

(2022) 07 GUJ CK 0006

In the Gujarat High Court

Case No : R/Special Civil Application No. 4313 Of 2022, Civil Application (For Stay) No. 1 Of 2022

Bhogilal Kesarabhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Town Planning And Urban Development Act, 1976 — Section 47, 48, 50

Citation : (2022) 07 GUJ CK 0006

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : SP Majmudar, Jyoti Bhatt, Deepak P Sanchela

Final Decision : Allowed/Disposed Of

Judgement

Dr. A. P. Thaker, J

1. With the consent of the learned advocates appearing for the respective parties, the matter is heard finally at the admission stage.

2. Heard learned advocate Mr.S.P.Majmudar for the petitioner, learned AGP Ms.Jyoti Bhatt for the respondent State and learned advocate Mr.Deepak Sanchela for the respondent no.3-Nagarpalika.

3. The present petition is filed under Article 226 of the Constitution of India for the following reliefs:-

“(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 directions quashing and setting aside the impugned notice dated 22.02.2022 issued by the respondent- Nagarpalika (at ANNEXURE-F) hereto) and further may be pleased to direct the respondent authority to modify the order dated 28.09.2018 passed by the No.1 by directing respondent authorities to have 15 mtrs road line from the center point and further be pleased to quash and set aside order and

notification dated 02.11.2011 sanctioning the draft town Planning scheme No.4 (Himmatnagar) to the aforesaid extent for the land in question.”

(A-1) YOUR LORDSHIPS may be pleased to issue a writ of mandamus and/or any other appropriate writ in the nature of mandamus and/or any other appropriate writ holding and declaring that the action of demolishing the part of the premises/property of the petitioner is illegal and further action of the respondent Nagarpalika of constructing the road of 18 meters width is totally illegal and contrary to the order dated 28.09.2018 passed by respondent no.1 and further be pleased to direct the respondent authority to construct the road of 15 meters from the center point.

(B) During the pendency and disposal of the present petition, YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of the impugned notice dated 22.02.2022 issued by the respondent No.3 Nagarpalika (at ANNEXURE -F) hereto) and further be pleased to direct authorities to maintain status-quo with respect to the land in question of the petitioner;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.

4. The petitioner has challenged the impugned notice dated 22.02.2022 issued by the respondent no.3 in respect of the land in question of the petitioner. The petitioner has submitted that he also seeks to challenge order dated 28.09.2018 passed by the respondent no.1 to the extent to modify the same directing the respondent authority to have 15 meters road line from the center point. According to the petitioner, the draft Town Planning Scheme No.4 (Himmatnagar) has been sanctioned by the State Government by notification dated 02.11.2011, which is in violation of the provisions of the Gujarat Town Planning And Urban Development Act, 1976 and Rules made thereof. According to the petitioner, the construction has been made by him, upon his land as per the approved lay out plan and as per the draft scheme, the road of 18 meter is shown to be passing through the land belonging to the petitioner.

4.1. It is submitted that earlier he has filed objection on 19.01.2012, to the concerned Town Planning Officer and also to the Nagarpalika and thereafter also he has filed representation. According to the petitioner, thereafter he and the others have preferred Special Civil Application No.8820 of 2012 before this Court challenging the notification of the State Government sanctioning the draft Town Planning Scheme which came to be disposed of by order dated 29.11.2012 with the consensus of all the parties and necessary direction was issued regarding filing appropriate representation by the petitioners. Accordingly, they preferred representation which came to be decided vide order dated 08.07.2013. It is also contended that thereafter they have preferred Special Civil Application No.17563 of 2013 wherein one of the contention of the petitioner was that the extension of the road should be made from the center point, the said petition came to be disposed of by this Court by direction dated 15.12.2017.

4.2. Thereafter, on the representation of the petitioner, respondent no.1 passed an order mentioning that the road should be of 15 meters only. Thereafter, they have made representation to the respondent nos.3 and 4 on 17.02.2022, where upon respondent no.3 issued letter dated 23.02.2022 to the petitioner informing him for date of hearing as 28.02.2022. It is contended that however, the Nagarpalika has issued impugned notice directing the petitioner to vacate the property within three days. This notice has been challenged by the petitioner.

5. Pending the petition, the petitioner has amended the petition as there was some demolition on the part of the property of the petitioner whereupon the petition came to be amended.

6. Learned advocate Mr.S.P.Majmudar for the petitioner has submitted the same facts which are narrated in the petition and has submitted that there were directions of this Court of hearing the representation of the petitioner by the concerned higher authority whereupon the same came to be heard by Additional Secretary who by his order dated 28.09.2018 directed the concerned authority to decide regarding the width of the road making it 15 meters after hearing all the concerned. According to Mr.Majmudar, the respondent no.3 issued notice for hearing the petitioner but on the same day from the Chief Officer of the Nagarpalika he received notice for removal of the premises of the petitioner. He has submitted that the impugned notice is clearly against the breach of principles of natural justice. He has also submitted that though the respondent no.1 has directed the concerned authority to hear the parties before taking any action of widening the road, the authority without hearing the petitioner has issued the notice and pending the petition has taken the action of demolition without any authority. He has submitted that the respondent no.1 authority ought not to have relegated the matter to the concerned Town Planning Officer but ought to have clearly directed the authority below to keep the road of width of 15 meters only and such width should be considered from the center point of the road. He has submitted that the draft Town Planning Scheme is only with a view to favour other side. He has submitted that even at present there is no finality of objection and no opportunity of being heard is given to the petitioner. He has prayed to allow the present petition.

7. Per contra, learned AGP Ms.Jyoti Bhatt has submitted that in view of the order passed by this Court in earlier round of litigation the respondent no.1-authority has heard the petitioners and passed appropriate order directing the subordinate authority to take appropriate action after providing appropriate opportunity to all the parties concerned. She has submitted that the order passed by the respondent no.1 is proper one.

8. Learned advocate Mr.Deepak Sanchela for respondent no.3 has submitted that the draft scheme has already been sanctioned and all the procedure under Section 47 and 48 of the Gujarat Town Planning And Urban Development Act, 1976 have been followed. He has submitted that the original notification is of the year 2011. He has submitted that the petitioners have a recourse under Section

50 of the Gujarat Town Planning And Urban Development Act, 1976. He has submitted that considering the necessity of preparing the road, the authority has acted in accordance with law and there is no merits in the petition and it deserves to be dismissed.

9. Having considered the submissions made on behalf of both the sides coupled with the material placed on record, it appears that, against the draft scheme, earlier also the petitioners and others have approached this Court wherein, necessary orders have been passed for deciding the representation of the petitioners challenging the draft scheme. It appears that in view of the order of this Court the respondent no.1 was directed to decide the representation of the petitioners. It appears from the order passed by the respondent no.1, which is at page no.48 onwards, while deciding the matter learned Additional Secretary had also taken into consideration all the representations made by all the parties concerned as well as the order of this Court and has ultimately directed the concerned authority to decide the question of widening the road in respect of Town Planning Scheme No.4. It also appears from page no.61 that as per the order dated 08.07.2013, the road was sanctioned for the width of 15 meters. It is observed therein that considering the sanction of the 15 meter road of Town Planning Scheme No.4 and considering the present structures thereon, it requires to be decided by the Town Planning Officer, after giving opportunity of hearing to all the parties concerned including Nagarpalika. Now, on perusal of the records, it appears that the Chief Officer, Himmatnagar Nagarpalika vide its communication dated 23.02.2022, (annexure -I at page 66) informed the petitioner to remain present on 28.02.2022 at 11 .00 O'Clock regarding his grievance as to the Town Planning road of 18 meter. Thus, the Chief Officer has invited the petitioner to remain present on 28.02.2022. However, at the same time, the same Chief Officer on 22.02.2022 issued impugned notice (annexure – F, page 67) to hand over the possession for widening of the road and three days time has been granted. Thus, instead of deciding the representations which may be filed by the petitioner in pursuance of communication no.HMP-TP-TP-2/5323/2022 dated 23.02.2022, the impugned notice has been issued. The said impugned notice is clearly against the direction issued by the respondent no.1 of providing opportunity to all concerned, which includes all the parties, Town Planning Officers and the Officers of the Nagarpalika. Not only that but when the Chief Officer himself has called upon the petitioner to remain present on 28.02.2022, there was no need for insistence of taking over possession of the property of the petitioner within a three days. Thus, the action of the respondent no.3 is clearly not sustainable in the eyes of law and the same is required to be set aside.

10. Further, since the respondent authority is trying to carry out the process of widening of the road of upto 18 meters which is also not in consonance with the direction issued by the respondent no.1, the action of the respondent needs to be stayed so far as the width of the road is concerned till the representation of the petitioner is decided by the concerned Town Planning Officer in accordance with law. Therefore, even if any demolition is made by the respondent authority

during the pendency of this petition, may be termed as an illegal one.

11. In view of the above, the present petition needs to be allowed to the aforesaid extent.

12. In view of the above, the impugned notice dated 22.02.2022, annexure- F issued by the respondent Nagarpalika is hereby quashed and set aside. The respondent -Nagarpalika and the Town Planning Officer are hereby directed to abide by the direction issued by the respondent no.1 regarding hearing of all the parties concerned before deciding the question of road. Till such representation is decided, the authority is hereby directed to maintain status quo qua the land in question of the petitioner.

12.1. If any adverse decision is taken by the concerned respondents against the grievances of the petitioner, the same shall not be implemented for atleast 7 days from the date of receipt of such communication in writing, by the petitioner, so as to provide opportunity to the petitioner to challenge the same in accordance with law before the appropriate forum.

13. With this observation the petition is allowed to the aforesaid extent. No order as to costs. Direct service is permitted. In view of the order passed in the main matter, the Civil Application stands disposed of accordingly.