

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 10487 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE R.M.CHHAYA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

PRAVINBHAI MULJIBHAI PATEL REPRESENTING THE ESTATE OF &
1....Petitioner(s)

Versus

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

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Appearance:

MR S N THAKKAR with MR.B H UPADHYAY, ADVOCATE for the Petitioner(s)
No. 1 - 2

MS ASMITA PATEL, AGP for the Respondent(s) No. 1

MR HS MUNSHAW, ADVOCATE for the Respondent(s) No. 2 - 5

RULE SERVED BY DS for the Respondent(s) No. 1 - 3

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CORAM: HONOURABLE MR.JUSTICE R.M.CHHAYA

Date : 24 /12/2014

CAV JUDGMENT

1. Heard Mr.S.N.Thakkar with Mr.B.H.Upadhyay,

learned counsel for the petitioners, MS.Asmita Patel, learned Assistant Government Pleader for respondent No.1 and Mr.H.S.Munshaw, learned counsel for respondent Nos.2 and 3. Though served, no one appears on behalf of respondent Nos.4 and 5.

2. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the communication/order dated 10.05.2010, whereby the application for development filed by the petitioners came to be rejected. The petitioners have further prayed for declaration that the petitioners are entitled to develop as owners of the land, bearing Survey Nos.122/2 and 122/3 total admeasuring 3,987 Sq.Mtrs., situated in Ruva Town Planning Scheme No.3, Bhavnagar, under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act" for short). The petitioners have also prayed for declaration that the said land is no longer under encumbrances of reservation of school or otherwise under the Town Planning Scheme.

3. The facts, which can be culled out from the record of the petition are as under:-

3.1 It is the case of the petitioners that the petitioners are the heirs of late Shri Muljibhai Shamjibhai Patel and Bachubhai Shamjibhai Patel. Original Survey Nos.122/2 and 122/3, total admeasuring 8 Acres and 30 Gunthas (3987 Sq.Mtrs.) were permitted to be vested from agricultural to residential use i.e. N.A. Permission, under Section 65 of the Bombay Land

Revenue Code (hereinafter referred to as "the Code" for short) came to be granted vide order dated 21.07.1967 passed by Collector, Bhavnagar. After such permission was granted, the land in question was plotted and the same were sold by the original owners to two societies namely "Shri Hariram Cooperative Housing Society Ltd." as well as "Shree Dharmraj Cooperative Housing Society Ltd." by different Sale-Deeds.

4. It is also noteworthy that the Draft Development Plan came to be published under the provisions of the Bombay Town Planning Act, 1954 on 27.01.1966 and ultimately, the State Government invited objections as provided under Section 17(1)(a)(ii) vide Notification dated 01.02.1983 calling upon any person to submit suggestions or objections, if any, with respect to the proposed modifications in the Draft Development Plan. Record further reveals that ultimately, after considering all the objections and suggestions that were received, the State Government vide Notification dated 08.11.1985 sanctioned the said Draft Development Plan and the same came into operations with effect from 01.01.1986. The land in question was designated as "Residential Zone" in the Final Development Plan.

5. It appears that by Notification dated 19.01.1983 issued by the Competent authority, the respondent-corporation being an appropriate authority declared its intention to prepare Town Planning Scheme No.3, which includes the land in question. Draft Town

Planning Scheme No.3 came to be sanctioned under Section 48(2) of the Act dated 05.09.1985. It appears that thereafter, the Town Planning Officer was appointed as provided under Section 50 of the Act on 06.11.1985.

6. The Town Planning Officer prepared the Town Planning Scheme as provided under Section 52(ii) of the Act and the said scheme was sanctioned by the State Government under Section 65(3) of the Act vide Notification dated 26.06.1990 and the said preliminary scheme came into force on 30.07.1990. As per the said sanctioned scheme and as per Form-F on the record, Revenue Survey No.122/2, total admeasuring 35,410 Sq.Mtrs., was allotted Original Plot Nos.2/1 and 2/2 and the same was reconstituted as Final Plot Nos.2/1 and 2/2 admeasuring 29,315 and 3400 Sq.Mtrs., respectively. It is also noteworthy that in the remarks column, it is mentioned that there is existence of non-agricultural construction. In order to verify the said position, at the time of hearing, the respondent-Corporation was asked to submit a part plan of the same. It appears that as per the said part plan, the construction, which was already made by the society to whom the original owners sold the land, is protected being Final Plot Nos.2/1 and 2/2, whereas while reconstituting the Final Plot, the remaining area is carved out as Final Plot No.125 and the same is reserved for "school".

7. It appears that by Notice dated 10.07.2008, the

petitioners through their advocate addressed a Notice under Section 20(2) of the Act, wherein it is averred thus:-

"(1) The aforesaid land is subject matter of RUVA Town Planning Scheme-3, Mul Khand No.2-3 is reserved for a particular purpose and it was expected that the land reserved for a particular public purpose will be acquired by the competent authority within 10 years from the appointed day and the compensation will be paid to the respective owner of the land.

(2) As it reveals that the authority had failed to acquire the said land and land in time namely within 10 years. Hence, this notice.

(3) You are noticed to acquire the land reserved for the public purpose within 6 months from the receipt of this notice failing which our client shall treat the reservation hearing lapsed and the land is no longer with a clouds of any proposed reservation."

8. It further appears from the record that thereafter, the petitioners filed an application under Sections 27, 34 and 49 of the Act for granting permission to develop the land, which is now Final Plot No.125 in the sanctioned Town Planning Scheme. On scrutiny of the same, the said application came to be rejected vide order dated 10.08.2010, against which, the present petition is filed.

9. The petitioners have raised contentions to the effect that the order dated 10.05.2010 is ex facie illegal and arbitrary and unreasonable and, the same is passed without making any proper inquiry as envisaged under Section 22 of the Act. It was further contended that in light of the provisions of Section 20(2) of the Town Planning Act, proceeding of acquisition of the land, has not been initiated within 6 months from the date of the Notice given after the

expiry of 10 years of the designation of the said land. It is, therefore, contended that the order dated 10.05.2010 deserves to be quashed and it is obligatory on the part of respondent No.3 to grant development permission.

10. The State Government has filed affidavit through its Town Planning Officer, wherein it is specifically stated that the plot in question is not reserved in the Final Development Plan but is reserved in Town Planning Scheme. It is also contended that the said scheme came to be sanctioned under Section 65(3) of the Act vide Notification dated 26.06.1990 and the scheme has come into force on 30.07.1990 and that the land in question is allocated for development of school for the appropriate authority and that as per the scheme it has vested in the authority on the date on which the scheme has come into force. It is further contended by the State Government that Section 20 of the Act is not applicable. It is also contended that the scheme has already been implemented and therefore, the petition is misconceived especially considering that the said scheme has come into force and has become part of the Act.

11. Respondent No.2-Bhavnagar Municipal Corporation has also filed an Affidavit-in-reply.

12. Apart from the factual aspects, it is contended by respondent No.2-Corporation that the land bearing Survey No.122 was in the name of Bachu Shyamji and Mulji Shyamji and as per the record of the scheme, it stands in the name of "Shri Hariram Cooperative

Housing Society Ltd.", as well as "Shree Dharmraj Cooperative Housing Society Ltd". It is further contended by respondent No.2-Corporation that the land in question has been renumbered as Final Plot No.2/1, admeasuring 29,315 Sq.Mtrs. as well as Final Plot No.2/2, admeasuring 3,400 Sq.mtrs. It is further contended that Final Plot No.67 in the draft scheme was carved out and it was reserved for school as public purpose and the area was determined at 5,382 Sq.Mtrs. It is further contended that the names of two societies exist as per the record of the Town Planning Scheme and the names of the present petitioners did not appear in the revenue records. After the scheme was sanctioned and after following due process of law as envisaged under the Act by giving notice to two societies, the scheme has been implemented and possession of Final Plot No.125 of Town Planning Scheme No.3 of RUVA is with Bhavnagar Municipal Corporation and therefore, the present petition is not maintainable.

13. Learned counsel of the petitioners has also relied upon the photocopies of the Notification, Form-F as well as the Notice given to the societies under Section 68 of the Act read with Rule-33 of the Gujarat Town Planning and Urban Development Rules (hereinafter referred to as "the Rule" for short). The petitioners have also filed a rejoinder to the affidavit filed by the respondents and have reiterated their stand as taken in the memo of the petition. Respondent No.2-Corporation has also filed its affidavit by way of affidavit-in-Sur-Rejoinder and has mainly reiterated

its stand that as per the provisions of Section 65(3) of the Act, the scheme has become part of the Act and the same has already been implemented.

14. Learned counsel for the petitioners has mainly contended as under:-

14.1 Though the Notice was issued under Section 20(2) of the Act as the respondent-authority has not acquired the land through the agreement or under the provisions of the Land Acquisition Act, hence, designation for school lapses. It was contended that the order impugned dated 10.05.2010 is illegal and the petitioners cannot be prevented from developing the land in question. It was further contended that as per the provisions of the Act, the reservation has only 10 years life and as the same is not acquired even after the notice, such designation/reservation lapses.

Learned counsel for the petitioners have relied upon the following judgments:-

1. Dungralal Harichand Vs. State of Gujarat [1976 GLR 1152]
2. Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. Anr Ors. [2003 (2) SCC 111]
3. Chief of Army Staff and Ors. Vs. Major Dharam Pal Kukrety [1985 (2) SCC 412]
4. Motor General Traders & Anr. Vs. State of Andhra Pradesh & Ors. [1984 (1) SCC 222]
5. Jashwantsingh Mathursingh And Another Vs. Ahmedabad Municipal Corporation & Ors. [1992 Supp (1) SCC 5]

6. Competent Authority Vs. Barangore Jute Factory & Ors. [2005 (13) SCC 477]

7. Mansukhlal Jadavji Darji & Anr. Vs. Ahmedabad Municipal Corporation & Ors. [1992 (1) GLH 133]

8. Bharathidasan University & Anr. Vs. All-India Council for Technical Education & Ors. [2001 (8) SCC 676]

15. Per contra, learned counsel for respondent Nos.2 and 3 have contended as under:-

15.1 Learned counsel for respondent Nos.2 and 3 have supported the impugned order dated 10.05.2010 and have contended that the land in question is not reserved in final development plan, but are reserved in the Town Planning Scheme, which has been duly sanctioned by the State Government under Section 65(3) of the Act vide Notification dated 26.06.1990 and that the scheme has become part of the Act and therefore, the present petition is not maintainable.

15.2 It was further contended that Section 20 of the Act has no application in relation to the lands, which are reserved/allocated for any public purpose in sanctioned Town Planning Scheme. Therefore, there is no question of acquiring lands within a period of 6 months after issuance of the Notice as contemplated under Section 20(2) of the Act. It was further contended that the scheme has already been implemented and respondent No.3 is in possession of Final Plot No.125 admeasuring 3626 Sq.Mtrs., and reserved for

school as per the sanctioned Town Planning Scheme.

15.3 Ratio laid down by the Apex Court in the case of **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.** is in relation to reservation in the final development plan, wherein the period of 10 years is provided for reservation in Final Development Plan and therefore, the said judgment would not be applicable in the instant case.

15.4 It was further contended that as per the provisions of Section 67(a) of the Act, the lands, which are allocated/reserved for the public purpose vests absolutely in favour of the appropriate authority on the day on which such scheme comes into force. It was, therefore, contended that the present petitioners have no right title or interest in the property in question. It was contended that the petition is thoroughly misconceived and the petitioners have made an attempt to misguide this Court. As per the provisions of Section 49 of the Act, the petitioners cannot be permitted to make any development upon Final Plot No.125, which now belongs to Bhavnagar Municipal Corporation as per the sanctioned Town Planning Scheme and in fact, respondent No.2 is in possession of the same.

16. Learned Assistant Government Pleader has adopted the arguments made by learned counsel for the respondent- Corporation and has submitted that the petition is misconceived and the same deserves to be dismissed.

No other or further submissions are made by learned counsel for the parties.

17. Before considering the rival submissions, it would be appropriate to quote the relevant provisions of the Act.

Section 2(x)-development plan - means a plan for the development or re-development or improvement of a development area.

Section 2 (xxvi) - scheme - means a town planning scheme prepared under this Act, and includes a plan or plans, together with the descriptive matter, if any, relating to such scheme.

Section 12(2)(b) - contents of draft development plan- proposal for the reservation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theaters and places for public entertainment, public assembly, museums, art galleries, religious buildings, play-grounds, stadia, open spaces, diaries and for such other purposes as may, from time to time, be specified by the State Government.

Section 20 - Acquisition of Land- (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 (o)] 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, 1894 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 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)(e)- A town planning scheme may make provision for any of the following matters namely:-

"the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities, public purpose or all kinds."

18. It is also noteworthy that total area of Survey Nos.122/2 and 122/3 admeasuring 8 Acres and 30 Gunthas (35,410 Sq.Mtrs) as per the record of the Town Planning Scheme. N.A permission, which is on record indicates that the said permission was granted for residential purpose.

19. Learned counsel for the petitioners was also asked to submit the copies of the Sale-Deeds executed by original owners in favour of the societies, which are of the year 1975 and 1981. Copies of the Sale-Deeds also indicate that the original owners have executed said Sale-Deeds. It transpires that on the date of the intention of the scheme i.e. on 19.01.1983, two societies were owners of the original plots. Record of the petition clearly establishes the fact that the land in question now forming part of Final Plot No.125, which is admeasuring 3626 Sq.Mtrs. is reserved for school. Part plan, which is submitted by the respondent-Corporation also fortifies the said factual aspects.

20. In light of the aforesaid facts, the land in question is not reserved in Final Development Plan, but is reserved in the scheme. It is noteworthy that even in the notice purported to have been issued under

Section 20(2) of the Act, the petitioners have clearly mentioned that the land in question is reserved for particular purpose in RUVA Town Planning Scheme No.3.

21. As per the scheme of the Act, Chapter-2 (Sections 3 to 21) provide for development area and constitution of area development authorities and contents for draft development plan. Similarly Town Planning Scheme are dealt with in Chapter-V (Sections 40 to 76). Section 12 of the Act - Contents of Draft Development Plan, wherein clause-b of Section 12(2) provides for reservation of land for public purpose such as school is provided for. However, considering the factual aspect arising in this petition and on basis of the records produced by the respondent-Corporation, the land in question is not reserved for school as provided under Section 12(2)(b) of the Act. Similarly, Section 40(3)(e) provides for the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green-belts, dairies, transport facilities, public purposes of all kinds.

22. In the instant case, Final Plot No.125 is carved out from Original Plot No.2, admeasuring 3626 Sq.Mtr. and is reserved for the purpose of school. Thus, Final Plot No.125 is reserved for the school for appropriate authority namely Bhavnagar Municipal Corporation. It is also noteworthy that when a plot of land is reserved, any of the clause of sub-section (3) of Section 40 in a Town Planning Scheme, it is for

appropriate authority whereas in a development plan, the authority can provide for reservation for other authorities as well the State Government or the local authorities.

23. Section 20 provides that if any land is designated in the Final Development Plan for any purpose specified in clause (b),(d) of sub-section (2) of Section 12, may acquire under the Land Acquisition Act, 1894 or under the agreement. Sub-section 2 clearly provides that if the land is not acquired by agreement within a period of ten years from the date of coming into force of the Final Development Plan or if the proceedings under the Land Acquisition Act, 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 acquisition, the designation of the land as aforesaid shall be deemed to have lapsed. It is, therefore, quite clear that sub-section 2 of Section 20 of the Act would apply to the case, wherein the land is reserved for any of the purpose, which is mentioned in sub-Section 2 of Section 20 of the Act. In the instant case, the petitioner has mentioned in the Notice purported to have been given under Section 20(2) of the Act, that the land in question is reserved for Town Planning Scheme. In light of the aforesaid, Section 20 and so also Sub-Section 2 of Section 20

would not apply when the plot or land is reserved in a sanctioned Town Planning Scheme.

24. In light of the aforesaid position therefore, there is no question of lapsing of reservation and/or designation, as the land in question is not designated or reserved for the purpose of school in the Final Development Plan, but is reserved for public purpose of school in the sanctioned Town Planning Scheme. Therefore, Section 20 of the Act would not be applicable in the instant case. Hence, the very notice dated 10.07.2008 is misconceived.

25. Having come to the conclusion that the land in question is reserved in a sanctioned Town Planning Scheme, it would be appropriate to refer to the effect of preliminary scheme. Section 67(a) clearly provides that all lands, which are required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free from all encumbrances on the date on which the preliminary scheme comes into force. Applying the said provisions in the instant case, Final Plot No.125 as observed herein above, is carved out from Original Plot No.2 and is reserved for the purpose of school. It is an admitted position that the scheme has been sanctioned by the State Government under Section 65 of the Act vide Notification dated 26.06.1990 and the said scheme has come into force as prescribed in the said Notification w.e.f 30.07.1990 and therefore, by operation of Section 67(a) of the

Act, the area of Final Plot No.125 vests in Bhavnagar Municipal Corporation from and with effect from 30.07.1990. Section 49 of the Act provides for restrictions on use and development of land after declaration of a scheme. In light of the aforesaid fact that the area of Final Plot No.125 is reserved for the school as discussed herein above, the petitioners claiming themselves to be the original owners, cannot be permitted to develop the said land in question and therefore, the impugned order dated 10.05.2010 is legal and proper and in consonance with the provisions of the Act. More so when the records of the petition establish that the scheme is already implemented and Final Plot No.125 is in possession of Bhavnagar Municipal Corporation.

26. In view of the fact that the land in question is reserved for the purpose of school and as per the record, which is based on the record of the Town Planning Scheme, Bhavnagar Municipal Corporation as an appropriate authority has followed the procedure as envisaged under Section 68 of the Act read with Rule-33 of the Rules and has already implemented the scheme vide Notice dated 10.02.1992, which is forming part of the record of this petition. In light of the aforesaid factual position, therefore, the very issuance of notice purported to have been issued under Section 20(2) of the Act and so also the petition is misconceived. Principles laid down by the Apex Court in the case of **Palitana Sugar Mill (P) Ltd. (supra)** as well as by the Division Bench of this Court in the

case of **Dungarlal Harichand Vs. State of Gujarat**, that a reservation can be held for 10 years and no more would apply only if the land in question is reserved in Final Development Plan. The land, which is reserved by way of Final Plot No.125 in the sanctioned Town Planning Scheme way back in the year 1990 and even though, the respondent-Corporation has already implemented the same and as per the record of this petition, even though Bhavnagar Municipal Corporation is in possession of the Final Plot No.125, the petitioners sent notice purported to have given under Section 20(2) of the Act, which even otherwise is illegal and misconceived. As observed herein above, even as per the scheme of the Act, more particularly sub-section 2 of Section 20 of the Act, has no applicability in the case of Final Plot which is reserved in a sanctioned town planning scheme.

27. Dungarlal Harichand (supra), Mansukhlal Jadavji Darji (supra) as well as Jashwantsingh Mathursingh And Another (supra) pertain to the procedure to be followed by Town Planning Officer. Therefore, the said judgments are not applicable in the present case as it is not the case of the petitioner that there was any defect in the procedure adopted by the Town Planning Officer while undertaking preparation scheme in question. Similarly, Chief of Army Staff and Ors. (supra), Competent Authority (supra) as well as Bharathidasan University & Anr.(supra) are not applicable to the present case at all.

28. The petitioners have made an attempt to mix up two issues namely reservation in development plan and reservation/allocation in reserved Town Planning Scheme. As held by the Division Bench of this Court in the case of **Dungarlal Harichand (supra)**, the word designation and reservation are interchangeable. However, consideration of the provisions of Section 20 of the Act would arise only when a particular land is reserved for any of the purposes in a Final Development Plan. Whereas when final plot is carved out from original plot and is reserved for public purpose i.e. for appropriate authority in sanctioned Town Planning Scheme, the same is not to be acquired as provided under Section 20(1) of the Act as it is carved out by way of reconstitution of original plot. In the instant case, Original Plot No.2 admeasuring 3626 Sq.Mtr is reconstituted as Final Plot Nos.2/1 and 2/2 admeasuring 29,315 and 3400 Sq.Mtrs. respectively and by way of deduction, the Town Planning Officer while preparing preliminary scheme as envisaged under Section 52 of the Act has reconstituted Original Plot No.2 as Final Plot Nos.2/1 and 2/2 and by way of deduction has carved out Final Plot No.125, which is reserved for the purpose of school. Even as per the petitioners, the said scheme is sanctioned vide Notification dated 26.06.1990 and has come into force on 30.07.1990 and thus, it has become part of the Act as provided under Section 65(3) of the Act and the same cannot be challenged in the manner, in which the petitioners have challenged by way of this petition.

29. In light of the aforesaid therefore, the impugned order dated 10.05.2010 passed by respondent No.3 rejecting the application for development filed by the petitioner is legal and proper and resultantly, the petitioners are not entitled to any of the relief(s) prayed for in the present petition.

Accordingly, the petition deserves to be dismissed and is hereby dismissed. Rule is discharged. Interim relief, if any, stands vacated. However, in the facts of the case, no costs.

(R.M.CHHAYA, J.)

FURTHER ORDER

After the judgment was pronounced, Mr.Satyen Thakkar, learned counsel for the petitioners prays that the order dated 28.10.2010, whereby this Court while admitting the matter has granted interim order to the effect that Final Plot No.125 of Town Planning Scheme, situated in the revenue sim of Village Ruva, Taluka and District Bhavnagar, will not be developed by any of the parties, be continued so as to enable the petitioner to approach the higher forum.

In view of the above, it transpires that the said order is in operation since 28.10.2010, hence, the same is extended till **31st January, 2015.**

(R.M.CHHAYA, J.)

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