect and come to the conclusion that the parties were heard at length by the District Collector as well as the State Government and those objections were duly taken into consideration while arriving at the final decision in the matter and hence, no prejudice is caused to any one.

22. Some of the arguments canvassed center round the sanction to be granted under Section 65 (2) of the Act for sale of the roads in question to the respondent No.4. When both the petitions are heard and disposed of by the

Learned Single Judge, sanction was not granted and proceedings had not reached upto that stage. The Learned Single Judge has, therefore, rightly observed that the present petitions are at a stage, where the Municipality has only resolved to discontinue the road and to sell the land of road / public street to respondent No.4. Therefore, if the Resolution of the Municipality is accepted or not upset, the question may stand concluded qua the Municipality for discontinuation of the road or for sale of the land forming part of the road / public street with objections, but thereby, the aspects for grant of permission under Section 65 (2) of the Act or otherwise shall not get concluded. It will be before the competent authority to examine the contents or objections qua the ownership of the Municipality and thereafter to decide the matter in accordance with law.

23. When the matters are heard by us, the State Government has already granted permission to sell the land to the respondent No.4 under Section 65 (2) of the Act vide order dated 29.01.2007. The Collector, Bhavnagar was directed to make measurement and give details after verifying from the City Survey

Superintendent, Gadhda. The respondent No.3 thereafter directed the respondent No.4 Trust to deposit Rs.17,24,738/- as a consideration for sale of land in favour of respondent No.4 Trust. The respondent No.4 Trust paid the amount to the respondent No.2 Municipality on 21.02.2007. The respondent No. 2 Collector, Bhavnagar thereafter passed an order under Section 65 (2) of the Act to grant the land in favour of respondent No.4 Trust by an order dated 02.03.2007 and the possession was handed over by the Chief Officer of the Municipality to the respondent No.4 Trust on 05.03.2007 and on 07.03.2007, sale deed was executed in favour of respondent No.4 Trust. Thus the whole transaction was concluded and the property of the roads was vested in the respondent No.4 Trust. It is, therefore, rightly contended before us that it is now not open for the petitioners to agitate all these issues before us especially when the appellants have preferred Special Civil Application No. 6552 of 2007 challenging the decision of the State Government dated 29.03.2007 which is still pending. We are, therefore, of the view that not only from the point of view that there is a concurrent finding of the authorities below which is

upheld by the Learned Single Judge, but there is also now concluded transaction and the property in question has already changed its hands, it is not open for us to set the clock back especially when there is no justifiable reason for the same.

24. Looking to the religious sentiments attached with the issues involved in the matter, the Learned Single Judge has rightly observed that at least during the period when Samaiya/procession/Jaljalani is to be performed, the ingress and egress is through the said road or even internal road, which may be provided by the respondent No.4 Trust for reaching upto road No. 1 or the way touching the Mandavdhar towards river Ghela may be available so that as per the tradition the procession can, as usual, start from one way and can come back through the other way. Of course, at that stage, the Learned Single Judge has also considered the submission of Mr. Shelat that both the Trusts are espousing the principle of, and are disciples of, Lord Swaminarayan. The ways are different and if the ingress and egress are permitted to everybody during such period, it may not be possible for the respondent No. 4 Trust to maintain the

harmonious atmosphere inside the campus and it may also adversely affect the development, which is proposed by having the exhibition complex etc. As a matter of fact, at the time when hearing of these appeals was going on, a tense situation arose and a temporary solution was found out by demolishing the wall constructed by the respondent No.4 Trust and the disciples of the petitioner Trust, only 5 to 7 in number, were allowed to proceed to river Ghela for Jaljalni and once the said work was over, the wall was again reconstructed. As far as this aspect is concerned, it is for the authority to maintain the law and order situation and take into consideration the prevailing situation. We, however, hope that to avoid any conflicting situation, the interim arrangement which was made during the course of hearing of these appeals, if the same arrangement is made once or twice in a year on the aforesaid special occasion of Jaljalni / Samaiya etc. and only 5 to 7 persons are allowed to use the road, it would be in the interest of all and where the road is passing through, instead of putting a wall, a small gate is put which can be used only at the time of such occasions and except this occasion, the gate may remain closed, there may not be any

unpleasant event and it would satisfy the sentiments of all persons concerned. This is merely a suggestion and not a direction which can be considered and if found acceptable, be implemented accordingly.

25. So far as legal submissions made and authorities cited before the Court by Mr. Vakil, we are of the view that initially, decision was taken to discontinue the road and since alternative road is provided, provisions of Section 146 of the Act are complied with. Under Section 146 (1) of the Act, the Municipality has right to maintain the road and to consider new road and to close the old roads in the public interest and after following the due procedure, the Resolution dated 30.05.2005 was passed. We are not much impressed with the arguments canvassed by Mr. Vakil that the manner in which the particular act is to be done has not been done and that the decision is illegal or void-ab-initio. It is not the case where it can be said that the Resolution passed by the Municipality has caused serious injury and it is not capable of being entirely erased when the error is corrected on subsequent appeal. It cannot be said that initially, the blow is suffered and it is difficult to

contemplate restitution through an appellate decision. We do not find that there is any breach of fundamental procedure in the original proceeding and appeal is an overall substitute for the original proceeding. On overall view of the matter, it cannot be said that the Municipality has taken a decision which is not in public interest. There is also no substance in the proposition that the statutory authorities have travelled beyond the powers conferred and they have taken any action for which they were not empowered under the Act. As discussed by the authorities below as well as by the Learned Single Judge and as we found from the record, we are not ascribing the view that the authorities have not acted in the manner or the way in which they were supposed to act and hence, authorities cited in this regard are of no assistance to the appellants, looking to the facts and circumstances of the present case.

26. In light of the above observations and discussion, we are of the view that there being no substance or merits in any of these two appeals, and since we are in complete agreement with the reasons recorded and findings arrived at by the Learned Single Judge, we dismiss both

these appeals, subject to the hope which we have expressed hereinabove.

27. In view of the dismissal of appeals, Civil Applications no longer survive and they are accordingly rejected.

Sd/-
[M. S. SHAH, J.]

Sd/-
[K. A. PUJ, J.]

Savariya