
(1996) 09 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeals No's. 11935-11943 of 1996

Ahmedabad Urban Development Authority

APPELLANT

Vs

Manilal Gordhandas and others etc.

RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:

Bombay Town Planning Act, 1954 — Section 7

Gujarat Town Planning and Urban Development Act, 1976 — Section 10, 11, 12, 124, 13

Citation : AIR 1996 SC 2804 : (1996) 3 GLR 580 : (1996) 8 JT 647 : (1996) 6 SCALE 687 : (1996) 11 SCC 482 : (1996) 6 SCR 79 Supp

Hon'ble Judges : Sujata V. Manohar, J;N. P. Singh, J

Bench : Division Bench

Advocate : S.N. Shelat, A.A.G., S. K. Dhokakia, Soli J. Sorabjee, Anil B. Divan and Ashok H. Desai, for the Appellant;

Final Decision : Allowed

Judgement

N.P. Singh, J.—Leave granted.

2. These appeals have been filed on behalf of the Ahmedabad Urban Development Authority for setting aside the order passed by the High Court of Gujarat dismissing the Letters Patent Appeals filed on behalf of the appellants, against the judgment of the single Judge of the said High Court in different writ petitions. The writ petitions had been allowed saying that the sanction accorded by the Notification dated 12.8.1983, by the State of Gujarat in exercise of powers conferred on it by Clause (c) of Sub-section (1) of Section 17 of the Gujarat Town Planning and Urban Development Act, 1976 had lapsed after the expiry of period of 10 years and because of service of notice by the concerned land owners in accordance with Sub-section (2) of Section 20 of the said Act, as during this period neither the lands in question were acquired by agreement nor proceedings under the Land Acquisition Act, 1894 were commenced.

3. The Bombay Town Planning Act, 1954 regulated the town planning activity

within the area falling within the jurisdiction of the local authorities in the State of Gujarat including the Ahmedabad Municipal Corporation (hereinafter referred to as the "Corporation"). On 15.1.1976 the Corporation submitted a revised development plan to the State Government for the area falling within the limits of the Corporation for sanction of the State Government. Section 7 of the Bombay Town Planning Act provides that the details of the proposals for designating the use of the land for the purposes such as (1) residential (2) industrial (3) commercial and (4) agricultural as well as proposals regarding designation of and for public purposes such as parks, play-grounds, recreation grounds, open spaces, schools, markets and for institutions should be indicated in the development plan. Section 8 prescribes, the particulars which have to be submitted to the State Government along with the development plan. In view of Section 9 within 2 months from the date of publication of the aforesaid development plan any member of the public has a right to communicate in writing to the local authority any suggestion relating to such plan which has to be considered at any time before submitting the development plan to the State Government. On receipt of the development plan u/s 8, the State Government u/s 10 can sanction such development plan including with modifications if any. Such sanction shall be notified in official gazette and thereafter the development plan so sanctioned shall be called "the final development plan" which shall come into force on such date as the State Government may specify in the notification issued. The Corporation submitted the development plan to the State Government for sanction on 15.1.1976. On 19.6.1976 the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Gujarat Town Planning Act) was enacted, which came in force on 30.1.1978 and the Bombay Town Planning Act was repealed since that date. On 30.1.1978 itself in exercise of the power u/s 22, the Ahmedabad Urban development Authority (hereinafter referred to as the AUDA) was constituted and the power to prepare development plan in respect of even the areas which were the part and parcel of the Corporation vested in AUDA since that date.

4. The preamble of the Gujarat Town Planning Act says "an Act to consolidate and amend the law relating to the making and execution of development plans and town planning schemes in the State of Gujarat". Section 7 specifies the functions of the development authority which includes to undertake the preparation of development plans under the provisions of the said Act for the development area and to undertake the preparation of town planning schemes under the provisions of the said Act; to control the development activities. Section 9 provides that as soon as may be after the Constitution of an area development authority as in the present case AUDA, for any development area such authority shall not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time extend "prepare and submit to the State Government a draft development plan for the whole or any part of the development area" in accordance with the provisions of the said Act. In view of Section 10 of that Act a

copy of the draft development plan as prepared u/s 9 in respect of any area has to be kept open for inspection by the public. Section 12 requires such draft development plan to indicate the manner in which the use of the lands in the area covered by it shall be regulated and shall also indicate the manner in which the development therein shall be carried out. The relevant portion of Sub-section (2) of Section 12 is as follows:

12(2) In particular, it shall provide, so far as may be necessary, for all or any of the following matters, namely:

(a) proposals for designating the use of the land for residential, industrial, commercial, agricultural and recreational purpose;

(b) proposals for the reservation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, public assembly, museums, art galleries, religious buildings, playgrounds, stadia, open spaces, dairies and for such other purposes as may, from time to time, be specified by the State Government;

(c) ...

(d) transport and communications, such as roads, highways, parkways, railways, waterways, canals and airport, including their extension and development;

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) proposals for the reservation of land for the purpose of Union, any State, local authority or any other authority or body established by or under any law for the time being in force;

(l) ...

(m) ...

(n) provision for preventing or removing pollution of water or air caused by the discharge of waste or other means as a result of the use of land;

(o) ...

5. Because of Section 13 such authority after "the draft development plan is prepared and submitted to the State Government u/s 9", shall publish it in the official gazette and in such other manner as may be prescribed along with a

notice in a prescribed manner inviting suggestions or objections from any person with respect to the development plan within a period of two months from the date of its publication. Sub-section (2) of Section 13 prescribes the particulars which have to be published along with the draft development plan. Objections or suggestions communicated in writing within the period specified has to be considered and if necessary the draft development plan may be modified. If the modifications made by the authority in the draft development plan are of extensive or substantial nature the said authority has to publish the said modifications in the official gazette along with the notice in prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of the said notice, which is required by Section 15. Section 16 provides that after the development plan is published as aforesaid and the objections or suggestions thereto, if any, are received, the authority shall within a period of six months from the date of the publication of the draft development plan u/s 13 "submit to the State Government for its sanction the draft development plan and the regulations with the modifications, if any, made thereof under Sections 14 or 15". The particulars published under Sub-section (2) of Section 13 and the suggestions or objections received under Sections 14 or 15 have also to be submitted to the State Government along with the draft development plan because of Sub-section (2) of Section 16. Section 17(1) which is relevant for the present case is as follows:

17. (1)(a) On receipt of the draft development plan u/s 16, the State Government may, by notification, -

(i) sanction the draft development plan and the regulations so received, within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modifications, or subject to such modifications, as it may consider proper; or

(ii) return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorised officer, for modifying the plan and the regulations in such manner as it may direct.

Provided that, where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority or, as the case may be, the authorised officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice; or

(iii) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorised Officer to prepare a fresh development plan under the provisions of this Act.

(b) Where a development plan and regulations are returned to an area development authority, or, as the case may be, the authorised officer under Sub-clause (ii) of Clause (a), the area development authority, or, as the case may be, the authorised officer, shall carry out the modifications therein as directed by the State Government and then submit them as so modified to the State Government for sanction; and the State Government shall thereupon sanction them after satisfying itself that the modifications suggested have been duly carried out therein.

(c) Where the State Government has published the modifications considered necessary in a draft development plan as required under the proviso to Sub-clause (ii) of Clause (a), the State Government shall, before according sanction to the draft development plan and the regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the draft development plan and the regulations in such modified form as it may consider fit.

(d) The sanction accorded under Clause (b) or Clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under Clause (d):

Provided that the date so specified shall not be earlier than one month from the date of publication of such notification.

The State Government under the aforesaid Sub-section (1) of Section 17, may sanction the draft development plan forwarded by development authority either without modifications or subject to such modifications. Section 20 provides:

20. (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 (k) or Clause (n) 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 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.

On a plain reading, Sub-section (1) of Section 20 requires the area development authority for whose purpose land is designated in the final development plan for

any purpose specified in Clauses (b), (d), (k) or Clause (n) of Sub-section (2) of Section 12 to acquire the land either by agreement or under the provisions of the Land Acquisition Act. If such land is not acquired by agreement within the period, of 10 years from the date of the "coming into force of the final development plan" or if the proceedings under the Land Acquisition Act 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 period of six months from the date of the service of the notice the land is not acquired or no steps are taken for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed.

6. Sub-section (1) of Section 124 repeals the Bombay Town Planning Act, 1954 but because of Sub-section (2) of the said Section 124 notwithstanding such repeal anything done or any action taken, including any declaration of intention to make a development plan or town planning scheme, any draft development plan or draft town planning scheme published by a local authority, any application made to the State Government for the sanction of any draft development plan or draft town planning scheme, any, sanction given by the State Government to the draft development plan or draft town planning scheme shall in so far as it is not inconsistent with the provisions of the Gujarat Town Planning Act shall have effect in relation thereto.

(emphasis supplied)

7. As already mentioned above on 15.1.1976 the Corporation under the provisions of the Bombay Town Planning Act, 1954 had submitted a revised development plan to the State Government for the area falling within the limits of the Corporation for sanction of the State Government. But on 19.6.1976, the Gujarat Town planning Act was enacted which came into force with effect from 30.1.1978. On that very date AUDA was constituted u/s 22 of the said Act. Because of Sub-section (1) of Section 124 it shall be deemed that the Bombay Town Planning Act was repealed with effect from 30.1.1978, when the Gujarat Town Planning Act came into force. Section 9 required AUDA to prepare and submit to the State Government a draft development plan within three years from the declaration of the areas as development areas. A draft development plan was prepared by AUDA for the entire area under its jurisdiction which included the area covered by the Corporation and was submitted to the State Government for its sanction on 23.7.1981.

8. On 12.8.1983 a notification was issued by the State Government saying:

WHEREAS the Ahmedabad Municipal Corporation (hereinafter referred to as "the said Municipal Corporation") has prepared a "Draft Revised Development Plan (hereinafter referred to as the said" Draft Revised Development Plan") in respect of the lands within the jurisdiction of the said Municipal Corporation under the provisions of the Bombay Town Planning Act, 1954 and advertisement regarding publication of the said draft revised Development Plan and calling; objections and

suggestions in the said draft revised development plan was published in the Part II of the Gujarat Government Gazette dated 15th January, 1976;

AND WHEREAS the government of Gujarat had considered it necessary to make modifications (hereinafter referred to as "the said modifications") in the said draft revised Development Plan which was submitted by the said Municipal Corporation to the State Government for sanction under the provisions of the Gujarat Town Planning and Urban Development Act, 1976;

...

NOW, THEREFORE, in exercise of the powers conferred by Clause (c) of Sub-section (1) of Section 17 of the Gujarat Town Planning and Urban Development Act, 1976, the Government of Gujarat hereby;

(a) finalises the said modifications;

(b) sanctions the said draft revised development plan and the regulations thereto subject to the modifications so finalised and as set out in the schedule appended hereto; and

(c) specifies the 16th September, 1983 as the date on which the final development plan shall come into force.

From the aforesaid notification itself it is apparent that the State Government purported to sanction the draft revised development plan submitted on 15.1.1976 by the Corporation under the provisions of the Bombay Town Planning Act and State Government specified 16.9.1983 as the date on which the said final development plan shall come into force.

9. There is no dispute that when AUDA prepared a draft development plan in accordance with the provisions of the Gujarat Town Planning Act and submitted to the State Government for sanction on 23.7.1981 it also included the area and the draft plan with modifications already submitted by the Corporation on 15.1.1976. It is the case of the AUDA that it was considered necessary to include even that area in the draft development plan prepared by the appellant, because by that time the draft development plan which had been submitted by the Corporation had not been sanctioned by the State Government. The State Government sanctioned the draft development plan submitted on 23.7.1981 by the appellant AUDA on 2.11.1987 including for the areas within the Corporation in respect of which the draft development had been sanctioned by the State Government by aforesaid notification dated 12.8.1983.

10. According to the writ petitioners-respondents, as the draft development plan which had been submitted on 15.1.1976 and sanctioned on 12.8.1983 by a notification saying that the sanction plan shall come into force with effect from 16.9.1983, the period of 10 years as specified in Sub-section (2) of Section 20 of the Gujarat Town Planning Act shall have to be counted with effect from 16.9.1983 so far the area covered by notification dated 12.8.1983 is concerned.

They claimed that within the aforesaid period of 10 years from coming into force of the final development plan neither the lands in question covered by that notification were acquired by agreement nor any proceedings under the Land Acquisition Act were commenced. Thereafter, they issued notices and on expiry of the period of six months from the date of service of such notices it was claimed on their behalf that the designation of the land had lapsed. This has found favour with the High Court which has been questioned before this Court.

11. It may be pointed out that although the aforesaid notification dated 12.8.1983 was issued under the provisions of Clause (c) Sub-section (1) of Section 17 of the Gujarat Town Planning Act, admittedly the said draft plan had neither been prepared in accordance with the provisions of Gujarat Town Planning Act nor submitted by AUDA the appellant. In the notification itself it has been specifically mentioned that the Corporation had prepared the said draft revised development plan under the provisions of the Bombay Town Planning Act and submitted the same to the State Government on 15.1.1976. It has been further said that the State Government had considered it necessary to make modifications in the said draft revised development plan which was submitted by the Corporation to the State Government and thereafter sanction was being accorded. We are not able to appreciate as to why and how the draft revised development plan which had been submitted by the Corporation on 15.1.1976 was sanctioned and notified on 12.8.1983, when in the meantime the Gujarat Town Planning Act had come into force with effect from 30.1.1978 which had jurisdiction even over the area in respect of which the Corporation had submitted the draft development plan on 15.1.1976. Apart from that before the aforesaid notification dated 12.8.1983 was issued, the appellant had submitted its draft development plan prepared in accordance with the provisions of the Gujarat Town Planning Act to the State Government for sanction, covering even the area which had been included in the draft development plan submitted by the Corporation on 15.1.1976 along with the much larger area for which the draft development plan was prepared by the appellant. In normal course, the State Government should not have taken note of the draft development plan submitted by the Corporation on 15.1.1976 which remained pending before the State Government and in the meantime the Gujarat Town Planning Act came into force and a more comprehensive draft development plan prepared by the appellant had been submitted to the State Government covering even the area for which the Corporation had submitted a draft development plan. On behalf of the respondents it was pointed out that when the appellant had submitted the draft development plan on 23.7.1981 including the area for which the draft development plan had been submitted by the Corporation, it was open to the State Government to sanction the draft development plan only in part, covering the area for which the draft development plan had been submitted earlier, while exercising power u/s 17(1)(a)(i) which says that the State Government may by notification sanction the draft development plan for the "whole area covered by the plan or separately for any part thereof. This argument could have been

accepted if in the notification dated 12.8.1983 the State Government had referred to the draft development plan submitted by the appellant on 23.7.1981 and had specifically said that it was sanctioning only part of the said plan by that notification. In the notification dated 12.8.1983, no notice has been taken of the draft development plan submitted by the appellant on 23.7.1981, covering even the areas in respect whereof the draft development plan had been prepared by the Corporation. As such it is a futile contention that by notification dated 12.8.1983 part of the draft development plan submitted by the appellant on 23.7.1981 had been sanctioned by the State Government in exercise of the powers u/s 17(1)(a)(i).

12. It was then submitted that as the draft development plan had been submitted by the Corporation to the State Government before the Bombay Town Planning Act stood repealed on coming into force of the Gujarat Town Planning Act on 30.1.1978, because of Sub-section (2) of Section 124 aforesaid it was open to the State Government to sanction that plan. On proper reading of Sub-section (2) it appears, that it shall be deemed that the said draft development plan was pending before the State Government because of Sub-section (2) of Section 124. There is a deeming fiction in Sub-section (2) of Section 124 saying that any application made to the State Government for sanction of any draft development plan shall "be deemed to have been done or taken under the corresponding provisions of this Act". It shall only keep the draft development plan submitted by the Corporation pending for consideration by the State Government because it shall be deemed that it has been submitted to the State Government under the provisions of the Gujarat Town Planning Act. But before sanctioning the said plan the State Government was required to examine the said draft development plan along with the draft development plan prepared and submitted by the appellant AUDA in the meantime. It can be said that there was complete lack of application of mind on the part of the State Government when the draft development plan submitted on 15.1.1976 by the Corporation was sanctioned under the provisions of the Gujarat Town Planning Act on 12.8.1983, overlooking the fact that in the meantime a comprehensive draft development plan had been prepared by the appellant and had been submitted on 23.7.1981 for sanction of the State Government. When Section 17(1) vests power in the State Government to sanction the draft development Plan, the said statutory Power should not be exercised in a casual manner without proper application of mind. The facts of the present case clearly depict how the State Government has exercised the power u/s 17(1)(c) of the Gujarat Town planning Act without proper application of mind. It appears the notification dated 12.8.1983 has been issued being completely oblivious and ignorant of the submission of a draft development plan by the appellant in the meantime on 23.7.1981 covering those areas also. In spite of repeated queries from the counsel who appeared for the writ petitioner-respondents, they could not explain as to how while sanctioning the draft development plan submitted on 15.1.76 by the Corporation, there is no mention in the notification in question about the submission of a draft

development plan by the appellant covering those very areas. Why the State Government was sanctioning the plan submitted on 15.1.1976 ignoring the more comprehensive and detailed draft development plan for a much larger area including the area for which the draft development plan had been submitted on 15.1.1976 by the Corporation? If the State Government was conscious of the fact that later a more comprehensive draft development plan had been submitted by the appellant, there was no reason to sanction the draft development plan submitted by the Corporation which had lost jurisdiction over the area for which the draft development plan had been prepared. The draft development plan submitted by the Corporation had been sanctioned on 12.8.1983 without proper application of mind is obvious from the fact that admittedly later the State Government on 2.11.1987 sanctioned by notification issued u/s 17(1)(i)(c) of the Gujarat Town planning Act, the draft development plan submitted by the appellant on 23.7.1981 including the area for which the draft development plan had been submitted by the Corporation on 15.1.1976.

13. Apart from that from a mere comparison of the relevant Sections under the Bombay Town Planning Act with the provisions of the Gujarat Town Planning Act it shall appear that the relevant provisions of the Gujarat Town Planning Act are inconsistent with the provisions of Bombay Town Planning Act. Section 12 of the Gujarat Town Planning Act covers a much wider field of the development and the object for development is not as limited as Section 7 of the Bombay Town Planning Act. Section 12 takes note of the factors and objects for which provisions have to be made in the draft development plan. Keeping in view the modern requirements for an urban development provisions have been made for zoological gardens, green belts, natural reserves sanctuaries, railways, waterways canals, airport, water supply, drainage, sewage disposal, public utility amenities including supply of electricity and gas. It also contemplates preservation, conservation and development of natural scenery and landscape, places of historical, architectural interest. It provides for controlling and regulating the use and development of land within the developed area including imposition conditions and restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys, parking spaces etc. It conceives provision for preventing or removing pollution of water or air caused by discharge of waste or other means as a result of the use of land. All this was not in Section 7 of the Bombay Town Planning Act prescribing the contents of the development plan. Similarly, the procedure prescribed for sanction of a draft development plan under Sections 13 to 17 of the Gujarat Town Planning Act are not consistent with Sections 8 to 10 of Bombay Town Planning Act. It has to be held that provisions of Sections 7 to 10 of Bombay Town Planning Act are inconsistent with Sections 9 to 17 of the Gujarat Town Planning Act. As such after coming into force of Gujarat Town Planning Act on 30.1.1978 State Government was required to follow provisions of Sections 9 to 17 of the Gujarat Town Planning Act. Sub-section (2) of Section 124 of Gujarat Town Planning Act was of

no help when the plan submitted by Corporation was sanctioned on 12.8.1983. That could have been done if the provisions of the Gujarat Town Planning Act had been consistent with the provisions of Bombay Town Planning Act. Sub-section (2) of Section 124 says:

Notwithstanding such repeal, anything done or any action taken (including any declaration of intention to make a development plan or town planning scheme, any draft development plan or draft town planning scheme published by a local authority, any application made to the State Government for the Sanction of any draft development plan or draft town planning scheme, any, sanction given by the State Government to the draft development plan...shall, in so far as it is not in consistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions, of this Act, and the provisions of this Act shall have effect in relation thereto.

(emphasis supplied)

Provisions and procedures under Sections 7 to 10 of the Bombay Town Planning Act are different from the provisions and procedures in respect of preparation of a development plan under the Gujarat Town Planning Act. In this background the State Government should not have taken note of the Plan submitted on 15.1.1976 by the Corporation after the repeal of the Bombay Town Planning Act on 30.1.1978 and coming in force of the new Gujarat Town Planning Act. There was no occasion to ignore the comprehensive plan submitted by AUDA vested with the power to submit such plan and to sanction the draft plan submitted by the Corporation. According to us, after coming into force of the Gujarat Town Planning Act on 31.1.1978 State Government could not have sanctioned a plan submitted by the Corporation when the AUDA had already submitted a draft development plan even covering those areas under the Gujarat Town Planning Act.

14. To prepare a scheme for the development of an urban agglomeration in the present days is a very complex issue and any development authority as well as the State Government which is the sanctioning authority has to apply its mind on the details of such development plans. During the last few decades an urban development has assumed unprecedented importance because of the population migration from rural areas to urban areas and cry for a roof and fresh air. In such urban areas the orderly growth of the cities has to be enforced through proper development plans. For every city as was done in Ahmedabad in the present case, development authorities have been constituted who can prepare comprehensive development plans keeping not only the present requirement but even the requirements for the 21st century in view. If the development in such areas are not carried on the well known principle, most of the cities will be converted into slums sooner or later. There was a time when a city meant only residential area and commercial complex including industrial centers. But the whole concept has changed. While planning an urban area not only the residential, institutional, industrial and commercial, aspects have to be seen but

also provisions have to be made in respect of zoological gardens, green belts, natural reserves, sanctuaries, highways, parkways, waterways, airport, drainage, sewage disposal. The development authority has also to reserve land for community facilities and services and for prevention of pollution of water or air caused by the discharge of waste or other means as a result of the use of land. From a bare reference to Sub-section (2) of Section 12 it shall appear that framers of the Gujarat Town Planning Act have conceived the new requirements for a proper development of an urban area.

15. As in the present case the only question which is to be answered is as to with effect from which date 10 years period shall be counted, it has to be decided as to which date shall be deemed to be the date of coming into force of the final development plan, so far the area within the Corporation is concerned. The notification dated 2.11.1987 had been issued by the State Government covering the area notified on 12.8.1983 several years before the issuance of notices by the writ petitioners. The notification dated 2.11.1987 was neither questioned by the writ petitioners-respondents nor could have been questioned, according to us. When power has been vested in the appellant to prepare a draft development plan and there being no bar to include in the said draft development plan even area for which an earlier draft development plan had already been sanctioned, then the draft development plan which was sanctioned and notified on 2.11.1987 shall be deemed to be the final development plan within the meaning of Section 20 of the Gujarat Town Planning Act. As such the period of 10 years has to be calculated and counted with reference to 3.12.1987 the date when such final development plan was to come into force.

16. On behalf of the writ petitioners it was pointed out that if it is held that period of 10 years is to be counted with reference to 3.12.1987 then the right which has been provided to the land owners or the persons interested by Sub-section (2) of Section 20 to give notice after the expiry of the period of 10 years from coming into force of the final development plan, can be defeated by any area development authority by notifying a fresh draft development plan just on expiry of the final plan including fresh areas. In other words any area development authority on verge of the expiry of the period of 10 years of a final development plan, may include that area into another draft development plan along with other area to defeat the right which had accrued or was likely to accrue to the land owners or the persons interested under Sub-section (2) of Section 20. If such power is exercised with ulterior motive and with an object to defeat the statutory right of persons interested, courts will be perfectly justified in nullifying such actions of area development authorities. But in the present case as has been pointed out above the draft development plan had been submitted by the appellant as early as on 23.7.1981 much before the draft development plan submitted by the Corporation was sanctioned on 12.8.1983. There is no scope for attributing any bad faith or malice on the part of the appellant or the State Government in the facts and circumstances of the present case. In all fairness none of the counsel appearing for the writ-petitioners-respondents took

such a stand that the State Government approved the draft development plan submitted by the appellant on 2.11.1987 only to defeat the right which was to accrue to the land owners or persons interested in the next few years.

17. We are not inclined to accept the submission made on behalf of the respondents that the effect of the sanctions given on 12.8.1983 and 2.11.1987 shall be that two final development plans had come into force. The effect of sanction given on 2.11.1987 shall be that the State Government had sanctioned the comprehensive draft plan prepared by the appellant with the area in respect of which State Government had purported to accord sanction on 12.8.1983. The respondents could not point out as to how this sanction of the State Government given by notification dated 2.11.1987 shall be illegal, invalid and not sanctioned by law. In the present case the draft development plan was submitted on 23.7.1981 by the appellant which was sanctioned on 2.11.1987. Then it shall be deemed that the area in respect of which separate draft development plan had been sanctioned on 12.8.1983 merged and became part and parcel of the scheme and plan which had been submitted by the appellant AUDA on 23.7.1981 and which was sanctioned on 2.11.1987. It will be deemed that the final plan came in force with effect from 3.12.1987, even in respect of area which was covered by the notification dated 12.8.1983.

18. We have already held that the State Government could not have sanctioned the draft development plan submitted by Corporation on 12.8.1983 because the Gujarat Town Planning Act had come in force on 30.1.1978 and Sub-section (2) of Section 124 of the Gujarat Town Planning Act shall not save the plan submitted by the Corporation, provisions of Sections 9 to 17 of Gujarat Town Planning Act being inconsistent with Section 7 to 10 of the Bombay Town Planning Act. The State Government after coming into force of the Gujarat Town Planning Act should have ignored the draft development plan submitted by the Corporation on 15.1.1976. This was also necessary because a special Act, Gujarat Town Planning Act had been enacted on 19.6.1976 with the sole object to develop the urban areas of the State in accordance with the provisions of the said Act.

19. Accordingly, the appeals are allowed. The Judgments of the High Court are set aside and the writ petitions are dismissed. There shall be no orders for costs.