IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 24 of 2013
With
SPECIAL CIVIL APPLICATION NO. 575 of 2013
With
SPECIAL CIVIL APPLICATION NO. 669 of 2013
With
SPECIAL CIVIL APPLICATION NO. 730 of 2013
With
SPECIAL CIVIL APPLICATION NO. 955 of 2013
With
SPECIAL CIVIL APPLICATION NO. 956 of 2013
With
SPECIAL CIVIL APPLICATION NO. 957 of 2013
With
SPECIAL CIVIL APPLICATION NO. 958 of 2013
With
SPECIAL CIVIL APPLICATION NO. 959 of 2013
With
SPECIAL CIVIL APPLICATION NO. 960 of 2013
With
SPECIAL CIVIL APPLICATION NO. 976 of 2013
With
SPECIAL CIVIL APPLICATION NO. 1020 of 2013
With
SPECIAL CIVIL APPLICATION NO. 1029 of 2013
With
SPECIAL CIVIL APPLICATION NO. 1773 of 2013
TO
SPECIAL CIVIL APPLICATION NO. 1780 of 2013
With
SPECIAL CIVIL APPLICATION NO. 2286 of 2013
With
SPECIAL CIVIL APPLICATION NO. 2793 of 2013
With
SPECIAL CIVIL APPLICATION NO. 17518 of 2012
With

SPECIAL CIVIL APPLICATION NO. 156 of 2013
With
SPECIAL CIVIL APPLICATION NO. 3267 of 2013
With
SPECIAL CIVIL APPLICATION NO. 6995 of 2013
With
SPECIAL CIVIL APPLICATION NO. 6996 of 2013
With
SPECIAL CIVIL APPLICATION NO. 6997 of 2013
With
SPECIAL CIVIL APPLICATION NO. 6998 of 2013
With
SPECIAL CIVIL APPLICATION NO. 6999 of 2013
With
SPECIAL CIVIL APPLICATION NO. 8624 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE ANANT S. DAVE Sd/-

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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

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VAISHALI PRATIK SHAH & 6....Petitioner(s)

Versus

STATE OF GUJARAT THRO SECRETARY & 4....Respondent(s)

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Appearance:

MR A J PATEL, ADVOCATE for the Petitioner(s) No. 1 - 7

IN SPECIAL CIVIL APPLICATION NOS.24/2013, 955/2013, 956/2013, 957/2013, 958/2013, 959/2013, 959/2013 AND 960/2013 : MR JK SHAH, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No.1
IN SPECIAL CIVIL APPLICATION NOS.669/2013, 976/2013, 1020/2013, 1029/2013, 1773/2013 to 1780/2013 AND 2793/2013 : MS KRINA CALLA, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1
IN SPECIAL CIVIL APPLICATION NOS.730/2013, 3267/2013, 6995/2013, 6996/2013, 6997/2013, 6998/2013 AND 6999/2013 : MR. ROHAN YAGNIK, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1
MR SN SHELAT, Ld. SENIOR COUNSEL with MR NILESH A PANDYA, ADVOCATE for the Respondent(s) No. 2
NOTICE SERVED for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE ANANT S. DAVE**

Date : 28/08/2014

COMMON CAV JUDGMENT

At the request of learned counsels for the parties, all these petitions are taken up for final disposal.

1. These petitions are filed with the following prayers which are common in nature :-

> **In Special Civil Application No.24/2013 and allied petitions :**
> "(A) Issue a Writ of mandamus, or any other appropriate Writ, order or direction in the nature of mandamus, holding that the petitioners are deemed to have been granted development permission for the subject land on the basis of the application submitted by the petitioners on 28.8.2012, in view of the provisions of section 29(4) of Gujarat Town Planning and Urban Development Act, 1976.
>
> (B) Quash and set aside the Circular issued by the Deputy Municipal Commissioner of respondent Municipal

Corporation in December 2012 (Annexure 'D') as being illegal, arbitrary and without any authority of law and contrary to the provisions of Gujarat Town Planning and Urban Development Act, 1976 and the Rules framed there-under, and hence not applicable in the case of the petitioners.

(C) Declare that the direction contained in the Circular at Annexure D issued by the Deputy Municipal Commissioner of the Respondent Corporation with regard to keeping open / reserved 40% of the land for the purpose of granting development permission, is illegal, without authority of law and void-ab-initio.

(D) Direct the respondent Vadodara Municipal Corporation to issue development permission to the petitioners for the subject land forthwith, or within such time limit as may be deemed fit, just and proper by this Hon'ble Court.

(E) During the pendency and till final disposal of this Petition, this Hon'ble Court may be pleased to permit the petitioners to commence the construction for residential purpose on the subject land bearing survey no. 1021/P 1 and 2, admeasuring 29845 sq. meters situated at Chhani, Taluka & District : Vadodara, on appropriate terms and conditions, in the interest of justice.

(F) This Hon'ble Court be pleased to grant any other relief as may be deemed, fit, just and proper in the interest of justice."

In Special Civil Application No.2286/2013 and allied petitions :

"(A) **YOUR LORDSHIPS** may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting-aside the impugned circular dated 4.12.2012 issued by

respondent no. 2 as being illegal, without jurisdiction, arbitrary, in breach of principles of natural justice, and also violative of Articles 14 and 19(1)(g) of the Constitution of India;

(B) **YOUR LORDSHIPS** may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting-aside the impugned decision of the respondent authorities as communicated vide letter dated 19.12.2012 issued by respondent no. 3 of requiring the petitioner to submit plan being consistent with the circular dated 4.12.2012, as being illegal, without jurisdiction, arbitrary, in breach of principles of natural justice, and also violative of Articles 14 and 19(1)(g) of the Constitution of India, and be further pleased to direct the respondent authorities to reconsider the application and the plan submitted by the petitioner without being influenced by the impugned circular dated 4.12.2012 issued by respondent no. 2, in the interest of justice and equity;

(C) Pending the hearing and final disposal of the petition, **YOUR LORDSHIPS** may be pleased to stay the operation, execution and/or implementation of the impugned circular dated 4.12.2012 issued by respondent no. 2 and also the impugned communication dated 19.12.2012 issued by respondent no. 3 in the interest of justice.

(D) Pending the hearing and final disposal of the petition, **YOUR LORDSHIPS** may be pleased to direct the respondent authorities to consider and process the application and plan submitted by the petitioner for grant of development permission in respect of subject land without being influenced by the impugned circular dated 4.12.2012 issued by respondent no.2.

(E) **YOUR LORDSHIPS** may be pleased to grant any other and further relief(s) as may be deemed just and proper in the interest of justice and fitness of things;"

2. Thus, all these writ petitions filed under Article 226 of the Constitution of India read with Articles 14, 21 and 300-A of the Constitution of India and under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to in short as 'the Act, 1976') and Rules of 1979 with the General Development Control Regulation, 2006 (GDCR) framed thereunder seek writ of mandamus or any other appropriate writ, order or direction and declaration that the application preferred by the petitioners under the provisions of Section 29 of the Act, 1976 with all requisite formalities envisaged under the Act are fulfilled and by virtue of deemed provisions contained therein, under sub-section 4 of Section 29, upon expiry of the period of three months from the date of receipt of application seeking permission for development it is deemed to have been granted if the appropriate authority fails to communicate its order to the applicant accordingly.

3. That such an application was preferred by the petitioners of Special Civil Applications No.24/2013 with requisite charges as prescribed but no decision is communicated by the appropriate authority and therefore, the petitioners are deemed to have been granted the development

permission for the subject land by the authority under the Act, 1976.

4. It is further prayed that a Circular issued by the Corporation in the month of December 2012 which states that 40% of the subject land should be kept open and reserved for future purpose by the Corporation for which development permission is sought for. That such Circular issued by the Deputy Municipal Commissioner, Vadodara Municipal Corporation is without any authority of law and hence, illegal, null and void and deserves to be quashed and set aside by this Court in exercise of powers under Article 226 of the Constitution of India.

5. It is further the case of the petitioners that the subject land is available in a designated residential zone as per the Zoning Certificate issued by the Vadodara Urban Development Authority (VUDA) and therefore, non-consideration / denial / refusal / withholding permission for development as sought for by the applicants by the Vadodara Municipal Corporation (VMC) on the ground of not providing for 40% deduction of land for the purpose of development permission when there is no Town Planning Scheme either under preparation plan or even contemplated, the Circular of December 2012 deserves to be quashed and set aside.

6. Likewise, prayers in other petitions are on similar line with some different facts about the area in which the subject land is situated, the

measurement of the land for which the allotted plan is prepared for the purpose of development. But one basic submission of law vis-a-viz subject matter of the petitions and prayers remain almost the same and so argued by learned Counsel appearing for the parties.

7. In such a background of facts, the petitioners have argued through their learned Counsels that the inaction on the part of the respondent Vadodara Municipal Corporation in granting the development permission in favour of the petitioners for the subject land despite there being no Town Planning Scheme, either prepared or even contemplated, and despite the requisite fee having been paid by the petitioners, is illegal, arbitrary, highhanded, unreasonable, uncalled for and contrary to the provisions of Town Planning Act.

The petitioners submit that having made the application for development permission in the prescribed form on 28.8.2012, the petitioners cannot wait for eternity for development permission from the respondent Corporation, particularly when there is no Town Planning Scheme in place at present or even contemplated in the near future. The petitioners submit that as per the provisions contained in Section 29(4) of the Act, 1976, the respondent Corporation is duty bound and under obligation to issue the development permission within a period of three months from the the date or receipt of

application, and if no communication is received by the person who has made the application, within the period of three months, then in that case, such a permission is deemed to have been granted. It is therefore, submitted that considering the fact that the petitioners have made the application for development permission on 28.8.2012 alongwith requisite charges / fees for the same, as no order or communication is received from the respondent Corporation, the petitioners are deemed to have been granted the development permission for the subject land.

The petitioners further submit that the subject land is non-agricultural land and as per the terms and conditions of the N.A. Permission granted by the competent authority, the petitioners are under obligation to commence the construction on the subject land within six months from the date of grant of N.A. Permission. Further, the petitioners are required to complete the construction within a period of three years. Failure on the part of the petitioners to comply with the conditions of N.A. Permission would result into automatic lapse of the N.A. Permission.

It is the case of the petitioners that in the present case, the petitioners have been granted non-agricultural permission on 29.8.2012 and hence, the petitioners are in dire need of development permission from the respondent Corporation in order to commence the construction

on the subject land within a period of six months and thereafter to complete the construction within three years.

The petitioners have submitted that the Deputy Municipal Commissioner of the respondent Corporation or the respondent Corporation has no authority to issue any circular providing for 40% deduction of land for the purpose of development permission when there is no Town Planning Scheme either under preparation, planned or even contemplated in the near future. However, the circular issued by the Corporation through its Deputy Municipal Corporation in December 2012, states that 40% land should be kept open and reserved for future purposes by the Corporation. The said circular has been issued without any authority of law and hence illegal, null and void. The Respondent Corporation is not authorized to issue such circular for deduction of 40% of land when a citizen makes an application for development permission for residential use. It is relevant to note that the subject land is falling in a designated residential zone.

It is the case of the petitioners that they cannot be prevented from making construction on the land of their ownership and possession. As per the provisions of Article 300A of the Constitution of India, a citizen cannot be prevented from his own land in accordance with law. There is no authority vested in the Commissioner of the respondent Corporation to direct a citizen to keep

40% of the land open or reserved, in order to grant development permission. There is no authority conferred upon the Commissioner which is discernible from the Town Planning Act and the Rules framed thereunder. The circular referred to above issued by the Corporation directed the land owners to reserve 40% of the land is whimsical, arbitrary, uncalled for, apart from being completely without authority of law. There is no provision under the Town Planning Act which provides for deduction of 40% land en-block, but percentage of deduction of land would depend upon need of the Town Planning Scheme and the orderly planned manner in which the area is sought to be developed.

The petitioners further submit that admittedly, there is no Town Planning Scheme at present and hence, the circular issued by the respondent Corporation is violative of fundamental rights of the petitioners under Articles 19 and 21 of the Constitution of India and violative of constitutional rights under Article 300A of the Constitution of India.

8. Learned Counsel Mr. N.K. Pahwa appears in Special Civil Application No.2286/2013 and while adopting the submissions made by learned Counsel Mr. A.J. Patel and relying on the ground of challenge recorded hereinabove, it is submitted that no Circular or Resolution can have a retrospective effect more particularly with added facts about the rights of owner of the land. Therefore,

according to learned Counsel Mr. N.K. Pahwa, non-consideration of application for permission for development within the prescribed time limit would amount to failure on part of the competent authority to communicate within three months from the receipt of the application as above and would result into grounds of deemed permission.

9. Likewise, learned Counsels appearing for the petitioners for in other writ petitions have adopted submissions and ground canvassed by learned Counsels Mr. A.J. Patel and Mr. N.K. Pahwa and would place reliance on the provisions of the Act, 1976 and Rules of 1979 framed thereunder alongwith GDCR.

10. As against above, learned Senior Counsel Mr. S.N. Shelat appearing with learned Counsel Mr. N.A. Pandya for the Vadodara Municipal Corporation (VMC) and learned Counsels appearing for the respective Urban Development authorities and the State of Gujarat would contend that challenge to the Circular of December 2012 issued by the Deputy Municipal Commissioner is misconceived inasmuch as the notification published in Gujarat Government gazette dated 22.03.2013 reveal the intention of VMC to prepare the Town Planning Scheme even in the newly added areas as notified in the above Gazette. It is therefore submitted that the petitioners have ample opportunities to raise all objections before the Town Planning Authority and therefore, the present petitions are not maintainable at this stage. In addition to the

above, all the petitioners have at different stages of hearing raised objections under the Act, 1976 and rules made thereunder. Besides, even the area which is not at all included in the Town Planning Scheme, there also VMC as requested, VUDA for variation in the GDCR of the development plan of VUDA in the public interest and expanding urban area. It is submitted that the VMC has already declared its intention of about 26 Town Planning Schemes in which the petitioner's land is situated and even the Circular issued for deduction of 40% of the land for roads and public maintenance for public purpose in future will also be included in the proposed Town Planning Scheme and reserved in the above area. It is submitted that when the area of land is less than 5000 sq. meters, VMC is not insisting for any reduction but when it appears that the plans are for construction of residential flats or residential accommodation, issuance of such a Circular is justified in larger public interest. That reliance is placed on Article 243 and Schedule 12 of the Constitution of India.

11. Learned Counsel appearing for the parties respectively have placed reliance on Definition Clause with regard to the subject petition and relevant provisions viz. Sections 9, 12, 17, 18, 19, 20 and under Sections 40(3)(j) and (jj)(a) of the Act, 1976.

> “Section 9 of the Act, 1976 provides that the Development Authority shall prepare

and submit the development plan to the State Government for the whole or any part of the development area in accordance with the provisions of the Act. Section 10 thereof requires that a copy of draft development plan is to be kept open for public inspection.

Section 12 provides for the contents of draft development plan generally providing the manner in which the use of land in the area covered by it shall be regulated and also indicating the manner in which the development therein shall be carried out. In particular, it shall provide, so far as may be necessary, proposal for designating the use of the land for residential, industrial, commercial, agricultural and recreational purposes; for the reservation of land for public purposes, such as schools, college and other educational institutions, medical and public health institutions; proposals for designation of area for zoological gardens, green belts, natural reserves and sanctuaries; transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development, proposals for water supply, drainage, sewage disposal, other public utility amenities and service including supply of electricity and gas; reservation of land for community facilities and services, etc.

Section 17 provides as to what should be the contents of the development plan. Section 17A(1) provides for constitution of a committee; sub-sections (2) and (3) whereof read as under :

(2) The Committee constituted under sub-section (1), shall :

(a) consider and suggest modifications and alterations in the draft development plan prepared by the Director under section 14;

(b) hear the objections after the publication of the draft development plan under section 18 and suggest modifications or alterations if any; to the Director.

(3) The Convenor of the Committee shall record in writing all the suggestions, modifications and alterations recommended by the committee under sub-section (2) and thereafter forward his report to the Director."

Section 18 of the Act provides for publication of a development plan; in terms whereof the objections and suggestions in writing are invited with respect thereto. The notice in terms of the said provision is to specify in regard to the draft development plan, inter alia, the following particulars :

(i) the existing land use maps;

xxx xx xxx

(iv) the provisions for enforcing the draft development plan and stating the manner in which permission for development may be obtained."

Section 19 provides for sanction of development plans, sub-section (2) whereof reads as under :

(2) Where the State Government approves the development plan with modification the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Gazette."

Preparation of zoning plan is envisaged under Chapter V thereof.

Section 20 of the Act reads as under :

"(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), Clause (k), clause (n) or clause (0) of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the land Acquisition Act, 1894.

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 189 (I of 1894), are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed."

Section 40(3)(j) & jj(a) of the Act reads as under :-

(j) the reservation of land to the extent of ten percent; or such percentage as near thereto as possible of the total area covered under the scheme for the purpose of providing housing accommodation to the members of socially and economically backward classes of people.

(jj)(a) the allotment of land from the total area covered under the scheme, to the extent of :

(i) Fifteen percent for roads;

(ii) Five percent for parks, playgrounds, garden and open space

(iii) Five percent for social infrastructure such as schools,

dispensary, fire brigade, public utility place as earmarked in the Draft Town Planning Scheme.

(iv) Fifteen percent for sale by appropriate Authority for residential, commercial or industrial use depending upon the nature of development.

Provided that the percentage of the allotment of land specified in paragraphs (i) to (iii) may be altered depending upon the nature of development and for the reasons to be recorded in writing;

(b) the proceeds from the Sale of land referred to in para (iv) of sub-clause (a) shall be used for the purpose of providing infrastructural facilities in the area covered under the scheme.

(c) The land allotted for the purposes referred to in paragraphs (ii) and (iii) of sub-clause (a) shall not be changed by variation of schemes for the purpose other than public purpose."

[emphasis supplied]

12. In addition to above, reliance is placed on the following decisions of the Apex Court :-

- **Chairman, Indore Vikas Pradhikiran v. M/s. Pure Industrial Cock and Chem. Ltd. and Ors.** reported in **2007 8 SCC 752**;
- **T. Vijayalakshmi and Ors. v. Town Planning Member and Anr. and Others** reported in **2006 8 SCC 502;**
- **Ahmedabad Green Belt Khedut Mandal vs. State of Gujarat through Secretary** reported in **2001 (1) GLR 888** and
- **Howrah Municipal Corpn. and Others v. Ganges**

Rope Co. Ltd. And Others reported in **(2004) 1 SCC 663**

13. Upon consideration of the decision in the case of **Ahmedabad Green Belt Khedut Mandal (supra),** the Division Bench of this Court had an occasion to consider the legality and validity of Sections 40(3),(jj) and (a) providing for allotment of land (to the extent of 15% of total area of scheme) for residential, commercial and industrial purpose and the Court found that only on the ground that the land owners deprived of land are to be paid compensation on the basis of market value on the date of declaration of intention to prepare a Scheme and not on the date of the proposed acquisition of properties cannot be held that the compensation is illegal and that the law is unreasonable. That it was further held that once the designation or reservation lapses by operation of statutory scheme under the parent Act, the same land cannot again go into the Town Planning Scheme as is done by the amended provisions of the above Section of the Act, 1976. However, the above decision was subject matter of challenge before the Apex Court and Civil Appeal No.1542-44/2001 alongwith other allied matters and the judgment dated 09.05.2014 now available has held in Paragraphs 38 and 39 as under :-

> “31. The High Court has committed an error in interpreting the provisions under challenge as it failed to appreciate that the provisions of the Town Planning Scheme in Chapter-V, no

where indicate that the lands under Section 20 cannot be subject matter of the Town Planning Scheme. The interpretation given by the High Court tantamounts to rewriting the provisions of the Act 1976 as the High Court has held that the land under Section 20 cannot be the subject of Section 40(3)(jj). Section 40(3)(jj)(a) only illustrates and provides the guidance to the authority.

32. So far as the observation made by this Court in Bhavnagar University (supra) is concerned, the court held that the land which has been de-reserved under Section 20 cannot be subject matter of revised development plan under Section 20(1). However, the issue involved in that case was in respect of applicability of Section 40 while framing the scheme, and this court had not dealt with the provisions of the scheme under Chapter-V of the Act.

37. It is a settled legal proposition that hardship of an individual cannot be a ground to strike down a statutory provision for the reason that a result flowing from a statutory provision is never an evil. It is the duty of the court to give full effect to the statutory provisions under all circumstances. Merely because a person suffers from hardship cannot be a ground for not giving effective and Page 144 of 169 grammatical meaning to every word of the provisions if the language used therein is unequivocal. (See: The Martin Burn Ltd. v. The Corporation of Calcutta, AIR 1966 SC 529; Tata Power Company Ltd. v. Reliance Energy Limited & Ors., (2009) 16 SCC 659; and Rohitash Kumar & Ors. v. Om Prakash Sharma & Ors., AIR 2013 SC 30).

38. The interpretation given by the High Court runs contrary to the intention under the Scheme and may frustrate the

> scheme itself as in the pockets left out in the scheme the basic amenities may not be available. The result would be that a portion of the land would be left without infrastructural facility while the adjacent area belonging to neighbours would be provided infrastructural facility.
>
> **39. In view thereof, we are of the considered opinion that the High Court has recorded an erroneous finding that if a designation lapses under Section 20, the land cannot be again reserved in a town planning scheme, and further if the land cannot be acquired under Section 20 for want of capacity to pay any compensation under the Act 1894, it cannot be allowed to be acquired indirectly or lesser payment of compensation as provided under the Act 1976. Thus, the judgment of the High Court to that extent is not sustainable in the eyes of law."**
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> [emphasis supplied]

14. Even the Resolution dated 16.05.2008 providing an exception of taking over land to 50% was also not challenged on various grounds and when submissions were made by learned Counsels appearing for the petitioners about permissible deduction upto 20% for non-agricultural land and 30% for agricultural land, the Apex Court considered Sections 50 and 51 of the Act and Rule 26 which provided for procedure to be followed for the purpose of preparing a preliminary Scheme and Final Scheme and notice published / given by the Town Planning Scheme in Form 'H' and affected persons to be given a hearing as envisaged under Rule 26(4) of Rules, 1979 and contentions so raised were found to be without merits and at a

premature stage by the Apex Court in the above case.

15. In another decision of the Division Bench of this Court dated 13.12.2013 in Writ Petition (PIL) No.112/2013, the challenge was to the Circular dated 04.02.2012 issued by VMC and also Resolution No.217 dated 30.01.2013 passed by the VMC allowing the developer to reserve 40% of the land in each Plot and notification dated 21-22/03/2013 declaring an intention to prepare Town Planning Scheme seeking amendment in the GDCR framed by VUDA, after threadbare analysis of the Scheme of the Act, 1976 and Rules 1979 in juxtaposition to each other, the Division Bench recorded chronology of events which are similar to various facts and circumstances of each of the petitions and almost identical so far as issuance of Notification dated 30.01.1978 under Section 1, sub-section 3 of the Act, 1978 and thereafter, constitution of Vadodara Urban Development Authority in exercise of powers under Section 22, Clause 1, sub-clause 2 and 4 of the Act, 1976 and further, passing of order under Section 122 of the Act of delegating the chief functions under the provisions of Section 7 and 23 of the Act to VMC. The question about issuance of order by the Officer of the VMC about deduction of 40% of the land while framing the Town Planning Scheme under Section 40(1) of the Act is also the subject matter of these writ petitions and therefore, the questions raised by learned Counsels for the petitioners recorded in earlier paragraphs have a clear answer in the

aforementioned judgment of the Division Bench in Paragraphs 35, 36, 49, 50 and 51 held as under :-

> **35. The purpose for giving a fair idea of the steps afore-noted which are yet to be undertaken is to show that at every stage an opportunity will be given to the persons likely to be affected by the scheme and it would be open for such persons to lodge their objections and suggestions which the appropriate authority will have to consider.**
>
> **36. Thus, we are convinced that there is merit in the first and the preliminary submission canvassed on behalf of the respondents that the petition deserves to be rejected at the very threshold since it is at a premature stage.**
>
> 49. There is one more reason why we are not impressed by the submission of Mr.Bhatt in this regard. The challenge to the validity of the Vadodara Urban Development Authority is after a lapse of almost 35 years. Mr.Trivedi, the learned Advocate General appearing for the State Government is right in submitting that the main purpose of VUDA is for the proper development or re-development of urban area according to the provisions of Section 22 of the Act. The powers and functions of the Urban Development Authority are conferred under Section 23 of the Act. Such powers are issued upon the Urban Development Authority for an effective planned development and control, keeping in view the interest of the public at large. Mr.Trivedi is justified in submitting that the challenge should fail also on the ground of delay because at such a belated stage if such a challenge is accepted then it would hamper the entire development process affecting the public at large. It would also affect and have a far reaching repercussions upon the actions which have been taken so far by the development

> authorities over a period of 35 years including the implementation and execution of several town planning schemes which are in existence.
>
> 50. Mr.Trivedi is also justified in submitting that by way of notification dated 30.1.1978, almost 87 urban development authorities were declared under Section 22 of the Act by the State Government. 82 authorities under Section 6, 2 authorities under Section 5 and 3 authorities other than the Vadodara Urban Development Authority and if on such a technical plea the notification is quashed or declared unconstitutional then it would lead to a disastrous situation whereby 88 authorities which came into existence on the same date and in similar conditions would also get affected.
>
> **51. In view of the above, we hold that there is no merit in the first argument of Mr.Bhatt so far as the challenge to the notification published in the official gazette on 23.2.1978, whereby VUDA was constituted is concerned.**
>
> [emphasis supplied]

16. The question of delegating the powers and sub-delegation was also answered by the Division Bench in Paragraphs 52, 53 and 54 of the judgment and finally after referring to the decision of the Apex Court in paragraphs 64, it was held as under :-

> “52. The above takes us to the second argument of Mr. Bhatt with regard to the legality of the order dated 16.9.1983 passed by the Government of Gujarat in exercise of powers under Section 122 of the Act and the resolution dated 28.10.1983 delegating all its powers and functions under the Act to the Vadodara

Municipal Corporation for the purpose of framing and implementation of the Town Planning Schemes.

53. According to Mr. Bhatt, the Act for the purpose of making development plan and for framing of the Town Planning Schemes has conferred powers in the entire area upon the VUDA. The area falling under the VMS is a part of the area of VUDA. Mr. Bhatt would submit that Section 122 of he Act cannot be pressed into service to prevent the development authority from exercising its powers under the Act and instead delegate such powers to some other alien authority. Mr.Bhatt would submit that the authority constituted under the Act is an expert body whereas the VMC is primarily constituted under the BPMC Act only to discharge the functions of the local-self-government. For the purpose of achieving the objects of the Act, the VMC is not an expert body but it is the VUDA which is the appropriate authority. According to Mr.Bhatt, the Section 122 of the Act does not contemplate the Government to issue a mandate to the Area Development Authority not to exercise its powers and not to discharge its duties under the Act and direct some other authority to discharge all the functions under Act. In such circumstances, according to Mr.Bhatt, the directions issued by the State Government vide order dated 16.9.1983 and the resolution to that effect dated 28.10.1983 are both illegal and unconstitutional.

54. We do not find any merit even in the aforesaid submission of Mr.Bhatt for more than one reason. It appears that vide order dated 16.9.1983 the instructions were issued upon the authority to delegate the powers under Section 23, Clause 1, Sub-clause (ii), Section 23 -1 (vi), Sections 68, 69, 70, 72 and 88 in favour of the VMC. Such instructions or directions are issued from time to time by the State Government in exercise of

its power under Section 122, Clause-1 of the Act with a view to see that the object of the Act is subserved.
Section 122, Clause-1 of the Act reads as under:-

“Sec. 122. Control by State Government.

(1) Every appropriate authority shall carry out such
directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.”

Section 23 of the Act reads as under:
“Sec. 23. Powers and functions of urban development
authority.
(1) [The power and functions of] an urban development authority shall be:-
(i) to undertake the preparation of development plans under the provisions of this Act, for the urban development area;
.....
(v) to control the development activities in accordance with the development plan in the urban development area;
2. [(v-a) to levy and collect such scrutiny fees for scrutiny of documents submitted to the appropriate authority for permission for development as may be prescribed by regulations;]
(vi) to execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities;
3. “(vi-a) to levy and collect such fees for the execution of works referred to in clause (vi) and for provision of other services and amenities as may be prescribed by regulation:”
17. (2) The urban development authority may, with the approval of the State Government, delegate [any of its powers and functions] to the local authority or authorities functioning in the urban development area.....”

18. With regard to the contention raised about consultation by the appropriate authority with the Chief Town Planning Officer about making the Town Planning Scheme under Section 41 of the Act, the Division Bench in Paragraphs 81, 82 and 83 answered as under :-

> **"81. In our opinion, at the time of consultation under Section 41, the Chief Town Planner has to ascertain whether the appropriate authority has made a town planning scheme for the development area or any part thereof and secondly whether such a scheme is in accordance with the provisions of this Act in respect of any land which is (i) in the course of development and (ii) likely to be used for residential or commercial or industrial or for building purpose or (iii) already built upon.**
>
> **82. Therefore, keeping Section 40 of the Act in mind it appears that the legislature has thought fit to provide for consultation under Section 41 at the stage of declaring the intention to make such a scheme. The function which the Chief Town Planner performs at that stage is an important function in public interest and, therefore, the consultation has to be meaningful and mandatory. It appears to us from the plain reading of Sections 40 and 41 of the Act that a resolution declaring the intention to make a scheme could be passed only if the Chief Town Planner approves the scheme verifying all the relevant aspects which are necessary under Section 40 of the Act.**
>
> **83. Thus, to the aforesaid extent, we are not in agreement with the contention of Mr.Shelat, the learned Senior Advocate appearing for the VMC that the consultation as provided under Section 41 could not be termed as mandatory but the same could be treated only as directory.**

At the same time, we are in agreement with Mr.Shelat that there has been a consultation and an effective consultation with the Chief Town Planner and the materials on record do suggest the same."
[emphasis supplied]

19. Finally, the contention raised about Articles 14, 19 and 300A of the Constitution of India, the Division Bench in Paragraphs 86 to 89 held as under :-

"86. In the aforesaid context, we may only say that the principles to be borne in mind in applying Articles 14 and 19 of the Constitution are now well-stated. The fundamental right to acquire, hold and dispose of the property can be controlled by the State only by making a law imposing in the interest of the general public reasonable restrictions on the exercise of the said right. Such restrictions on the exercise of a fundamental right shall not be arbitrary or excessive or beyond what is required in the interest of the general public. The reasonableness of a restriction shall be decided both from substantive and procedural aspects.

87. The Act 1976 makes very elaborate provisions regarding the formalities to be gone through, by the local authority, by the State Government and by the other authorities concerned, in the matter of preparing and finalizing a town planning scheme. As observed earlier, at all stages a very wide publicity is given, by the authorities concerned, in the mater of making known its proposals to the people and to the owners of the land, who are sought to be affected by the scheme. Provisions have been made for filing of objections and suggestions, and the authorities are bound to take into account those

objections and suggestions.

88. Article 300-A falls within Chapter-IV and Part-XII of the Constitution. Article 300-A states that no person shall be deprived of his property save by authority of law. This article was introduced from 20.6.1979, when Article 19 (1), Sub-clause (f) and 31 were deleted by the 44th amendment to the Constitution. Thus, the right to property was removed from Part-III relating to fundamental rights and was re-introduced as Article 300-A as a constitutional right. Right to hold a property is no more a fundamental right, instead it is a constitutional right.

89. The phrase "deprivation of the property of a person" must be considered in the fact situation of a case. Deprivation connotes different concepts. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power under the provisions of the Act 1976 may interfere with the right to property of a person by acquiring the same but it must be for a public purpose. Having regard to the facts of the present case, it is very difficult for us to accept the contention of Mr.Bhatt that the decision of the authorities to compulsorily deduct 40% of the land of the owner at the time of granting development permission is violative of Article 300-A of the Constitution. We have discussed in our judgment at length the legality and validity of such a decision and we have also explained why the same is in larger public interest, having regard to the object of the Act 1976."

[emphasis supplied]

The above paragraphs reproduced hereinabove clearly answer the contentions raised on behalf of the learned counsel for the petitioners about

compulsory deduction of 40% of the land, interpretation of Sections 20 and 40(3) of the Act vis-a-vis Article 300A of the Constitution of India and I am in agreement with the proposition of law laid down in the above decisions and ultimately I am of the view that the contentions raised by the learned counsel for the petitioners on the above issues in this petition have no merit and are hereby rejected.

20. That during the pendency of the petitions, an Association of Farmers, residing within the territorial limits of Vadodara Urban Development Authority [for short, `VUDA']] challenged the legality and validity of the resolution dated 30th January, 2013 passed by the VUDA and the notification dated 21st March, 2013 issued by the Government of Gujarat, by which any person who prays for the development permission of his land will have to set apart approximately 35% to 40% of the land for various public purposes at the stage of operation of the development plan and such restrictions which have been imposed in the General Development Control Regulations [for short, `the GDCR'], according to the petitioners, are contrary to the provisions of the Gujarat Town Planning and Urban Development Act, 1979, and is also violative of Articles 14 and 300-A of the Constitution of India, a Division Bench of of this Court by CAV Judgment pronounced on 15.07.2014 considered various contentions raised therein

relying on decisions of the Apex Court, various High Courts and held as under :-

> “PAGE 154-155
>
> At this stage, we may also deal with the submission very strenuously contended before us that if the impugned regulation is allowed to stand, it will amount to freezing of the land.
>
> It appears that this contention of freezing of land is on the basis of the decision of the Supreme Court in the case of Chairman, Indore Vikas Pradhikaran (supra). In the said case before the Supreme Court, the issue raised was, whether the appellate authority could have declared its intention to frame a town planning scheme in terms of Section 50 of the Act before the development attained finality. Having regard to the provisions of the Act with which the Supreme Court was dealing with and in the facts of the case, the Court took the view considering the provisions of Sections 17 and 49 of the Act that it was the development plan which determine the manner of usage of the land and the town development scheme enumerated the manner in which such proposed usage could be implemented. The Court observed that it would follow that until the usage was determined through a development plan, the stage of manner of implementation of such proposed usage could not be brought about. The Court took the view that it would necessarily follow that what was contemplated was the final development plan and not a draft development plan, since only the development plan was finalized it would have no statutory or legal force and the land used as existing prior

thereto with the rights of usage of the land arising therefrom would continue. The Court held further that to accept that it was open to the Town Development Authority to declare an intention to formulate a town development scheme even without a development plan and *ipso facto* bring into play a freeze on usage of the land under Section 53 would lead to complete exercise of power and arbitrary exercise thereof depriving a citizen of his right to use the land subject to the permitted land use and laws relating to the manner of usage thereof. In such circumstances, the Court held that it would be an unlawful deprivation of the citizens' right to property, which right includes within it, the right to use the property in accordance with law as it stood at such time.

PAGE 160-161

We are afraid, this decision is of no assistance to the petitioners and some of the observations made by the Supreme Court have been torn out of context. The Supreme Court was concerned with a plot of land reserved for a garden in a development plan for the purpose of promoting ecology and congenial environment. However, at a later stage, the Government of Maharashtra received a report from the Municipal Corporation of Pune that they were not in a position to acquire the said plot for the purpose of garden. In such circumstances, the State Government de-reserved the same by issuing a notification. The action on the part of the Government in de-reserving the plot which was reserved for the purpose of garden was challenged by way of a public interest litigation contending that once the land is earmarked for a particular

purpose for promoting environmental exigencies, the same could not have been de-reserved. It was in that context that the Court observed that in order to provide amenities to the residents, private land can be acquired to effectuate the public purpose. But, when acquiring the same, the Government cannot deprive the owner of the land from using the same for residential purpose. **In the case at hand, neither we are concerned with acquisition nor reservation and we have explained this very exhaustively. The impugned regulation imposes a restriction upon the owner of the land to set apart 35% to 40% of his land if at all he seeks development permission for the same, and such regulations, as we have explained, is with the avowed object of having planned development to meet with the future exigencies**.

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As discussed by us, the restriction which is sought to be imposed by way of the impugned regulation cannot in any manner be termed as unreasonable restriction or contrary to the provisions of law. The regulation has been framed in accordance with law with a definite object in mind i.e. planned development.

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We have answered this question exhaustively taking the view that the regulation proposed in the GDCR in no manner could be termed as arbitrary or illegal.

It has been very strenuously

contended before us on behalf of the petitioners that the very object with which the impugned regulation has been proposed in the GDCR is not likely to be subserved and the whole idea in the mind of the authorities is absurd. According to the learned counsel appearing on behalf of the petitioners, the applicability of the impugned regulation even so far as the small plot holders are concerned, will not serve the purpose which is in the mind of the authorities. The learned counsel have given us an example to explain this submission. According to the learned counsel, in a society if the small plot holders are asked to set apart 40% of the total area of the land at the time of seeking development permission, then in what manner the area of that 40% of the individual plot would help the authorities in framing an effective town planning which may be introduced in future.

We are afraid, we are not able to accept such submission canvassed on behalf of the petitioners for the simple reason that we are not experts in the field of town planning. To certify the impugned regulation as an absurd regulation will be too much. It is not that overnight such regulation has been proposed in the GDCR. Many experts in the field must have applied their minds and thereafter must have reached to this conclusion that such a regulation is now very much imperative in the present day scenario of expanding population and industrial development taking place in and around the cities which, in its turn, is attracting people from outside. Most of our towns and cities have grown up without any planning with the result that public amenities therein are now being found to be wholly inadequate for the already enlarged and still

expanding population. The roads are too narrow for modern vehicular traffic. The drainage system, such as it obtains in most of the towns and cities, is hopelessly inadequate to cope with the requirements of an already overgrown population. The best example we can give is the problems in Bopal so far as the city of Ahmedabad is concerned. Therefore, it is not for the Court to comment anything on the wisdom of the policy embodied in the impugned regulation.

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We are quite conscious of the fact that no land owner, more particularly, a small plot holder would appreciate the idea of leaving aside 35% to 40% of the land for such town planning purposes as any owner would be anxious to see that every inch of his land is being utilized at its best. However, people are not mindful of the fact that the restrictions imposed today will yield better results tomorrow and it is only the people who will ultimately be benefited.

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Once again at the cost of repetition, we reiterate that under the Town Planning Act there are provisions as regards the preparation of a development plan and town planning scheme. The development plan is a macro plan as envisaged under Section 12 of the Act, whereas the town planning scheme is a micro plan which is provided in Sections 40 to 71 of the Act. There is a vast difference between a macro plan and a micro plan. The development plan is prepared keeping in mind a vision for 20 years. None can dispute the fact that the

authorities, while sanctioning and preparing a town planning scheme, are unable to match with the pace at which the development is taking place as on today. Such is the reason why development takes place even in an area where there is no town planning scheme. Keeping this in view the special provisions are made for the non-town planning scheme areas. **If people are permitted, more particularly, those engaged in the business of construction and development, without keeping in mind the future necessities, more particularly, when a town planning scheme is prepared, virtually there would not be any possibility for reconstitution of a plot or even for providing an allocation as envisaged under sub-section (3) of Section 40 of the Act. However, with a view to see that the development is not stalled and can be permitted even in a non-town planning area, a provision is made to keep 40% of the total land area intact, wherein no development is permissible. Such a provision is not a reservation on allocation in the development plan, but it is one of the restrictions as provided under Section 26 of the Act.** This would facilitate the town planning authorities to undertake effective micro planning when the intention to prepare a town planning scheme is declared under Section 41 of the Act. Such restriction, in fact, is a part and parcel of the town planning and the same is not just a figment of imagination of the authorities concerned. **One should not forget that when a development is made in a non-town planning area, such lands are not final plots as defined under the Act, but they are survey numbers which indicate that it is a non-town planning scheme area."**

[emphasis supplied]

21. Now, the question of deemed permission for grant of development as contained in Section 29(4) of the Act, 1976 again it is no more res-integra and along with the issues considered in the case of **Chairman, Indore Vikas Pradhikaran** [supra], the Apex Court also considered and answered that whether application preferred by respondents for seeking permission for development in accordance with law as it existed at the time when application is preferred or at the time when such an application is decided. The Apex Court after considering certain decisions of the Privy Council, in paras 106, 107 and 108 held as under :

> "106. The learned counsel would submit that the said direction is not correct as the High Court should have directed the Director to consider the respondents' application in accordance with the law as it existed at the relevant point of time. **We do not subscribe to the said view as it is now well-known that that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned.**
>
> 107. In Director of Public Works v. Ho Po Sang [1961 AC 901 : (1961) 2 All ER 721], the Privy Council considered the said question having regard to the repealing provisions of the Landlord and Tenant Ordinance, 1947 as amended on 9-4-1957. It was held that having regard to the repeal of Sections 3A to 3E, when applications remained pending, no accrued or vested right was derived stating:
>
> "In summary, the application of the

second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of Sections 3A to 3E, but merely conferred hope or expectation that the Governor-in-Council would exercise his executive or ministerial discretion in his favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor-in-Council. The repeal dis-entitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been referred by petition to the Governor-in-Council but had not been determined by the Governor."

[See also Lakshmi Amma v. Devassy [1970 KLT 204]

The question again came up for consideration in Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. [(2004) 1 SCC 663], wherein this Court categorically held : [SCC p.680, para 37]

"The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not

create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rulemaking power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such settled expectation has been rendered impossible of fulfillment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such vested right or settled expectation is being sought to be enforced. The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."

In Union of India v. Indian Charge Chrome [(1999) 7 SCC 314], yet again this Court emphasized : [SCC p.327, para 17]

"The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration."

108. In S.B. International Ltd. v. Asstt. Director General of Foreign Trade [(1996) 2 SCC 439], this Court repelled a contention that the authorities cannot take advantage of their own wrong viz. delay in issuing the advance licence, stating :

> [SCC p.446, para 12]
>
> "We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with all the relevant provisions."
> [See also Kuldeep Singh v. Govt. NCT of Delhi [(2006) 5 SCC 702]"
> [emphasis supplied]

22. The Apex Court in the above paragraphs viz. 106 to 108 clearly held that the application has to be decided in accordance with law applicable on the date on which the authority according to restriction is called upon to apply its mind to the prayer of permission for development. The above view is a reiteration of law laid down by the Apex Court in the case of **T. Vijayalakshmi** [supra] and was held in paras 15 and 18 of the said decision already reproduced in para 49 of the decision in the case of the **Chairman, Indore Vikas Pradhikaran** [supra].

23. Therefore, simply by taking recourse of subsection (4) of Section 29 of the Act, 1976 in case if an application preferred seeking permission for development is received by the concerned authority and no order is passed and communicated to the applicant within 3 months from the receipt of such application, deemed permission be granted, is answered negatively. That law in existence and applicable on the date on which the authority granting such permission apply its mind,

is to be made applicable since unless and until the conditions precedent laid down in the statute for a right of its enforcement at several stages stand fulfilled and satisfied, in absence of no such vested right in the facts of these cases. Therefore, it is held that for application seeking permission for development under Section 27 of the Act, 1976 though received in accordance with law as provided under Section 29 of the Act, 1976 remained undecided or no order is passed within 3 months of the receipt of such application, it cannot be said that deemed permission for development is granted. However, such applications are to be decided as expeditiously as possible and within a reasonable time, depending on the facts and circumstances of each case.

The view is also taken by the Apex Court in the case of **Esha Ekta Apartments Cooperative Housing Society Ltd. v. Municipal Corporation of Mumbai** reported in the case of **2013 (5) SCC 357** in the context of Section 45 of the Urban Development and Regulation Act, 1966 where Section 45 is on par / parimateria with Section 29 of the Gujarat Town Planning and Urban and Development Act, 1976 and therefore, also contentions raised by the petitioners about deemed permission for development under Section 29(4) have no merits.

24. Thus, the cumulative effect of the above decisions, i.e. **Vadodara Shaheri Jilla Khedut Mandal through President v. Vadodara Municipal**

Corporation through Municipal Commissioner and Others [Writ Petitions (PIL) No.111/2013 and 112/2013], **Chairman, Indore Vikas Pradhikaran (supra) and Ahmedabad Green Belt Khedut Mandal reported in 2001(1) GLR 888 and later on partly over-ruled by the Apex Court vide judgment dated 09.05.2014 in Civil Appeal No.1542-44 of 2001 along with other allied matters, the reference of which is also made in the CAV Judgment dated 15.07.2014 by the Division Bench of this Court in Writ Petition [PIL] No.111 of 2013** with regard to the interpretation of Sections 20 and Section 40(3) of the Act, 1976, it is clear that subject is no more *res integra* as to the Circular issued by Vadodara Municipal Corporation for providing 40% deduction of land for the purpose of development permission even though no Town Planning Scheme is finalised, cannot be said to be illegal as held in the above decisions. Further, in the facts of these cases, it is not in dispute that during the pendency of these petitions, the authority has declared its intention to prepare the Town Planning Scheme as envisaged under Section 41(1) of the Act and all the grievances and contentions raised by learned Counsels for the respective parties can be raised by way of objections before the Town Planning Officer and the State Government at respective stages as envisaged under the Town Planning Act and Rules.

25. Therefore, all the above petitions fail and stand disposed of accordingly. The Rule or

Notice as the case may be in the respective petitions stand discharged. Ad-interim relief / Interim relief granted earlier, if any, in the petitions stand vacated.

Sd/-

(ANANT S. DAVE, J.)

CAROLINE