
(2015) 05 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 6337 of 2015 and Spl. C.A. Nos. 6340, 6342 to 6351, 6688 and 7048 of 2015

Everest Publicity Pvt. Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(a), 19(1)(g), 21
Gujarat Provincial Municipal Corporations Act, 1949 — Section 17, 19
Gujarat Town Planning and Urban Development Act, 1976 — Section 12, 12(1), 12(2), 12(2)(m), 12(ii)(m)

Citation : (2015) 3 GLR 1891

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : R.S. Sanjanwala, Senior Advocate and Ajay S. Jagirdar, for the Appellant; Manisha Lavkumar Shah, G.P. and Rashesh Rindani, A.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J—As in all these petitions, common questions arise for consideration with regard to the removal of number of hoardings in excess, they are being heard together and are being decided by present common order. Special Civil Application Nos. 6337, 6342 to 6350 and 7048 of 2015 are filed by the different petitioners, who are carrying on business of outdoor advertising, under Arts. 14, 19(1)(a) and (g), 21 and 226 of the Constitution of India as well as under the provisions of the Gujarat Provincial Municipal Corporations Act, 1949 for the prayers inter alia to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the notice issued by the respondent-Corporation dated 17-3-2015 and to direct the State Government to issue modification/suggestion dated 30-8-2013 and 3-1-2015 and to issue necessary direction in exercise of power conferred by Sec. 122 of the Gujarat Town Planning and Urban Development Act on the grounds stated in the

memo of petition.

2. Special Civil Application No. 6340 of 2015 is filed by the petitioner-Chitra Publicity Company Private Limited through its Director (the petitioner No. 2) under Arts. 14, 19(1)(a) and (g), 21 and 226 of the Constitution of India as well as under the provisions of the Gujarat Provincial Municipal Corporation Act, 1949 for the prayers inter alia to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the notices issued by the respondent No. 2 dated 17-3-2015 and 4-4-2015 at Annexure-A collectively and to direct the respondent No. 1 to decide the representation/suggestion of the respondent No. 2 dated 30-8-2013 and 3-1-2015 at Annexures-B1 and B2 and also restraining them from demolishing and/or taking any coercive action for removal of the existing hoardings of the petitioners as per the list at Annexure-C on the grounds stated in the memo of petition.

3. Special Civil Application No. 6688 of 2015 is filed by the petitioner-Selvel Medial Services Pvt. Ltd., under Arts. 14, 19(1)(a) and (g), 21 and 226 of the Constitution of India as well as under the provisions of the Gujarat Provincial Municipal Corporation Act, 1949 for the prayers inter alia to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the notices dated 23-3-2015 and 4-4-2015 issued by the respondent No. 2-Corporation and also for the direction to decide the representation/suggestion of the respondent No. 2 dated 30-8-2013 and 3-1-2015 at Annexures "O" and "P" respectively on the grounds stated in the memo of petition.

4. Heard learned Senior Counsel, Shri Mihir Thakore appearing with learned Advocate, Shri Amar Bhatt in Special Civil Application No. 6340 of 2015, learned Senior Counsel, Shri R.S. Sanjanwala appearing with learned Advocate, Shri Ajay Jagirdar in Special Civil Application Nos. 6337, 6342 to 6350 and 7048 of 2015, learned Advocate, Shri Jal Unwala appearing with learned Advocate, Ms. Tejal Vasi in Special Civil Application No. 6688 of 2015, learned Government Pleader, Ms. Manisha Lavkumar Shah appearing with learned A.G.P. Shri Rashesh Rindani for respondent No. 1-State and learned Advocate, Shri Satyam Chhaya for the respondent No. 2-Corporation.

5. Learned Senior Counsel, Shri Mihir Thakore submitted that the petitioner is seeking appropriate direction and writ of mandamus directing the respondents to decide the representation made by the respondent No. 2-Corporation produced at Annexure-B1 at page No. 26. He submitted that the owners of the property have right to make the use of the property and the petitioners, who are carrying on business of publicity, are having right to carry on their trade and business for advertising and publicity. He, therefore, emphasized that if the prayer as prayed for is not granted, it would curtail their rights.

6. Learned Senior Counsel, Shri Mihir Thakore referred to the background of the facts and submitted with details that the licences were granted to the petitioners to place billboards or hoardings on the private property as provided in the notice

and the dispute has arisen when the notices dated 17-3-2015 and 4-4-2015 came to be issued by the Corporation for removal of such hoardings on the ground that the billboards or hoardings in the margin open space upto 500 sq.mtrs. area of building unit may not exceed two, whereas same has been under consideration for the draft development plan. He pointedly referred to Annexure-B1 at page No. 26, which is a communication by the Commissioner of Ahmedabad Municipal Corporation-respondent No. 2 and submitted that it was recommended or suggested that it should be permitted as stated in this proposal which will permit the persons like the petitioners to have more than two hoardings in 500 sq.mtrs. building unit subject to maximum four boards. He emphasized that as stated in this communication by the respondent No. 2, it would also be a source of income for the respondent No. 2-Corporation. Learned Senior Counsel, Shri Mihir Thakore submitted that therefore the letter dated 3-1-2015 was also addressed by the respondent No. 2 to the respondent No. 1 produced at Annexure-B2 and submitted that it was also suggested to clarify about the inconsistency with reference to G.D.C.R. Learned Senior Counsel, Shri Mihir Thakore referred to the background of the facts and submitted that earlier Special Civil Application No. 15453 of 2008 and other group of matters were filed before this High Court and the High Court (Coram: Jay ant Patel, J.) vide order dated 22-12-2008 passed an order. He also referred to the order passed in Special Civil Application No. 15453 of 2008 and allied group of matters passed by the Hon"ble Division Bench (Coram: K.S. Jhaveri and A.G. Uraizee, JJ.), dated 7-3-2014 and submitted that it was an order passed with consensus and the said order was passed with the knowledge about the observation and direction given by the Court. He emphasized that it was observed in Para 4:

"4. In view of the same, the present petitions stand disposed of accordingly. It is made clear that this Court has not expressed any opinion on the merits of the matter. It is clarified that in case the approval is not granted by the State Government or Municipal Corporation, it will be open for the petitioner to challenge the said decision before appropriate forum. Since, we have not expressed any opinion of the merits of the matter, it will also be open for the petitioner to raise all the grounds as raised in this application as well as in the petition. It is expected from the Municipal Corporation that if in case, the State Government is not approving the suggestion, they will give prior notice to the petitioner before removing the hoardings."

7. Learned Senior Counsel, Shri Mihir Thakore also referred to the subsequent order dated 28-3-2014 passed below, speaking to minutes and submitted that the it is the direction of the Court that the respondent No. 1 was required to consider the suggestion/modification as suggested by the respondent No. 2-Corporation, and therefore, it is obliged to take decision which has not been taken. Learned Senior Counsel, Shri Mihir Thakore submitted that as could be seen from the papers, no such decision has been taken or placed on record nor is there anything to suggest that on the application of mind with regard to the suggestion by the petitioner as well as the respondent No. 2-Corporation, the

decision has been taken. He therefore emphasized that the contention of the respondent No. 1-State that once G.D.C.R. is approved, it will have the application prescribing number of hoardings and bill-boards, which will be placed in the private place in 500 sq.mtr. unit, is de hors the observations made by the Court. Learned Senior Counsel, Shri Mihir Thakore strenuously submitted that there is no application of mind while taking decision as there is nothing on record, from which, it could be suggested that the decision has been taken by the respondent No. 1 and the suggestion or the objections are considered.

8. Learned Senior Counsel, Shri Mihir Thakore pointedly referred to the decision which is placed on record along with the affidavit-in-reply and tried to submit that the decision which has been taken dated 21-1-2015 produced at Annexure-R1 as stated in the affidavit-in-reply, does not refer to the issue with regard to number of hoardings, which is permissible pursuant to the suggestion by the respondent No. 2-Corporation. He pointedly referred to the order dated 21-1-2015 of the State Government at Annexure-R1 and submitted that it only refers to P.I.L. and issue involved in P.I.L. with regard to the hoarding placed on the public road or street but has not made a reference to the hoardings in a private property. He also referred to G.D.C.R. and submitted that it was incumbent upon the respondent No. 1 to pass an order when to the knowledge of the respondents, the order came to be passed by the Hon"ble Division Bench. He again emphasized the order of the Hon"ble Division Bench dated 7-3-2014:

"It is clarified that in case the approval is not granted by the State Government or Municipal Corporation, it will be open for the petitioner to challenge the said decision before appropriate forum."

9. Learned Senior Counsel, Shri Mihir Thakore therefore submitted that as there is no decision, which can be said to have been taken validly, it has affected the fundamental rights of the petitioners under Art. 19(1)(g) of the Constitution of India and there is no consideration of the suggestions. Learned Senior Counsel, Shri Mihir Thakore submitted that it cannot be permitted to contend that the decision has been taken, which would imply that the suggestions are deemed to have been rejected or not accepted. He tried to submit that unless there is a specific conscious decision reflected either from the file or from the impugned order or the communication at Annexure-R1, there is no decision, and therefore, the prayer as prayed for may be granted directing the respondent No. 1 to take fresh decision considering the objections or suggestions by the petitioners as well as the respondent No. 2-Corporation.

10. Learned Senior Counsel, Shri Mihir Thakore submitted that it is the legitimate expectation of the persons like the petitioners, who carry on business or trade to have their suggestions considered by the authority before taking decision. He emphasized that particularly when the Hon"ble Division Bench has passed an order, it was incumbent upon the respondent No. 1 to apply mind and consider the suggestions made by the petitioners as well as the respondent No. 2, which is not there, and therefore, the contentions raised on the ground of G.D.C.R. may

not be accepted. He also referred to the provisions of the Gujarat Town Planning and Urban Development Act, 1976. Learned Senior Counsel, Shri Mihir Thakore referred to the affidavit-in-rejoinder to emphasize his submission that the order dated 21-1-2015 is deemed rejection of the request for modification by the respondent No. 2-Corporation on 3-1-2015 and 30-8-2013 regarding the hoardings in the margin land of private property. He emphasized that the respondent No. 1 has been approbating and reprobating. He emphasized that it was contended that the suggestion for the modification from the respondent No. 2-Corporation were received after a period of 60 days was over, and therefore, they were not considered and on the other hand, when G.D.C.R. are finalized on 20-12-2014, it is contended that they are impliedly rejected. He emphasized that the petitioners and the Outdoor Advertising Owners Association had raised objections making suggestions on 8-4-2013 i.e. within a period of 60 days, which have not been considered. He again referred to the background of the facts with reference to the dates and the order of the Hon'ble Division Bench dated 7-3-2014 and tried to submit that the finalization of G.D.C.R. would imply that the suggestions are considered or deemed to have been rejected, which is not correct and decision could not be in silentio. He further submitted that the decision has to be reflected from the file or there should be an express decision, and therefore, there is no decision pursuant to the order of the Hon'ble Division Bench. Learned Senior Counsel, Shri Mihir Thakore submitted that the respondents may be called upon to disclose as to the steps taken pursuant to the order of the High Court and as it transpires, they have not considered the submissions made by the respondent No. 1 or the respondent No. 2-Corporation on the ground that it has not been received within 60 days.

11. Learned Senior Counsel, Shri Mihir Thakore referred to the judgment of the Hon'ble Apex Court in case of Syed Hasan Rasul Numa and others Vs. Union of India and others, AIR 1991 SC 711 : (1990) 4 JT 463 : (1990) 2 SCALE 1007 : (1991) 1 SCC 401 : (1990) 3 SCR 165 Supp in support of his submissions with regard to non-consideration of the suggestions.

12. Learned Senior Counsel, Shri Mihir Thakore has also referred to Art. 19(1)(g) of the Constitution of India and tried to submit that it affects the fundamental rights of the petitioner to carry on trade and business and unreasonable restriction cannot be imposed. He tried to submit that the burden is on the respondent authorities to establish that the restrictions are not unreasonable. In support of this submission, he also referred to and relied upon the judgment of the Hon'ble Apex Court in case of N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012) 3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417 . He also referred to and relied upon the judgment of the Hon'ble Apex Court in case of State of Maharashtra and Another Vs. Indian Hotel and Restaurants Assn. and Others, (2013) 5 ABR 222 : AIR 2013 SC 2582 : (2013) 3 RCR(Criminal) 455 : (2013) 9 SCALE 47 : (2013) 8 SCC 519 and referred to the observations made in Para Nos. 125 and 132.

13. Learned Senior Counsel, Shri R.S. Sanjanwala appearing with learned Advocate, Shri Ajay Jagirdar in Special Civil Application Nos. 6337, 6342 to 6350 and 7048 of 2015 and learned Advocate, Shri Jal Unwala appearing with learned Advocate, Ms. Tejal Vasi in Special Civil Application No. 6688 of 2015 have adopted the submission made by learned Senior Counsel, Shri Mihir Thakore appearing with learned Advocate, Shri Amar Bhatt in Special Civil Application No. 6340 of 2015.

14. Learned Government Pleader, Ms. Manisha Lavkumar Shah referred to the papers and submitted that the Court may consider as to what is the right of the petitioners to seek prayer with regard to the direction that the suggestion or the modification suggested by the respondent No. 2-Corporation have not been considered. She emphasized that admittedly the objections/suggestions made by the petitioners have been considered and entire case is banked on the letter addressed by the respondent No. 2 produced at page No. 26. She emphasized that as could be seen from the background, prevalent G.D.C.R. also permitted a limited two hoardings and Corporation had granted licence beyond that, for which, when the notices were given for removal, which had resulted into the litigation. Learned Government Pleader, Ms. Shah submitted that therefore when the issue with regard to such hoardings on a public road or street came up in a P.I.L., it is sought to be mixed up with number of permissible bill-boards or hoardings permissible in the private property with 500 sq.mtrs. unit. She emphasized that even in earlier G.D.C.R. when it was permissible only two hoardings, more hoardings were place due to the permission or licence by the respondent No. 2-Corporation, and therefore, when the Corporation was asked to implement the G.D.C.R., the notices were issued which resulted in the litigation. She therefore submitted that the issue with regard to the hoardings on public road or a street causing inconvenience was considered in P.I.L. before the High Court and it was a separate issued. She, however, submitted that the respondent No. 2-Commissioner of Municipal Corporation seems to have made suggestion as stated in Annexure-B1 and B2 for modification which has not been accepted. She pointedly referred to the order passed by the Hon"ble Division Bench in Special Civil Application No. 15453 of 2008 dated 7-3-2014 and 28-3-2014 and submitted that as observed in Para No. 4 that it was for the petitioner to challenge the decision before the appropriate forum (Emphasis Supplied). She, therefore, submitted that it was open for the petitioners to apply before the forum under the Town Planning Act for variation. She again referred to the order and submitted that it was expected that in case the modification as suggested by the Municipal Corporation are not approved Clause 20.1 of Chapter would prevail, meaning thereby, it has also been further clarified while passing an order passed below speaking to minutes dated 28-3-2014, which reads as under:

"According to the Municipal Corporation, in the event, suggested modifications are not approved, the clause 20.1 of Chapter 20.0 shall prevail. The petitioners submit that this will not effect the rights of the petitioners to challenge the final G.D.C.R. in case the suggested modifications are not approved or file a fresh

petition on the grounds raised in these petitions."

15. Therefore, learned Government Pleader, Ms. Shah submitted that in fact the petitioners had been very much aware that they may either have to go for variation as provided under Sec. 19 of the Town Planning Act or they may challenge G.D.C.R. She, therefore, emphasized that the present petition is not maintainable at all. Learned Government Pleader, Ms. Shah also referred to the affidavit-in-rejoinder and submitted that as stated in rejoinder, the petitioners have already resorted to the procedure under Sec. 19 of the Town Planning Act for variation. She emphasized, Paragraph No. 4 of the rejoinder, which reads as under:

"4. I reiterate that the Respondent No. 1 has failed to consider the request/representation of the petitioner and the A.M.C. for modifying Clause 20.1.1. and 20.1.2. of G.D.R. At any rate and without prejudice to what is stated above, under Sec. 19 of the T.P. Act, the G.D.R. can always be varied and the request/representation of the A.M.C. dated 3-1-2015 together with the representation dated 30-8-2013 may be treated as an application under Sec. 19 of the T.P. Act for variation of the G.D.R., particularly when the A.M.C. itself is supporting the view that clauses 20.1.1. and 20.1.2. of the G.D.R. need to be modified as stated in the said letters dated 30-8-2013 and 3-1-2015."

16. She, therefore, submitted that on one hand, they have resorted to the procedure for variation under Sec. 19 of the T.P. Act and on the other hand, they are making grievance only to continue interim relief by way of such petition, and it is only to buy the time, the petition is pursued. Learned Government Pleader, Ms. Shah, therefore, submitted that the conduct of the petitioners is also required to be considered that it is only on the basis of the latter at Annexure-B1 produced at page No. 26 addressed by the Corporation, entire petition is based on such letter. However, she submitted that it has not been shown on what basis the relief could be claimed with regard to the suggestion of the Commissioner when G.D.C.R. has already been approved by the Government. She submitted that once the G.D.C.R. has been approved, it has to be implemented. She pointedly referred to the scheme of the Gujarat Town Planning and Urban Development Act, 1976 and submitted that Sec. 12 of the T.P. Act refers to the contents of the draft development plan and submitted that as provided in Sec. 12(1), it refers to the use of the land in the area covered by it shall be regulated in the manner provided. She pointedly referred to Sec. 12(ii)(m), which reads as under:

"12(ii)(m) Provision for controlling and regulating the use and development of land within the development area, including imposition of 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 stories and character of building and density of built-up area allowed in specified area, the use and purposes to which a building or specified areas of land may or many not be appropriated, the sub-divisions of plots, the

discontinuance of objectionable uses of land in any area in any specified periods, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act."

17. She, therefore, submitted that it refers to very issue with regard to the space of the building and size of the projection and the advertising sign and hoardings and other materials that may be considered necessary for the purpose of object of the Act. Learned Government Pleader, Ms. Shah submitted that Sec. 13 refers to the publication of draft development plan and Sec. 13(2)(c) provides,-

"the draft regulations for enforcing the provisions of the draft development plan".

18. She, therefore, submitted that meaning thereby, once the development plan is approved, every possible aspect has been considered. She pointedly referred to Sec. 17 of the Act, which provides:

"Power of State Government to sanction draft development plan".

19. Learned Government Pleader, Ms. Shah referred to Sec. 17(1)(c) and submitted that it provides that where the State Government has published the draft development plan as required, it shall take into consideration the suggestions and objections that may have been received and it shall be invited. She emphasized that once the development plan is sanctioned, it assumes force of an Act and it cannot be set aside. She therefore submitted that the petitioners may have the recourse and the present petition may not be entertained.

20. In view of these rival submissions, it is required to be considered whether the present petition deserves consideration.

21. As could be seen from the background of the facts recorded hereinabove, it is a classic case of abuse of the process suggesting that the litigation could be a gainful exercise. The petitioners have filed the petitions challenging the impugned notice/order on two counts:

"(1) that it affects the fundamental rights of the petitioners to carry on trade and business under Art. 19(1)(g) of the Constitution of India; and

(2) that the decision as required by the order of the Division Bench has not been taken and there is no application of mind."

22. The submission was that the decision could not be in silentio or it could not have been stated that the objections or the suggestions are deemed to have been rejected. Though, the submissions have been made, first aspect, which requires focus, is the right of the petitioners to carry on trade and business and whether any such right much less any fundamental rights can be said to have been affected. The petitioners' right to carry on trade or business is one thing, which is not affected merely because the authority in exercise of power under the statute has regulated the number of hoardings, which could be placed in private property with particular area like 500 sq.mtrs. In other words, the right to carry

on business of advertising is one thing, which is not in any way affected but it cannot be stressed to suggest that the authority cannot implement the statutory provisions like G.D.C.R. and the petitioners may be permitted to have as many boards as he desires for the business in disregard to G.D.C.R. As this issue has been raised first, it will be necessary and desirable to revert back to the background, which could be stressed to the judgment of the of this High Court in Outdoor Advertising Owners Association and Another Vs. K. Kailashnathan and/or Successor to The Office and Others, AIR 2006 Guj 212 : (2006) 3 GLR 2362 . Even at that time, there was litigation on similar basis and the observations have been made by the Court. It requires a consideration about the conduct and attitude of the petitioners and/or the association of such Outdoor Advertising Owners" Association. In the said judgment in case of Outdoor Advertising Owners Association and Another Vs. K. Kailashnathan and/or Successor to The Office and Others, AIR 2006 Guj 212 : (2006) 3 GLR 2362 it has been observed, more particularly, in Paragraph No. 10 that the petitioner therein had suggested the proposed amendment in G.D.C.R. through A.U.D.A. and it was contended that during the pendency of the proposal with the State Government, they may be permitted to continue with the hoardings and signs in the margin land. The contentions were not accepted on the ground that merely because some amendments are proposed, it is not that the petitioners are not required to comply with the requirement as per the existing G.D.C.R.. So long as the amendment is not accepted by the Government and the regulations are not amended, the regulations continued in existing and the petitioner and/or any other persons are bound to comply with the requirement of the existing G.D.C.R. (Emphasis Supplied). Even after passage of time in the same way, the proposals are sought to be conveyed through the respondent No. 2-Corporation produced at page No. 26 and it has been contended that till it is considered by the respondent No. 1, they may be continued to have the hoardings or billboards de hors the provision of the G.D.C.R. The contention is raised that the decision is not taken nor placed on record is only to wriggle out of the implementation of the G.D.C.R., which is the law prevailing as on the day. It is required to be noted that to the knowledge of the petitioner as specified in the order of the Hon''ble Division Bench, it was made clear that if the suggestions/modifications by the respondent No. 2-Corporation are not approved, G.D.C.R. will prevail. Therefore, it cannot be assumed that Law should not be implemented and the person like petitioners may be permitted to continue de hors the statutory provision of law in the guise of such submissions, which are raised. The High Court even in that case had observed that, it will not be permissible and till the modifications are approved by the State as per the provision of the Town Planning Act, G.D.C.R. prevailing has to be implemented. Therefore, same situation would prevail as on day that the petitioners having recourse under Sec. 19 of the Town Planning Act may move for the variation for the G.D.C.R., which may be a separate issue, but it cannot be argued or permitted to be argued that till then the approved draft development plan of the G.D.C.R. may not be implemented as sought to be canvassed.

23. Thus, the situation which had prevailed at that time in 2006 is the same when the petitioners are raising such contentions urging the violation of fundamental rights without justifying that any right much less any fundamental rights can be said to have been violated. Again it cannot be disputed that such a right under Art. 19(1)(g) of the Constitution of India are subject to reasonable restriction. It is well accepted that while considering the issue with regard to the right of the hawkers under Art. 19(1)(g) of the Constitution of India, the Hon''ble Apex Court has made clear that the right of hawkers under Art. 19(1)(g) is subject to reasonable restriction. It has also been emphasized that there is no fundamental right under Art. 21 to carry on any hawking business. There is also no right to do hawking at any particular place. The Hon''ble Apex Court in a judgment in case of Indian Drugs and Pharm and Others Vs. Punjab Drugs Manufactures Association and Others, AIR 1999 SC 1626 : (1999) 3 CTC 458 : (1999) 2 JT 445 : (1999) 123 PLR 38 : (1999) 2 SCALE 306 : (1999) 6 SCC 247 : (1999) 2 UJ 889 : (1999) AIRSCW 1236 : (1999) 3 Supreme 266 referring to earlier judgment of the Hon''ble Apex Court in case of Saghir Ahmad Vs. The State of U.P. and Others, AIR 1954 SC 728 : (1955) 1 SCR 707 has observed and quoted:

"Under Clause (1)(g) of Art. 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Art. 19. But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest."

24. Thus as observed in this judgment referring to earlier judgment, such right could be regulated even by exercise of executive powers or policy restrictions. It could hardly be said that the restrictions imposed with regard to number of billboards, which could be placed in a private property pursuant to the regulation like G.D.C.R. can be said to be unreasonable. The submission that the person has right to make use of his property and there could not be any restriction is thoroughly misconceived inasmuch as if such arguments are to be accepted then, the person may claim that he can put up any construction without any norms or regulations or compliance with the building regulation merely because he is the owner of the land, which is not permissible. It is well accepted that even in the private land depending upon various factors like zone, area, F.S.I., permissible restriction and development and construction, the development could be made and such restrictions are considered to be reasonable restrictions on the right to use the property.

25. Thus, the moot question is whether G.D.C.R. made in exercise of statutory power can be said to be unreasonable which may provide for some regulation with regard to various aspects like hoardings in the private place. The provisions of Sec. 12 referring to the contents of draft development plan clearly provides that it may provide for the matters as enumerated in Sec. 12(2). Section 12(2)

(m) which has been emphasized by learned Government Pleader, Ms. Shah provides for the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act. Similarly, Sec. 13 of the Act referred to the publication of draft development plan and it also provides for regulation for enforcing the provisions of the draft development plan. Therefore, in exercise of the statutory provisions or the powers, G.D.C.R. is made after following the procedure as referred to in the papers including inviting objections of the persons like petitioners, no grievance could be made. It is required to be mentioned that the petitioners have raised objection/suggestion within time, which are considered and what they are seeking is direction based on the proposal/suggestion made by the Commissioner of Municipal Corporation of Ahmedabad, the respondent No. 2 referred to at page No. 26. In other words, entire basis of the petition is such a communication from the Commissioner, Ahmedabad Municipal Corporation dated 3-1-2015 at Annexure-B that such suggestions have not been considered. It is required to be stated that the submissions have been canvassed based on such letter that there is no decision by the respondent No. 1-State or that there is no reference about the consideration of the objections/suggestions, which have been made by the respondent No. 2-Commissioner, Ahmedabad Municipal Corporation. However, it is well accepted that while considering the draft development plan or town planning scheme for the entire area, suggestions/objections are invited, which are collected together and after considering the same, final shape is given, for which, it may not be necessary to expressly state with reference to either suggestions or objections, otherwise, it may be practically impossible to have finalization of the scheme recording details of such suggestions. Therefore, the submissions which have been made, are based on the assumption that the objections/suggestions made by them within stipulated period are not considered. In fact, as could be seen from the papers, particularly page No. 26 at Annexure-B in Special Civil Application No. 6340 of 2015, the Commissioner, Ahmedabad Municipal Corporation seems to have addressed a letter making suggestion on the basis of letter from the association. Thus, such submissions about non-consideration of the objections on the basis that it is not reflected in the impugned order or it is not expressly stated, cannot be readily accepted. It is well accepted that the presumption would be that act or function which is required to be performed, has been performed validly as per the statutory provisions unless it is established, otherwise. The submissions which have been made by learned Senior Counsel, Shri Thakore and learned Senior Counsel, Shri Sanjanwala with regard to the doctrine of legitimate expectation is also without any merits. The term legitimate expectation clearly suggests that the person can expect legitimately that he would be dealt with fairly and reasonably by the authority exercising the statutory power. Therefore, the moot question is that is there any case for legitimate expectation which can be canvassed by the petitioners in a given background of the facts. All that is required was that the persons like the petitioners, who are having licences to place hoardings in the private place are permitted. However, in disregard to the G.D.C.R., the

Corporation may have permitted more than prescribed hoardings in a private place which had led to the litigation as stated above. Therefore, at that time, the contention was raised that till the licences expire, the persons like the petitioners may continue to have hoardings as per the licences, meaning thereby, more than two hoardings upto four hoardings in the private place. After the period of licence expires, the petitioners desired that they should have say in the matter as regards number of hoardings which could be permitted in a private property in furtherance of their right to carry on business. However, the respondent No. 1 as stated above in exercise of the statutory power of T.P. Act made G.D.C.R. permitting only two hoardings in the private property, which cannot be now challenged by resorting such proceedings based on some letter or suggestion by the Commissioner of Municipal Corporation. It is well accepted that the Municipal Corporation or A.U.D.A. as an implementing authority of the town planning have been contending throughout that they are only implementing authority and any variation/modification is left to the State authority i.e. the respondent No. 1. Therefore, when the State authority has made G.D.C.R. finally, the decision culminating into G.D.C.R. has become final and it cannot be questioned at the instance of the petitioner relying upon such letter by the Corporation. In fact the recourse can be had as provided under Sec. 19 of the Act for variation or modification, which can be considered by the respondent No. 1. The doctrine of legitimate expectation also has to be considered with reference to the exercise of powers by the authority and the public interest, which is sought to be achieved. It is well accepted that as provided in doctrine of proportionality, whenever there is conflict between the private independent and the collective needs of society or the public as a whole, same may have to be balanced or independent rights may have to be compromised in a given situation. A useful reference can also be made to the judgment of this Court (Coram: A.R. Dave, J) in case of Jethabhai Mepabhai Makwana Vs. State of Gujarat, AIR 2005 Guj 132 , wherein it has been observed that in the process of town planning some one is bound to be badly affected and the variation in the scheme cannot be readily accepted. Again a reference is made to the doctrine of proportionality that the balance has to be struck between the individual claim and the right of the society. It is observed:

"The doctrine of proportionality itself provides that in the process of striking the balance, for betterment of the society at large, if a person has to suffer, it cannot be said that the said doctrine has been violated."

26. Therefore, it can hardly be said that the persons like petitioners can claim any legitimate expectation de hors the statutory provisions or Regulations like G.D.C.R. framed in exercise of statutory powers. One cannot have a legitimate expectation contrary to or de hors the statutory provisions. Again when the rights of the persons like the petitioners are subject to reasonable restriction or restrictions which cannot be termed as unreasonable or arbitrary, there is no question of making any complaint on the ground of legitimate expectation.

27. Learned Senior Counsel, Shri Thakore much emphasized referring to the

decision that such decision by the authority cannot be in silentio or it cannot be said that the modification suggested by the respondent No. 2 are deemed to have been considered unless it could be shown that in fact, they have been considered. It was emphasized that there was no material placed on record, by which, it could be said that in fact, such objections/suggestions by the respondent No. 2-Corporation have been considered. There is also a fallacy in the argument on two counts:

"(1) the Commissioner of Municipal Corporation may have incidentally made a recommendation/suggestion but the authority is bound to consider; and

(2) having considered the suggestions/objections of the petitioners, it can hardly be contended by the petitioners that they are aggrieved because suggestions made through their letter by the Corporation are not considered."

28. The statutory provision like Gujarat Town Planning and Urban Development Act, 1976 referred to various stages and the procedure and once the Regulations are framed in exercise of such statutory powers, it must prevail. Therefore, unless such Regulations like G.D.C.R. are modified in accordance with law subject to the procedure that is required to be followed, it cannot be given a go-bye merely on the suggestion as sought to be canvassed.

29. It is required to be mentioned at this stage that the order of the Hon"ble Division Bench as recorded hereinabove clearly provides that in case the modification are not approved, Clause 20.1 of Chapter 20 shall prevail. It has been recorded even in the order of the Hon"ble Division Bench dated 28-3-2014:

"this will not affect the rights of the petitioners to challenge the final G.D.R. in case the suggested modifications are not approved or file a fresh petition on the grounds raised in these petitions."

30. Therefore, it is evident that the statutory provisions or Regulations made in exercise of statutory powers must prevail which was also agreed and accepted before the Hon"ble Division Bench also. Assuming without admitting that the Corporation may have some suggestion independency, the provision of Sec. 122 makes the position clear, which provides, "Control by State Government." Therefore, it is not permissible for the petitioners to raise such contentions about the legitimate expectation having accepted before the Hon"ble Division Bench also that G.D.C.R. will prevail if the suggestions are not approved by the State.

31. It is required to be noted that though Annexure-B with regard to the modifications referred to the aspect of revenue for the Corporation, same is devoid of any merits. On closer scrutiny, it would be evident that the billboards or signboards are permitted to be placed in a private property. The private owner of the land would be receiving the amount of the rent or such charges and the Corporation will only have the licence charges which is given to the persons like the petitioners who are carrying on such business of placing advertisement of the hoardings. Therefore, it appears that taking a clue from the P.I.L. with regard to

the hoardings or the boards on street or footpath, the Commissioner of the respondent No. 2-Municipal Corporation seems to have added this issue while addressing letter referring to the letter addressed by the Association. It is also required to be stated that it only reflects that on one way or other, the petitioners desire to continue to have an advantage in the guise of such litigation, which is evident from the fact that since 2006, the issue has been kept entangled in the litigation with different shades and colour with same issues raised from time to time. However, the fact remains that it appears to be contention and the say of the petitioners that irrespective of the law like G.D.C.R., they may have the right to carry on trade and business and the Corporation or the authority may not implement the law by pursuing such litigation. It only reflects the attitude which cannot be permitted.

32. The aspect of test of reasonableness has also been considered in a judgment of the Hon"ble Apex Court in case of N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012) 3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417 relied upon by the learned Senior Counsel, Shri Mihir Thakore for the petitioners. However, referring to this aspect of reasonableness, the Court has observed that:

"The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, Courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo, but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole."

33. Again in this judgment, the Hon"ble Court has quoted earlier judgment of the Hon"ble Apex Court in case of State of Madras Vs. V.G. Row, AIR 1952 SC 196 : (1952) CriLJ 966 : (1952) 1 SCR 597 and observed:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied, thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

34. Therefore, the submissions, which have been made by learned Counsel for the petitioners cannot be accepted and the present petition deserves to be dismissed and accordingly stands dismissed. Notice is discharged. Interim relief shall stand vacated. No order as to costs.

FURTHER ORDER:

35. After the order was dictated and pronounced, learned Senior Counsel Shri Mihir Thakore appearing with learned Advocate Shri Amar Bhatt in Special Civil Application No. 6340 of 2015, learned Senior Counsel Shri R.S. Sanjanwala appearing with learned Advocate Shri Ajay Jagirdar in Special Civil Application Nos. 6337, 6342 to 6350 and 7048 of 2015, learned Advocate Shri Jal Unwala appearing with learned Advocate Ms. Tejal Vasi in Special Civil Application No. 6688 of 2015 have requested for stay of the operation of the order to enable the petitioners to have recourse before the higher forum.

36. Learned A.G.P. Shri Rindani has strenuously resisted contending that when G.D.C.R. itself is not challenged, the Court may consider the effect, and therefore, it may not be allowed to continue by staying of the operation of the order. However, considering the facts and circumstances and also the fact that initially the Corporation had permitted by licence, and thereafter, the G.D.R.G. has been framed, it would be in the interest of justice to stay operation of the order permitting the petitioners to have recourse before the higher forum till 15-6-2015 and the interim arrangement shall continue till 15-6-2015.