

(2008) 04 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 6552 of 2007

Gopinathji Dev Mandir Trust and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 79

Constitution of India, 1950 — Article 14, 227, 28, 298

Gujarat Municipalities Act, 1963 — Section 146, 146(1), 148, 258, 264

Citation : (2008) 3 GLR 2215

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : S.B. Vakil and Chirag B. Patel, for the Appellant; Kamal B. Trivedi, learned A.G., Sangeeta Vishen, learned Assistant Government Pleader for respondents 1 and 2, Harin P. Raval, for Respondent 3, S.N. Shelat, learned and D.C. Dave, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—Rule. Ms. Sangeeta Vishen, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents Nos. 1 and 2, Mr. Harin P. Raval, learned advocate, waives service of notice of rule on behalf of the respondent No. 3 and Mr. D.C. Dave, learned advocate, waives service of notice of rule on behalf of the respondent No. 4. On the facts and in the circumstances of the case and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided today.

2. This petition has been filed challenging the order dated 29-1-2007 (Annexure "A" to the petition) passed by the State Government, granting approval u/s 65(2) of the Gujarat Municipalities Act, 1963 ("the Act" for short) for sale of land admeasuring 1890.74 sq.mts. in favour of the respondent No. 4-Trust, at the rate of Rs. 912/- per sq.mt., the consequential communication dated 20-2-2007(Annexure "B" to the petition) of the District Collector, Bhavnagar, whereby the respondent No. 4 - Trust has been asked to pay an amount of Rs.

17,24,738/- towards sale consideration of the land in question, and also order dated 2-3-2007(Annexure "E" to the petition) of the Collector, laying down certain terms and conditions for the sale of the said land.

3. There has been a series of protracted litigation inter se between the petitioners and the respondent No. 4 and it will be necessary to refer to the salient aspects thereof, in order to place the issues raised in the present petition in their proper context, on the basis of facts, which are not in dispute. To this effect, it will be fruitful to advert, briefly, to the background in which the petition has been filed, as culled out from the averments made therein, the documents annexed therewith, as also the pleadings of parties and material on record.

4. The petitioner No. 1 herein is the "Shree Gopinathji Dev Mandir Trust", registered under the Bombay Public Trusts Act, 1950, and the petitioner No. 2 is the Trustee of petitioner No. 1-Trust. The respondent No. 4 is the Bochasanvasi Shri Akshar Purshottam Sanstha, which is also a registered Trust. Both the petitioners and the respondent No. 4 are espousing and propagating the principles enunciated by Lord Swaminarayan, and have their respective temples and properties, among other places, in the town of Gadhada, which is situated on the banks of the river Ghela in District Bhavnagar. It is stated that Lord Swaminarayan has resided at Gadhada for about 29 years and, therefore, the petitioners and the respondent No. 4 share the same emotional attachment towards Lord Swaminarayan as well as Gadhada town, which has attained the status of a place of pilgrimage for the devotees of Lord Swaminarayan. However, it is also stated that the petitioners and the respondent No. 4, while being devotees of Lord Swaminarayan, have different ways of worship and ideology.

4.1 The dispute between the petitioners and the respondent No. 4 Trust arose much before the filing of the present petition. The respondent No. 4 preferred an application to the Administrator, Gadhada Municipality on 7-8-2002 to consider the grant for allotment of land comprising three roads, which were declared as public streets and used as such, for the last more than about 200 years. On the receipt of the application, the Municipality, by Resolution dated 12-7-2004, invited objections against the proposal for the closure of the three roads. A public notice was published in the local newspaper for this purpose. After considering the objections which were received within the prescribed time period, the Gadhada Municipality, vide Resolution dated 30-5-2005, unanimously resolved to discontinue the user of the roads with objections, subject to permission of the State Government. It was resolved to forward the said proposal to the State Government for permission to sell the land as per the provisions of Section 65(2) of the Act and the valuation of the prevalent market price of the land comprising the said roads was to be entrusted to the Town Planning and Assessment Department, Bhavnagar, and after the accord of permission by the State Government and deposit of the amount of consideration by respondent No. 4, the land comprising the three roads would be sold to the respondent No. 4, subject to certain conditions stipulated therein.

4.2 The petitioners preferred an application u/s 258 of the Act before the Collector, Bhavnagar, challenging the said Resolution. After hearing the parties, the Collector, Bhavnagar dismissed the application and confirmed the validity of the Resolution. The petitioners thereafter preferred a Revision Application before the State Government against the decision of the Collector, Bhavnagar, confirming the discontinuance of the roads by the Gadhada Municipality. The State Government, after hearing all the objectors, including the petitioners, rejected the Revision Application and held that the Resolution was legal and valid and that there was an alternative road available to the objectors. It appears that three petitions, being Special Civil Applications Nos. 23329, 23331 and 23332 of 2005 came to be filed, which were disposed of by order dated 24-1-2006 of this Court, with the direction to the State Government to issue notice to all interested parties and consider the matter and the objections raised, and until such time the Resolution of the Municipality would remain suspended. In this background, the State Government considered the objections raised by the objectors as well as the petitioners and after considering the same, vide order dated 27-6-2006, came to the conclusion that the order of the Collector dated 26-10-2005 required no interference.

4.3 The order dated 27-6-2006 passed by the State Government was the subject matter of challenge by the petitioners in Special Civil Applications Nos. 14517 and 15460 of 2006, which were dismissed vide judgment dated 2-9-2006, whereby the Resolution of the Municipality and the confirmation thereof by the District Collector, Bhavnagar, in exercise of powers u/s 258 of the Act, and its further confirmation by the State Government in revisional jurisdiction u/s 264 of the Act, has been upheld. The judgment dated 2-9-2006 of the learned Single Judge of this Court was challenged by filing Letters Patent Appeals Nos. 122 and 123 of 2007 in Special Civil Applications Nos. 15460 and 14517 of 2006 respectively. Both the Letters Patent Appeals have been dismissed by the Division Bench by a common judgment dated 30-11-2007.

4.4 The State Government, therefore, passed order dated 29-1-2007 (Annexure "A" to the petition), granting permission under the provisions of Section 65(2) of the Act for sale of land comprising the three roads in question, admeasuring 1890.74 sq.mts., in favour of respondent No. 4 at the rate of Rs. 912/- per sq.mt. By order dated 20-2-2007 (Annexure "B" to the petition) the District Collector, Bhavnagar, called upon the respondent No. 4 to deposit an amount of Rs. 17,24,738/- towards consideration of the same. Further, vide order dated 2-3-2007 (Annexure "E" to the petition) the District Collector, Bhavnagar laid down certain terms and conditions regarding the sale of the land comprising the three roads, in favour of the respondent No. 4. Being aggrieved by the orders dated 29-1-2007, 20-2-2007 and 2-3-2007 of the State Government and the District Collector, respectively, the petitioners have approached this Court by filing the present petition.

5. Affidavits-in-reply have been filed by the contesting respondents, to which an

affidavit in rejoinder and one in sur-rejoinder by the respondent No. 4, has been filed, thereby completing the pleadings of the parties.

6. In this background, the brief facts, as emerging from a perusal of the averments made in the petition, are that the petitioners espouse the principles propagated by Lord Swaminarayan, who lived in Gadhada town for a considerable period of time. The temple at Gadhada, which is under the management of the petitioners, is an old temple and the petitioner No. 1 is also holding various other properties in the town, in particular property bearing Survey No. 3281/1, known as Kamdibai Centre, which is owned by the petitioner-Trust. It is stated in the petition that Kamdibai had donated her property to the temple and had served the temple faithfully. Lord Swaminarayan used to take his daily meals in the property bearing Survey No. 3281/1 and, therefore, the said property has become a place of worship. It is further averred that this property has only one access and that road has been sold by the respondent No. 3-Municipality to the respondent No. 4-Trust. It is stated that after various litigations, the petitioner No. 1 filed Special Civil Applications Nos. 14517 and 15460 of 2006, which came to be dismissed vide judgment and order dated 2-9-2006. The Letters Patent Appeals challenging the dismissal of the Special Civil Applications Nos. 14517 and 15460 of 2006, were also dismissed by judgment dated 30-11-2007. The Court is informed by the learned Counsel for the petitioners that an application for review of the said judgment in Appeal has been filed by the petitioners, which is pending adjudication.

7. It is averred in the petition that the Court, while deciding Special Civil Applications Nos. 14517 and 15460 of 2006, had left the question of ownership of the lands comprising the three roads, which have been sold to the respondent No. 4, to be considered by the State Government at the time of according approval to the sale u/s 65(2) of the Act and to see whether the petitioners have any right over the property bearing Survey No. 3281/1 or not. It is stated that the question regarding regulation of traffic during the time of "Samaiya" (procession) or when the ceremony of "Jal Jilani" takes place once or twice annually, was also to be considered by the competent authority, who could impose suitable conditions so that the general public may not be put to hardship during such time. The case of the petitioners is, that without considering the difficulties of the petitioner No. 1-Trust or the sentiments of the devotees of the temple, and without following the directions issued by this Court in judgment dated 2-9-2006, the State Government has, straightaway, passed the impugned order dated 29-1-2007 and the consequential orders dated 20-2-2007 and 2-3-2007 have been passed by the Collector. According to the petitioners, the impugned orders have been passed with a view to defeat the case of the petitioners and the consequential orders are merely an eye-wash, passed with a view to overreach the process of the Court. It is averred that the land comprising the three roads has been sold to the respondent No. 4 without inviting tenders or conducting a public auction, at a price determined by the respondent No. 1, which procedure is against the well-established principles for disposal of the

property of a local authority or the State Government and, if the impugned orders are permitted to be implemented, it would amount to demolishing the historical gate of Gadhada town, as well as the temple of Lord Hanuman, which will adversely affect the sentiments of devotees and, therefore, the impugned orders dated 29-1-2007, 20-2-2007 and 2-3-2007 deserve to be quashed and set aside, and the petition be allowed.

8. In the affidavit-in-reply filed on behalf of the State Government, it has been stated that the order dated 29-1-2007 as well as the consequential orders dated 20-2-2007 and 2-3-2007 have been passed in compliance with the directions of the Court contained in judgment dated 2-9-2006. After rendition of the said judgment, the Collector, vide his letter dated 29-11-2006, forwarded a proposal to the State Government, seeking permission for the sale of land in favour of the respondent No. 4, as contemplated by the provisions of Section 65(2) of the Act. The State government, by letter dated 27-12-2006 called for further information and the opinion of the Collector, in the light of the judgment dated 2-9-2006. It is stated that the report, as called for, was submitted by the Collector to the State Government and only after considering the same, was the order dated 29-1-2007, granting permission for sale of land u/s 65(2) of the Act, passed. Thereafter, the communication dated 20-2-2007 asking the respondent No. 4 to pay the amount of Rs. 17,24,738/- towards sale of the land in question, was issued, and the Collector passed order dated 2-3-2007, laying down certain terms and conditions, in compliance with the judgment of the Court dated 2-9-2006. It is further averred that the Collector has given a report that the land belongs to the respondent No. 3-Municipality and that while granting permission to sell the land to respondent No. 4, the provisions of law have been duly complied with. It is categorically denied in the affidavit-in-reply of the State Government that the implementation of the orders dated 29-1-2007 and 2-3-2007 would result in the demolition of the historical gate of Gadhada town or the temple of Lord Hanuman. It is further stated that the market price of the land in question has been determined by the Town Planning and Valuation Department, after taking into consideration the relevant sale instances, following the guidelines /instructions laid down by the State Government in various Circulars mentioned therein. It is prayed that since the impugned orders have been passed in accordance with the provisions of law and after following the proper procedure, this Court may not interfere, and the writ petition be dismissed.

9. The respondent No. 4, in affidavit-in-reply dated 25-4-2007 has denied the averments made in the petition and has supported the impugned orders of the State Government and District Collector, regarding sale of the land in question in its favour. It is stated in the said affidavit that the sale of the property in question to the respondent No. 4 does not affect public interest in any manner. It is emphasised that the respondent No. 4 is propagating the faith of Lord Swaminarayan all over the world and the followers of the respondent No. 4 have the same emotional attachment towards Lord Swaminarayan and the "Prashadi

"thans" (religious places) as the petitioner-Trust. It is further stated that the town of Gadhada has become a pilgrimage place, which is visited by devotees from all over the country and abroad and, therefore, the development of the Temple Complex, as contemplated by the respondent No. 4, would enhance the interest of the pilgrims visiting the town. It is stated that no private properties are abutting the roads in question and the entire surrounding property belongs to the respondent No. 4-Trust. The property bearing Survey No. 3281/1 is lying in an abandoned condition since the last thirty years, and, moreover, this property has no roof and neither is any idol installed therein, but is in a state of total disrepair. It is stated that the respondent No. 4 has widened the road leading to the river Ghela, as directed by the State Government, to 4.5 mts. from 3.5 mts. and the gate of Gadhada town as well as the temple of Lord Hanuman are intact. It is averred that the respondent No. 4 had offered to provide an alternative road, in addition to the existing road made available by the Municipality, but the petitioners have refused to accept the offer. It is further stated in the affidavit-in-reply of respondent No. 4 that the ownership of the property in question vests in the respondent No. 3-Municipality, which is competent to sell the same after being accorded prior permission by the State Government, and that the respondent No. 4 has purchased the property in question by paying the full market price for the same. The respondent No. 3-Municipality has sold the land to the respondent No. 4, in accordance with the provisions of Section 65(2) of the Act and as, the sale deed in respect of the property in question has been executed, no legal right of the petitioners has been abridged or violated. It is emphasised in the said reply that the impugned orders have been passed in accordance with the relevant provisions of law and after taking into consideration the directions contained in judgment dated 2-9-2006 and, therefore, this Court may dismiss the petition.

10. The respondent No. 2-President of the Gadhada Municipality as well as the respondent No. 3 Gadhada Municipality have filed affidavits-in-reply denying the averments made in the petition. In the reply filed by the respondent No. 3, apart from the factual aspects, it is stated that pursuant to the orders dated 29-1-2007 and 20-2-2007, the respondent No. 4 has made the payment of Rs. 17,24,738/- to the Municipality on 21-2-2007 and a registered document of sale dated 7-3-2007 has been executed and the respondent No. 4 has already been put in possession of the land in question, after drawing a regular panchanama.

11. In the rejoinder filed by the petitioners, apart from reiterating the averments made in the petition and denying the contentions stated in the reply-affidavit, the petitioner has expressed its willingness to maintain the roads in question, after paying the necessary price, which contention is denied by the respondent No. 4-Trust in the affidavit-in-sur rejoinder as being an after-thought.

12. Mr. S.B. Vakil, learned senior advocate with Mr. Chirag B. Patel, appearing for the petitioners has advanced the following submissions:

i. That the impugned order dated 29-1-2007 is in breach of the principles of

natural justice. It is submitted that the judgment of the learned Single Judge dated 2-9-2006, dismissing Special Civil Applications Nos. 1417 and 15460 of 2006 contains certain directions to be complied by the State Government. It is argued that the petitioners were interested in the compliance of these directions by the State Government and were, therefore, required to be heard before permission u/s 65(2) of the Act was granted. It is emphasised that while exercising powers u/s 65 of the Act, the State Government was obliged to consider the material on record, in accordance with law before passing the order u/s 65(2) of the Act, but while passing the said order granting permission for sale of the land in question in favour of the respondent No. 4, the petitioners have not been given an opportunity of being heard, which is evident from a perusal of the order dated 29-1-2007. It is contended by the learned senior advocate, that had the petitioners been given such an opportunity, they could have urged the contention that the sale of the property in question has been effected without discontinuing or closing the streets under the provisions of Section 146 of the Act, which could not have been done. According to Mr. S.B. Vakil, the contention to the effect that the land belongs to the District Panchayat and not to the Municipality could also have been urged before the State Government and by denying the petitioners an opportunity of hearing, these contentions, as well as the objection regarding regulation of traffic during the time of "Samaiya" (procession) or when the ceremony of "Jal Jilani" takes place, could not be effectively canvassed by the petitioners. It is further urged that the directions of the Court in this regard, contained in the judgment dated 2-9-2006 have not been complied with and, therefore, the impugned order dated 29-1-2007 as well as the consequential orders dated 20-2-2007 and 2-3-2007, deserve to be set aside, being violative of the principles of natural justice.

ii. That the respondent No. 3-Municipality ought to have sold the land in question by inviting tenders and conducting a public auction and the State Government could not have given permission to sell by private negotiation. It is contended by Mr. S.B. Vakil, learned senior advocate, that had the land been put under auction, the petitioner No. 1-Trust, whose disciples have got much more attachment to the property in question, would definitely have come forward to purchase the same. However, ignoring the settled principles of law, the property has been sold without inviting tenders and the offer of the respondent No. 4 has been accepted, without application of mind and without following the procedure of public auction/tender. It is submitted that a public authority, selling its property by private negotiation, must take a conscious decision after due application of mind which justifies such a course and in the absence of the same, a mere sale by private negotiation cannot be justified on the sole ground that it would serve the public purpose. It is further argued that there is nothing on record to show that the Municipality had taken a conscious decision to dispense with the procedure of public auction/tender and without doing so has resorted to private negotiation and, therefore, the impugned order dated 29-1-2007 being in violation of Article 14 of the Constitution of India, deserves to be quashed and

set aside.

In support of this submission, the learned Counsel for the petitioners has placed reliance in the case of (i) Kanchanbhai Kanbhai Tadvi v. Municipal Corporation of the City of Vadodara (2002) 1 GLH 790 and (ii) judgment in Special Civil Application Nos. 3193 of 1999 and 10390 of 1999 decided on 27-12-2006 (iii) Vadi and Patwa v. Union of India and Ors. .

iii. That as per the directions of the Court contained in judgment dated 2-9-2006 the following questions were to be considered by the State Government at the time of granting permission u/s 65(2) of the Act; (1) whether the Municipality has resolved to sell the land with objections; (2) whether the land in question belongs to the Municipality or the District Panchayat; (3) whether additional roads are to be provided by the respondent No. 4 as per the maps for options Nos. 1 and 2; (4) whether such roads will be available to all residents of Gadhada; and (5) laying of conditions for the use of road No. 2 or any alternative ingress or egress during the "Samaiya" (procession) or the occasion of "Jal Jilani". According to the learned senior counsel, the above directions of the Court were required to be complied with by the State Government, before passing the order dated 29-1-2007, which has not been done. It is contended that the order dated 2-3-2007 (Annexure "E" to the petition) is subsequent to the order dated 29-1-2007 and, by trying to supplement the earlier order by the subsequent one, the loopholes in the order dated 29-1-2007 cannot be plugged in. It is submitted that the directions of the Court are binding upon the State Government and public orders made by a statutory authority cannot be construed in the light of an explanation given subsequently by the officer making the order, especially as the State Government has not delegated any of its powers, functions or duties under the Act to any of its officers and, therefore, the Collector's order dated 2-3-2007, which is subsequent to the order of grant of permission for sale dated 29-1-2007, cannot be read as an explanation to cover up the loopholes regarding non-compliance of the directions contained in judgment dated 2-9-2006.

In support of the above submissions the learned Counsel for the petitioners has placed reliance upon (i) State of Gujarat Vs. Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya and Another, (ii) The Govt. of Tamil Nadu Vs. PV. Enter. Rep. by SCM Jamuludeen and Others, (iii) Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , (iv) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, (v) Chandra Singh Vs. State of Rajasthan and Another, and (vi) Kunverji Lalji Parmar v. (Shri) C.M. Lenya 1994(2) GLH 182.

In support of the submission that the State Government has not delegated its functions u/s 65(2) to any authority, the learned Counsel for the petitioners has relied upon (i) OCL India Ltd. Vs. State of Orissa and Others, (ii) Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court, and (iii) Sulochana Dadaji Vs. Commissioner, Nagpur Division, Nagpur and Others, . Mr. S.B. Vakil, learned senior advocate has forcefully contended that merely because

the impugned order dated 29-1-2007 mentions that the proposal dated 29-11-2006 and letter dated 17-1-2007 of the Collector have been taken into consideration while passing the order, does not tantamount to incorporating, by reference, the conclusions arrived at in those orders and, therefore, it cannot be said that the directions contained in the judgment of the High Court have been complied with by the State Government, while passing the order dated 29-1-2007. It is also submitted that nowhere has it been stated that the land in question has ceased to form part of the street as contemplated by the provisions of Section 65(2) of the Act, and the order of the Collector does not mention any adjudication regarding the ownership of the land, between the Municipality and the Panchayat. It is emphasised that the report dated 29-11-2006 and communication dated 17-1-2007 of the Collector do not relate to the directions contained in paragraph 14 or 20 of the judgment dated 2-9-2006 but are limited to the directions contained in paragraph 22 thereof, and since the said orders have been passed by the Collector and not by the State Government, compliance of the directions of the Court cannot be attributed to the State Government. It is submitted by the learned Counsel for the petitioners that the State Government was bound by the directions of the Court and since they have not been complied with before passing the order dated 29-1-2007, the same is liable to be quashed and set aside as being illegal and arbitrary. It is submitted that the manner in which the decision is taken is open to judicial review by this Court, as has been held in the case of *Tata Cellular v. Union of India* (1994) 6 SCC 651.

iv. That the impugned order of the Government dated 29-1-2007 is bad because there is no discontinuance or stoppage of the three public streets in question, as contemplated by the provisions of Section 146 of the Act. It is submitted that the Municipal Resolution No. 137(21) dated 30-5-2005 is only for the sale of the three streets and makes no mention of discontinuance or stoppage of any of the streets/roads resolved to be sold, to the respondent No. 4. It is sought to be canvassed by the learned Counsel for the petitioners that there could be no resolution for discontinuance/stoppage of the streets in question under the provisions of Section 146 of the Act, without taking a decision on the objections received thereto. It is contended that the observations in judgment dated 2-9-2006 rendered in Special Civil Applications Nos. 14560 and 15460 of 2006 and the judgment dated 30-11-2007 rendered in Letters Patent Appeals Nos. 122 and 123 of 2006, whereby the Letters Patent Appeals have been dismissed, have not attained finality, since the petitioners have preferred an application for review of the judgment in Appeal which is still pending and, therefore, it cannot be said that the submissions made by the petitioners regarding the legality and validity of the Resolution passed by the respondent No. 3 have attained finality. The learned senior counsel has submitted that even otherwise, notwithstanding anything contained in the judgment of the High Court, the Government is bound to act in accordance with law.

In support of the above submissions, learned Counsel has placed reliance upon (i) *Satya Prakash Vs. State of U.P. and Others*, and (ii) *Government of T.N. v.*

Park View Enterprises (Supra).

(v) That the execution of the sale deed by the respondent No. 3-Municipality, in favour of respondent No. 4 cannot be considered as a bar to filing the present petition. The State is bound to comply with the requirements of Article 14 of the Constitution in respect of contractual obligations, and it is incumbent upon it to act justly, fairly and reasonably. The action of the State Government should be free from arbitrariness, when entering into a contract or during the execution or conclusion of the contract. It is contended that since the order of the State Government dated 29-1-2007 and the consequential orders of the Collector dated 20-2-2007 and 2-3-2007 have not been passed in compliance with the statutory provisions and the directions of this Court contained in judgment dated 2-9-2006, the Court may allow the petition by quashing and setting aside the impugned orders.

13. Per contra, refuting the submissions made by Mr. S.B. Vakil, learned senior advocate for the petitioners, Mr. Kamal B. Trivedi, learned Advocate General with Ms. Sangeeta Vishen, learned Assistant Government Pleader, appearing for the respondents Nos. 1 and 2, has made the following submissions:

(i) That before passing the order dated 29-1-2007, the directions contained in the judgment of the Court dated 2-9-2006 rendered in Special Civil Applications No. 14517 and 15460 of 2006 have been duly complied with. This fact is evident from the documents annexed to the affidavit-in-reply filed by the State Government (Pages 282 to 335 of the paper-book), which makes it abundantly clear that the process for determining the market value was undertaken by the Town Planning and Valuation Department, wherein the Junior Town Planner, Bhavnagar Division, after conducting the entire process, submitted his report (pages 300 to 310 of the paper book), fixing the market value of the land at the rate of Rs. 912/- per sq.mt. It is further clarified by the learned Advocate General that vide order dated 29-11-2006 the Collector forwarded a detailed report regarding various issues, including the issue of ownership of the lands in question alongwith a proposal to the State Government, seeking permission for sale of the lands comprising the three roads, in favour of the respondent No. 4, as envisaged under the provisions of Section 65(2) of the Act. It is pointed out that thereafter, the State Government, vide letter dated 27-12-2006, called for further information and for a report containing the opinion of the Collector, in the light of the directions contained in judgment dated 2-9-2006. Pursuant thereto, the Collector submitted a further report dated 17-1-2007 on various points, including the direction regarding the quantum of traffic and the steps that were required to be taken for its regulation, so as not to cause any inconvenience to the residents of the town. It is emphasised by the learned Advocate General that the report dated 27-12-2006 has, in particular, indicated that the land in question is of the ownership of the respondent No. 3-Municipality and, in future, it is not to be used by the said Municipality. The report also contained a factual finding to the effect that almost all the buildings abutting the land in question are

owned by respondent No. 4 and, therefore, there is no likelihood of there being any adverse effect on the traffic, by virtue of the discontinuance of the said roads/streets. Further, the report has also clarified that the procession of "Jal Jilani" can be taken through two other adjoining roads which are, at present, being used by the residents. It was also proposed that the width of one of the adjoining roads was to be increased to 4.35 mts. from its existing width of 3.5 mts. in order to provide convenience to the public. It is submitted by the learned Advocate General that on the basis of the aforesaid two reports of the Collector, as mentioned in order dated 29-1-2007, the State Government, after due deliberation and after being satisfied that permission u/s 65(2) of the Act deserves to be granted, passed order dated 29-1-2007, granting permission for sale of the roads in question, u/s 65(2) of the Act. The learned Advocate General has forcefully submitted that the reports of the Collector dated 27-12-2006 and 17-1-2007 have covered all the issues that the Court had directed the State Government to look into, and having taken into consideration the aspect of ownership of the land, regulation of traffic and the feasibility of the procession of "Jal Jilani" being taken out through the adjoining roads, it cannot be said that there has been no compliance of the directions of the Court, before passing order dated 29-1-2007 by the State Government. It is submitted that the order dated 20-2-2007, whereby the respondent No. 4 was asked to pay the consideration for the sale of land to the tune of Rs. 17,24,738/-, is consequential to the order dated 29-1-2007, as is order dated 2-3-2007, laying down certain terms and conditions for the sale of the land in question, keeping in view the directions of the Court, and all the orders impugned are legal and valid and do not deserve to be interfered with by this Court.

(ii) That the order granting permission for sale of the land u/s 65(2) of the Act is an administrative matter between the Municipality, Collector and the State Government and since there is no lis between the parties while granting such permission, there is no question of giving an opportunity of hearing to the petitioners at that stage and, therefore, the principles of natural justice will not come into play. It is submitted that the rights of the residents stand extinguished once the Resolution for discontinuance of the road was held to be legal and valid by this Court vide judgment dated 2-9-2006 rendered in Special Civil Applications Nos. 14517 and 15460 of 2006, which, in turn, has been affirmed by the Division Bench by judgment dated 30-11-2007 rendered in Letters Patent Appeals Nos. 122 and 123 of 2007. It is submitted that as regards the regulation of traffic, the petitioners are not required to be heard since that is an administrative matter between the Police, Deputy Collector and the State Government. Further, regarding the ownership of the land in question, admittedly the land belongs to the Municipality, as has been mentioned in the report of the Collector and the Municipality, before taking a decision for discontinuance of the road, has heard the petitioners and considered their objections as per provisions of Section 146 of the Act. The petitioners and other objectors have been given an ample opportunity of hearing and, therefore, it is abundantly clear that there is

no violation of the principles of natural justice, as contended by the petitioners.

(iii) Responding to the contention of the learned Counsel for the petitioners that the sale of the land in question has been effected through private negotiations, without resorting to the process of public auction, the learned Advocate General has submitted that it is not an invariable rule that property cannot be sold for a public purpose at the prevailing market rate, without inviting tenders. It is contended that the land in question came to be sold to the respondent No. 4 for development purposes, inasmuch as it is situated in the midst of the various properties of the respondent No. 4. The same has not been sold for the purpose of generating revenue or with a view to earning any profit. The Municipality has offered the land in question to the respondent No. 4 for a specified purpose, which is a public purpose. Moreover, it is emphasised that the petitioners have never contended in any proceedings that they were desirous of purchasing the land, and this stand has only been taken at the time of filing the affidavit-in-rejoinder in the present petition. It is clarified that the market price of the land has been properly determined by the State Government, by scrupulously following the necessary instructions in this regard, contained in various Government Circulars and after taking into account relevant sale instances. It is further submitted that when the market price has been properly determined and the State Government has taken into consideration all the relevant aspects while granting permission u/s 65(2) of the Act, it cannot be said that the sale of the land is for some alien purpose or has been effected in an arbitrary or discriminatory manner, in violation of any of the fundamental rights of the petitioners or of any legal provision. Drawing the attention of this Court to the affidavit-in-reply filed by the State Government, the learned Advocate General has submitted that it has been the practice of the State Government while granting permission u/s 65(2) of the Act for the sale of the lands under streets for various purposes, to follow the Government resolutions and circulars in this regard, as is evident from the instances set out in the reply affidavit from pages 329 to 335 and it cannot be said that this procedure has been resorted to only in the case of the respondent No. 4. It is submitted that permission for sale of the land in favour of respondent No. 4 has been granted in consonance with the prevalent policy of the Government.

In support of the above contentions, the learned Advocate General has relied upon (i) Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, (para 39), (ii) M.P.Oil Extraction v. State of Madhya Pradesh AIR 1998 SC 145 (para 45), (iii) Kosamba Gram Panchayat v. State of Gujarat 2000 (1) GLH 337 and (iv) Secretary, Sarvodaya Educational Society (Regd.) Vs. Ginja Panasaiah and Others,

(iv) That the controversy between the parties has now been set at rest by the judgment of the Division Bench of this Court rendered on 30-11-2007 in Letters Patent Appeals Nos. 122 and 123 of 2007, arising from judgment and order of the learned Single Judge dated 2-9-2006 in Special Civil Applications Nos. 14517

and 15460 of 2006 and, therefore, after rendition of the judgment of the Division Bench, the orders of the State Government and the Collector may not be interfered with. The learned Advocate General has submitted that there is a clear finding of fact arrived at against the petitioners by the learned Single Judge, which has ultimately been confirmed by the Division Bench and in view of the conclusions arrived at by the Division Bench, it is not open for the petitioners to raise various grounds of challenge, as has been done in the present petition. It is submitted that when the matters were being heard by the Division Bench, the State Government had already granted permission to sell the land to the respondent No. 4 u/s 65(2) of the Act, vide order dated 29-1-2007 and the present petition had already been filed and, therefore, only the legality and validity of the order passed u/s 65(2) of the Act can be looked into by this Court, since matters pertaining to a stage prior thereto have already been concluded by the judgment of the Division Bench, which is binding upon the parties.

14. On the above grounds, the learned Advocate General has submitted that the order of the State Government granting permission to sell the land in question in favour of the respondent No. 4 may not be interfered with, and the petition be dismissed.

15. Mr. Harin P. Raval, learned Counsel for the respondent No. 3, has made the following submissions:

(i) That the respondent No. 3 (Municipality) has a very limited role to play in the present petition, particularly in view of the fact that the action of the said respondent was the subject matter of challenge in Special Civil Applications Nos. 14517 and 15460 of 2006. It is submitted that the Resolution dated 30-5-2005 passed by the general meeting of the Gadhada Nagarpalika, as confirmed by the order of the Collector in exercise of powers vested in him u/s 258 of the Municipalities Act and, further affirmed by the order dated 27-6-2005 passed by the Joint Secretary, Urban Development and Urban Housing Department in exercise of revisional powers u/s 264 of the Act, has been upheld by judgment dated 2-9-2006 rendered in Special Civil Applications Nos. 14517 and 15460 of 2006 which, in turn, has been affirmed by judgment dated 30-11-2007 in Letters Patent Appeals Nos. 122 and 123 of 2007. It is submitted that in the light of the judgment of the Division Bench, the questions qua the Municipality which had been raised in Special Civil Applications Nos. 14517 and 15460 of 2006, have been concluded and as far as the present petition is concerned, no action of the Municipality has been challenged and the orders impugned herein have nothing to do with the Municipality.

(ii) That the respondent No. 4 has made the payment of Rs. 17,24,738/- to the respondent No. 3 - Municipality on 21-2-2007 and, thereafter, the Municipality has executed a registered document of sale bearing No. 185 of 2007, dated 7-3-2007 and consequentially, the respondent No. 4 has been put in possession of the property by drawing a regular panchanama. Since the consideration has been duly received, a registered document of sale has been executed and the

respondent No. 4 has been put into possession, the sale transaction is a concluded one and, therefore, this Court may not interfere since concluded issues cannot be re-opened in these proceedings. It is, therefore, prayed that the petition be dismissed.

16. Mr. S.N. Shelat, learned senior advocate with Mr. D.C. Dave, learned advocate for the respondent No. 4-Trust has made the following submissions:

(i) That as far as the compliance of the directions of the High Court contained in judgment dated 2-9-2006 is concerned, it is clear that after the decision of the learned Single Judge dated 2-9-2006, the Collector, Bhavnagar, forwarded his report dated 29-11-2006 containing the relevant information which was required for grant of permission u/s 65(2) of the Act, to the State Government. The report clarified that the property in question belongs to Gadhada Municipality and, in future, the property is not to be used by the Municipality. It is submitted that the procedure required to be adopted u/s 65(2) of the Act is laid down in various Circulars of the State Government and the State Government has instructed the Collector to take into consideration various facts while granting permission to sell the land. The learned senior advocate has elaborated that the Collector is required to consider the relevant factors, while making a proposal to the State Government and the market price of the land is to be determined by adhering to the prescribed guidelines /principles for this purpose, contained in various circulars of the State Government. It is emphasised by the learned senior advocate that the prescribed procedure and existing guidelines for determination of the market value have been followed. It is explained that the Collector submitted report dated 29-11-2006 to the State Government containing relevant information to the effect that (i) the property in question belongs to Gadhada Nagarpalika (ii) in future the property is not to be used by the Nagarpalika (iii) that the market price is determined by the Department of Town Planning on 27-12-2005, (iv) that the lands are adjacent to the properties owned by the respondent No. 4-Trust and, (v) there is no likelihood of adverse effect on traffic by discontinuance of the roads in question. It is further clarified that on 17-1-2007, the Collector submitted a further report, in consultation with various competent authorities, answering the further queries of the State Government and this report contains relevant information to the effect that (i) the discontinuance of the roads will not result in disruption of the traffic and on discontinuance of road No. 1, there is an adjacent road available for the public and residents of the town, (ii) that the properties abutting road No. 2 belong to the respondent No. 4 and the procession of "Jal Jilani" can be taken from the adjacent road which is being used by the residents, (iii) the width of the road should be enhanced to 4.35 sq.mts. from 3.5 sq.mts. in order to provide more convenience to the public and, (iv) that the Collector submitted valuation report dated 27-12-2005, which has taken into consideration the average sale instances prevailing in the locality and, thereafter, the market price has been fixed at Rs. 912/- per sq.mt. The learned senior counsel has laid emphasis on the fact that the order dated 29-1-2007 of the State Government has been passed only after

due consideration of the above reports and after being satisfied that all relevant aspects regarding the width of the road, regulation of traffic, ownership of property, etc. have been duly taken care of. It is, therefore, submitted that the directions contained in judgment dated 2-9-2006 have been duly complied with and the impugned orders do not suffer from any legal infirmity.

(ii) Mr. S.N. Shelat, learned senior advocate for the respondent No. 4 has further submitted that the inquiry contemplated u/s 65(2) of the Act for the sale of Municipal property is of an administrative nature, which is essentially concerning the collection of facts, on the basis of which the State Government has to found its satisfaction before granting permission for sale, as required u/s 65(2) of the Act. It is submitted that to this end, there is no bar in seeking a fact finding report from the Collector of the concerned District in order to satisfy itself regarding all relevant aspects before granting permission to sell. It is contended that ultimately, it is for the State Government to grant permission u/s 65(2) of the Act and, therefore, the contention of the learned Counsel for the petitioners that there cannot be delegation of the functions of the State Government to the Collector, is not tenable. The learned senior advocate has submitted that there is no delegation of powers by the State Government, which has rightly exercised power u/s 65(2) of the Act, after considering the reports of the Collector.

(iii) Regarding the breach of the principles of natural justice it is submitted that since permission u/s 65(2) of the Act is an administrative matter between the Municipality, Collector and the State Government, there is no requirement of giving an opportunity of hearing to the parties concerned while granting such permission, as there is no lis between the parties and, therefore, the petitioners were not required to be heard before the grant of permission u/s 65(2) of the Act. It is submitted that Section 146 of the Act provides ample opportunity to the residents before the Municipality takes a decision for discontinuance of the road/street concerned and as such an opportunity has been provided to the petitioners and their objections have been duly considered, no further opportunity of hearing is required to be accorded at the stage of grant of permission u/s 65(2) of the Act. Once the Resolution for discontinuance of the roads in question has been held to be legal and valid by the learned Single Judge vide judgment dated 2-9-2006, which has been affirmed by the division Bench vide judgment dated 30-11-2007 in Letters Patent Appeals No. 122 and 123 of 2007, the rights of the residents are extinguished and it cannot be contended by the petitioners that the Panchayat, and not the Municipality, is the owner of the property. If, at all, any objection regarding the ownership of the road is to be taken, it is for the Panchayat to do so, but so far the Panchayat has not raised any objection regarding the sale as the property belongs to the Municipality and, therefore, there is no violation of the principles of natural justice as contended by the petitioners. It is further submitted that even regarding the regulation of traffic, the petitioners are not required to be given an opportunity of hearing as that is an administrative matter between the police authorities, Deputy Collector and the State Government who are competent to look into this issue and in this view

of the matter, there is no breach of the principles of natural justice.

(iv) Regarding the contention of the learned senior advocate for the petitioners that the sale by private negotiation is violative of Article 14 of the Constitution of India, Mr. S.N. Shelat, learned senior advocate for the respondent No. 4 has submitted that the respondent No. 3-Municipality has specifically offered the property to the respondent No. 4 for a specified purpose and the property has not been sold for generation of revenue. It is submitted that there is a conscious application of the mind on the part of the Municipality regarding the sale in favour of respondent No. 4 at the market price and this is evident from a perusal of the public advertisement and the Resolution passed by the Municipality. The learned senior advocate has emphasised that it is not an invariable rule that the property cannot be sold for a public purpose at the market price, without inviting tenders. The State Government has evaluated the market price for the sale of the property and it has been sold to the respondent No. 4 for the purpose of development of Gadhada town, since the property in question is situated in the complex of the respondent No. 4 and the adjoining properties are also owned by respondent No. 4 and, therefore, it cannot be said that the grant of permission for sale is bad only because the procedure of auction has not been resorted to. In support of the above contention, learned senior advocate has placed reliance upon (i) *Jaswantsinh L.Chauhan v. Deesa Municipality* 1995(1) GLH 730, (ii) *Secretary, Sarvodaya Educational Society v. Ginjal Panasaiah* AIR 2000 SCW 4672, (iii) *Netai Bag and Others Vs. The State of West Bengal and Others*, (iv) *Kosamba Gram Panchayat v. State of Gujarat* reported in 2000 (1) GLH 337 and a Division Bench judgment rendered in Special Civil Application No. 9251 of 1997 decided on 11-11-1998.

(v) Lastly, it is submitted by Mr. S.N. Shelat that the Court has jurisdiction to review the order u/s 65(2) of the Act only to a limited extent, namely, whether permission granted u/s 65(2) of the Act for sale of the land in question in favour of respondent No. 4 is justified or not, and whether there is a compliance of the directions of the High Court. It is submitted that since the directions of the Court have been complied with and the order dated 29-1-2007 granting permission for sale of the land in question u/s 65(2) of the Act has been passed after considering the detailed reports of the Collector dated 29-11-2006 and 17-1-2007, and the same does not suffer from any legal infirmity and is in accordance with the provisions of the Act, this Court may not interfere.

17. On the strength of the above submissions, it is prayed that the petition be dismissed.

18. The above, in essence, are all the submissions advanced by the learned Counsel for the respective parties. No other contention has been urged.

19. After having heard the learned Counsel for the respective parties at length and in great detail and before dealing with the submissions made by the learned Counsel for the petitioners, it will be fruitful to advert, briefly, to the admitted

facts. It is not in dispute that the respondent No. 4-Trust preferred an application to the Administrator, Gadhada Municipality, for the grant of the land comprising the three roads in question, as far back as on 7-8-2002. The Gadhada Municipality invited objections regarding the said proposal on 12-7-2004 and an advertisement was issued in the local newspaper on 23-7-2004, inviting objections against the discontinuance of the roads and the sale in favour of the respondent No. 4. The market price at the rate of Rs. 912/- was determined, and vide Resolution dated 30-5-2005, the Gadhada Municipality resolved to discontinue the user of the roads in question subject to permission for sale from the State Government and subject to objections. Various rounds of litigations ensued between the petitioners and the respondent No. 4 which led to the filing of Special Civil Applications No. 14517 and 15460 of 2006, wherein the order of the State Government and the order of the Collector, Bhavnagar as well as the Resolution passed by the Gadhada Municipality for discontinuance of the roads and proposed sale in favour of the respondent No. 4-Trust were the subject matter of challenge. This petition was dismissed vide judgment and order dated 2-9-2006 by the learned Single Judge and the Letters Patent Appeals Nos. 122 and 123 of 2007 have also been dismissed by judgment dated 30-11-2007 by the Division Bench. It is relevant to keep in mind the fact that at the time of rendition of the judgment dated 30-11-2007 by the Division Bench, the petitioners had preferred the present petition challenging the decision of the State Government dated 29-1-2007. The challenge in the present petition relates to a stage later than that which prevailed at the time of filing of Special Civil Applications Nos. 14517 and 15460 of 2006 and, subsequently, Letters Patent Appeals Nos. 122 and 123 of 2007. The challenge to the resolution dated 30-5-2005 has been negated by the Division Bench and the said resolution for sale of land to the respondent No. 4 has been upheld. From the above, it is clear that the issues which have been concluded by the Division Bench in judgment dated 30-11-2007 cannot now be re-opened or looked into by this Court, and the findings arrived at by the Division Bench in respect of the same, are binding upon the parties as well as upon this Court. The scope, therefore, of the present petition, is limited only to the determination of the legality and validity of the order dated 29-1-2007 of the State Government granting permission for sale of land u/s 65(2) of the Act in favour of the respondent No. 4, and the consequential orders dated 20-2-2007 and 2-3-2007, which pertain to a stage subsequent to the rendition of the judgment of the Division Bench. With this clarification, it will be fruitful to take a look at the relevant provisions of law.

20. The relevant extract of Section 65, which relates to the issues raised in the petition, is reproduced hereinbelow:

65. Powers of municipality to sell, lease and contract.

1. A municipality shall be competent, subject to the restriction contained in Sub-Section (2), to lease, sell or otherwise transfer any movable or immovable property which may, for the purposes of this Act, have become vested in or been

acquired by it; and so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes.

2. In the case of every lease or sale of land under Sub-section (1) of Section 146 and of a lease of immovable property for a term exceeding ten years and of every sale or other transfer of such immovable property, the market value of which excess one lakh of rupees, the previous permission of the State Government is required:

[Provided that in the case of a lease or sale of land under Sub-section(1) of Section 146 no such permission shall be granted if such land forms a street or part of a street which has been declared to be a public street u/s 148.]

21. A perusal of the above section makes it clear that the Municipality is empowered to lease or sell or otherwise transfer any movable or immovable property for the purposes under the Act, which may have become vested in, or been acquired by it, so far as it is not inconsistent with the provisions and purposes of the Act and to enter into and perform such a contract or transaction. Section 65(2) of the Act provides that in case of every lease or sale of land under Sub-section (1) of Section 146, (which deals with the powers of the Municipality to discontinue or stop any street) and of a lease of immovable property for a term exceeding ten years, and of every sale or other transfer of such immovable property, the market value of which exceeds one lakh rupees, the previous permission of the State government is required. Since the market price of the property in question exceeds the value of Rupees one lakh, the provisions of Section 65(2) of the Act come into play and the previous permission of the State Government is necessary before such a sale can be effected. The impugned order dated 29-1-2007 has been passed u/s 65(2) which only contemplates the grant of permission by the State Government before the Municipality can sell the property which exceeds the value of Rupees one lakh. In the above context, the submissions made by the learned Counsel for the petitioners can now be dealt with.

22. The learned Counsel for the petitioners has submitted that the petitioners have not been heard before the order u/s 65(2) of the Act was passed by the State Government and, therefore, there is a breach of the principles of natural justice. A bare reading of the provisions of Section 65(2) makes it amply clear that what is envisaged by the said provision is that, the previous permission of the State Government is necessary before the Municipality can sell its property exceeding the value of Rupees one lakh. Nothing more is contemplated by the provisions of Section 65(2) of the Act. It is, essentially, an administrative requirement to be fulfilled by the Municipality before it can sell its property exceeding the value of Rupees one lakh. The requirements of this provision are not adjudicatory, inasmuch as no proceedings are contemplated as there is no lis to be decided. It is an administrative requirement to be fulfilled by exercising the

executive functions of the State in consonance with the provisions of law. The permission is to be sought by the Municipality concerned and it is for the State Government to grant it. The provisions of Section 65(2) have no relation, whatsoever, with any party in whose favour permission is sought to be granted or any other interested or objecting party. To read into the provisions of Section 65(2) the requirement of giving an opportunity of hearing to the petitioners/objectors, as submitted by Mr. S.B. Vakil, would amount to re-writing the provisions of the statute, by adding thereto something which is not integral to it, and which is not intended by the Legislature. It would amount to doing violence to the provision of law by enlarging its scope beyond what is plainly intended by the Legislature. Such an interpretation cannot, in my view, be resorted to and hence, the submission of the learned Counsel for the petitioners that the petitioners were required to be heard before passing order dated 29-1-2007, cannot be accepted.

23. As far as the aspect of regulation of traffic, due to discontinuance of the roads in question is concerned, there is no necessity for the petitioners to be heard by any authority regarding this aspect as the competent authorities in this regard, who are entrusted with the administration of the town as well as the enforcement of law and order and traffic regulations, are capable of looking into these matters and it is for them to ensure the smooth regulation of traffic and to see that no inconvenience is caused to the residents of the town, due to the discontinuance of the roads in question, especially when the "Samaiya" (procession) is taken out and on the occasion of "Jal Jilani". The contention of the learned Counsel for the petitioners that the petitioners ought to have been given an opportunity of hearing before passing the order dated 29-1-2007 so that they could have urged their objections to the resolution for sale of the roads is also untenable, since that aspect of the matter has been concluded by the judgment dated 2-9-2006, as affirmed by the Division Bench vide judgment dated 30-11-2007.

24. It is a settled principle of law that the principles of natural justice cannot be put into a strait-jacket formula and the same must depend on the facts and circumstances of the case. In this case, the petitioners have already been given an opportunity to make their objections to the resolution at a stage prior to granting permission u/s 65(2) and they have been heard. As stated hereinabove, there is neither any requirement nor necessity, of giving the petitioners an opportunity of hearing before passing the order u/s 65(2) of the Act. The submission of the learned senior advocate for the petitioners to the effect that the order dated 29-1-2007 is bad on account of violation of the principles of natural justice is, therefore, not acceptable.

25. Regarding the contention of the learned Counsel for the petitioners that the land in question was required to be sold by the Municipality by resorting to the procedure of public auction/tender, and that not having been done, the sale by private negotiation in favour of the respondent No. 4, amounts to a violation of

the fundamental rights of the petitioners as contained in Article 14 of the Constitution of India, it is necessary to bear in mind the fact that the roads in question have not been sold to the respondent No. 4 for the purpose of generating revenue or for earning profit, but for a public purpose. On an application being made by the respondent No. 4, the respondent No. 3 - Municipality has specifically offered the property to respondent No. 4 for a public purpose. One of the reasons was that almost all the properties abutting on the land comprising the three roads belong to the respondent No. 4. To decide the question whether the sale of property to the respondent No. 4 by determining the market price on the basis of Government Circulars, Resolutions, relevant sale instances, and without inviting tenders amounts to a violation of Article 14 of the Constitution, as argued by the learned Counsel for the petitioners, it would be helpful to advert to certain judicial pronouncements in this regard. In *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court has held as under:

39. On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

26. In *M.P. Oil Extraction v. State of Madhya Pradesh* AIR 1998 SC 145 (in para 45) the Supreme Court has held as under:

Although to ensure fair play and transparency in such action, distribution of largesse by inviting open tenders or by public auction is desirable, it cannot be held that in no case distribution of such largesse by negotiation is permissible.

27. At this stage, it will be relevant to take into consideration the observations of the Division Bench of this Court in *Kosamba Gram Panchayat v. State of Gujarat* 2000 (1) GLH 337:

4.3 Acquisition of immovable property by any religious institution can be made by any of the legally permissible modes including a grant of such property by the State. There is no prohibition on the State, under the Constitution, on its right to make grants of immovable property to any religious institution. The States have executive power to acquire, hold and dispose of property under Article 298 of the Constitution. Therefore, in exercise of its executive power to dispose of its property, it would be open for the State Government to grant land in accordance

with law to any person including any institution set up by a religious denomination or Section thereof. This executive power of the State Government cannot be exercised in a manner that would infringe the fundamental rights or in violation of law. If the grant of immovable property is arbitrarily made so as to deny right to equality enshrined in Article 14 of the Constitution or has the effect of impinging upon the right to life as spelt out from Article 21, it could be rendered ineffective by judicial review.

28. In *Secretary, Sarvodaya Educational Society (Regd.) Vs. Ginja Panasaiah and Others*, , the Supreme Court has observed as under:

4. We have heard learned Counsel for the parties and perused the record. It is not disputed that the acquisition and transfer of immovable property which vests in the Gram Panchayat are governed by the rules framed under the Gram Panchayats Act. The said rules do not permit that the land which vests in the State is to be transferred through a public auction. Moreover, any property including any vacant land which vests in Gram Panchayat is meant to be utilised for public purposes and for benefit of general public of the Gram Panchayat. In fact, the public is the only beneficiary of the property that vests in the Gram Panchayat. It is not the object that the property, which vests in the Gram Panchayat, is to be sold through a public auction with a view to raise more money. Even if the land is to be sold, the paramount consideration should be the general benefit to the people of the Gram Panchayat. Under such circumstances, we find that the direction issued by the High Court that the property should be sold through a public auction is not warranted under the rules. We, therefore, set aside that part of the order of the High Court. The appeal is allowed. There shall be no order as to costs.

29. In *Jaswantsinh L. Chauhan v. Deesa Municipality* 1995(1) GLH 730, the challenge to Section 65 of the Act on the ground of excessive delegation was negated by a Division Bench of this Court. Dealing with the provisions of Section 65, the Court has observed as under:

It is difficult for us to agree with the contention of the learned Counsel for the petitioners that in every case where the property is supposed to be disposed of, it can be done only by public auction. There is no provision in Section 65 of the Act to that effect. Of course, the municipality cannot dispose of its property for an ulterior reason or not for the purposes of the Act, nor can it circumvent the provisions of the Act to directly or indirectly give undue benefit to persons or a class of persons. This can, however, not prevent the municipality from considering favourably the demands or the needs of a Section of society. Section 65 of the Act contains sufficient safeguards and does not, in our opinion, suffer from the vice of excessive delegation. The challenge to the said provision is without any basis.

30. The principle of law which emerges from the above judicial pronouncements is very clear, namely, that taking recourse to public auction is not an invariable

rule and that the State Government or the public authority concerned can sell its property without resorting to the method of public auction and without inviting tenders, for the general benefit of the public provided, that the sale is not arbitrary or discriminatory. In the case in hand, the property in question has been sold, keeping in mind prevalent guidelines for granting permission u/s 65(2) of the Act, for sale of lands and streets for various purposes. A perusal of the affidavit-in-reply filed by the State Government alongwith the annexures thereto, it is evident that the State Government has followed the previous circulars/resolutions relating to this aspect, some of which are set out herein-under:

- (a) Resolution dated 2-11-1991 with reference to land of the street belonging to Bulsar Nagarpalika.
- (b) Resolution dated 18-5-1992 with reference to land of the street belonging to Dolka Nagarpalika.
- (c) Resolution dated 4-3-1995 with reference to land of the street belonging to Kalol Nagarpalika.
- (d) Resolution dated 26-5-1997 with reference to land of the street belonging to Vadodara.
- (e) Resolution dated 30-9-1998 with reference to land of the street belonging to Bulsar Nagarpalika.
- (f) Resolution dated 23-8-2005 with reference to land of the street belonging to Surat Municipal corporation.

31. In addition thereto, before granting permission for sale of the land in question the State Government has taken into consideration the guidelines and instructions, issued from time to time, for the purpose of determining the market value of the land. In this regard, the following Circulars, which have been annexed as Annexure VI collectively to the writ petition are relevant:

- (a) Circular No. NPL-4586-4049-M dated 19-5-1988 issued by the Urban Development and Urban Housing Department, inter-alia issuing guidelines to be followed by all the Collectors while disposing of land under the provisions of Section 65(2) and 146(1) of the Act.
- (b) Circular No. NPL-1489-843-M dated 25-10-1990 issued by the Urban Development and Urban Housing Department, inter-alia envisaging factors to be considered while disposing of the land within the municipal limits.
- (c) Circular No. NPL-4598-5935-M dated 12-1-1999 issued by the Urban Development and Urban Housing Department, inter-alia issuing guidelines for making proposal for disposal of the land of the ownership of municipalities.
- (d) Circular No. Valuation/Circular/5114 dated 23-9-2002 issued by Chief Town Planner, Gujarat State, Gandhinagar, inter-alia prescribing guiding principles for

determining the price of the land.

32. The learned Counsel for the petitioners has placed reliance upon *Kanchanbhai Kanbhai Tadvī v. Municipal Corporation of the City of Vadodara* (Supra) and judgment in Special Civil Application Nos. 3193 and 10390 of 1999 decided on 27-12-2006. The decision in *Kanchanbhai Kanbhai Tadvī* (Supra) is not relevant for the interpretation of Section 65(2) of the Act in view of the interpretation of this Section in *Jaswantsinh L. Chauhan v. Deesa Municipality* (Supra). The decision in *Kanchanbhai Kanbhai Tadvī* (Supra) arises out of Section 79 of the Bombay Provincial Municipal Corporations Act, 1949, where various interested parties like the LIC wanted the property for their purposes. The Court is informed that against this judgment an appeal has been preferred in the Supreme Court, therefore this judgment does not advance the case of the petitioners, especially in the light of the decision in *Jaswantsinh L. Chauhan* (supra) which directly covers the point in issue, i.e. exercise of power u/s 65 of the Act.

33. It is not the case of the petitioners that the relevant statutory provision mandates the State to adhere to a specified procedure when sale of its property is contemplated. Admittedly, no such procedure is laid down by Section 65(2) of the Act. In the absence of any statutory restriction on specified procedure, the purpose for which the property has been sold is of paramount importance. It is not an invariable rule that in all instances when the State sells its property, tenders should be invited, failing which it may be assumed that the sale is arbitrary. It is to be seen whether the action of the State Government is a colourable exercise of power, prompted by extraneous considerations, or opposed to the principles enshrined in Article 14 of the Constitution, or not. In the present case, the property in question has been sold to the respondent No. 4 at the market price and for a public purpose. The market value of the property has been determined, taking into consideration the guidelines contained in various Government circulars and relevant sale instances. It is also not the case of the petitioners that the property has been sold at a throw-away price or for profit. The grievance of the petitioners is that had tenders been floated, the petitioners could have participated, and laid claim to the property. In this regard it is relevant to keep in mind that the petitioners have never filed an application for purchase of the property and this submission has surfaced only in the affidavit-in-rejoinder to the petition, and is apparently an afterthought.

34. From the facts and circumstances of the case enumerated hereinabove, it is abundantly clear that the State Government has granted permission for the sale of the property after due and proper application of mind and after meticulously ascertaining the market value of the property by referring to the past practice, relevant circulars and resolutions as well as relevant sale instances in the area. The sale has been effected at the prevailing market rate and it cannot be said that it has resulted in loss of revenue to the public exchequer. This being the position, the non-inviting of tenders is neither arbitrary, discriminatory, nor

violative of the fundamental rights of the petitioners. The sale has been made for a public purpose and not for any ulterior reason, and the fact that tenders were not invited cannot be said to be a ground to vitiate or invalidate the sale. The record reveals that there has been proper application of mind to all relevant aspects before permission to sell was granted. The procedure adopted by the State Government in this regard is fair and transparent, and there is no material on record, to prove the contrary. The order dated 29-1-2007, therefore, does not suffer from any legal infirmity so as to warrant the interference of this Court.

35. A submission has been advanced by the learned Counsel for the petitioners that the State Government has not complied with the directions of the High Court contained in judgment dated 2-9-2006 rendered in Special Civil Applications Nos. 14517 and 15460 of 2006 and, therefore, the impugned orders are bad. A perusal of the order dated 29-1-2007 reveals that it has been passed after taking into consideration the reports dated 26-11-2006 and 17-1-2007 of the Collector, Bhavnagar. While disposing of Special Civil Applications Nos. 14517 and 15460 of 2006, the learned Single Judge has directed that while granting permission u/s 65(2) of the Act, the State Government should consider the aspect of ownership of the land in question as well as the aspect of regulation of traffic. It is relevant to note that in paragraph 14 of the judgment dated 29-1-2007 in Special Civil Applications Nos. 14517 and 15460 of 2006 it has been stated that "The present petitions are at a stage, where the Municipality has only resolved to discontinue the road and to sell the land of the road/public street to respondent No. 4. Therefore, if the resolution of the Municipality is accepted, or not upset, the question may stand concluded qua the Municipality for discontinuation of the road or for sale of the land forming part of the road/public street with objections, but thereby, the aspects for grant of permission u/s 65(2) of the Act or otherwise shall not get concluded." It is, therefore, clear that the question of discontinuation of the road was not an issue on which any direction has been issued to the State Government. As far as the ownership of the land as well as regulation of the traffic during the period of "Samaiya" and "Jal Jilani" are concerned, the directions of the Court have been complied with by the State Government, as is evident from perusal of the detailed affidavit-in-reply as well as the documents annexed thereto, filed by them. It transpires from a reading of the documents on record that the Collector forwarded a proposal dated 29-11-2006 to the State Government, seeking permission for sale of the land in favour of respondent No. 4, as envisaged under the provisions of Sub-section (2) of Section 65 of the Act. Thereafter, vide letter dated 27-12-2006 the State Government called for further information and a report alongwith the opinion of the Collector, in the light of the directions contained in the judgment and order dated 2-9-2006 passed by the Court. This communication was followed by a reminder dated 11-1-2007 calling for the requisite information in the light of the directions contained in paragraph 22 of the aforesaid judgment. The reports dated 26-11-2006 and 17-1-2007 of the Collector deal with the aspects of ownership of the land and regulation of traffic in detail, and after taking into

consideration these reports, the order dated 29-1-2007, granting permission for sale u/s 65(2), has been passed by the State Government. In the light of the above, the contention that the directions of the Court have not been complied with, is unsustainable.

36. There is no substance in the contention of the learned Counsel for the petitioners that the land does not belong to the Municipality but belongs to the Panchayat. Had this been the situation, the Panchayat would have objected to the sale of the land at the initial stage, or even later. What is the foundation for this contention, has not been elaborated. It is, therefore, baseless and is merely stated to be rejected. In the report of the Collector dated 17-1-2007, it has been specifically stated that the land is of the ownership of the respondent No. 3- Municipality and in future the land is not to be used by the Municipality. There is no material on record to suggest the contrary. It is further stated that all the buildings abutting on the land in question are owned by the respondent No. 4 and there is no likelihood of any adverse effect on traffic by discontinuing the roads in question. The report of the Collector has also taken into consideration the occasions when "Samaiya" or "Jal Jilani" are to be taken out through the adjoining street and it is stated in the report that the procession of "Jal Jilani" can be taken out through the other two adjoining roads, which are currently being used by the residents of the town. It was also proposed that the width of one of the adjoining roads is required to be widened to 4.35 mts. from its existing width, to avoid inconvenience to the public. It is, therefore, abundantly clear, that after being satisfied on all aspects of the matter and after taking into consideration the issues raised in the petition as well as the directions of the Court, the Government has accorded permission u/s 65(2) of the Act for sale of the land in question. The order dated 29-1-2007 u/s 65(2) of the Act, the consequential order dated 20-2-2007 directing the respondent No. 4 to pay the price of the land to the tune of Rs. 17,24,738/- as well as the order dated 2-3-2007 laying down certain terms and conditions regarding the sale of the land in question, therefore, suffer from no legal infirmity and the contention of the learned Counsel for the petitioners that directions of the Court have not been complied with, is not sustainable.

37. Regarding the submission of the learned Counsel for the petitioners to the effect that the impugned order dated 29-1-2007 is bad because there is no discontinuation or stoppage of three public streets u/s 146 of the Act, it is clarified that this issue has already been concluded by judgment dated 2-9-2006 rendered in Special Civil Applications Nos. 14517 and 15460 of 2006, as affirmed by judgment of the Division Bench dated 30-11-2007 in Letters Patent Appeals Nos. 122 and 123 of 2007. As has already been stated earlier, Special Civil Applications Nos. 14517 and 15460 of 2006 were instituted inter alia challenging the resolution dated 30-5-2005 discontinuing the roads in question and against the sale in favour of the respondent No. 4. There is a specific observation in paragraph 14 of the judgment dated 2-9-2006 to the effect that the Municipality has resolved to discontinue the road and sell the lands of the road/public street

to the respondent No. 4, which, has been reproduced in this judgment, earlier. In paragraph 18 of the judgment dated 2-9-2006, it has been held that "In a matter of discontinuation of the use of the public street, the individual rights are not required to be accepted for all purposes by the authority laying down the road or discontinuing the road. The matter is to be considered in larger perspective, keeping in view the convenience of all the residents of the area generally." The Division Bench, in paragraph 21 of the judgment dated 30-11-2007, has held "When three authorities have given concurrent finding and arrived at a particular decision, which decision has been confirmed by the learned Single Judge while exercising his writ jurisdiction under Article 227 of the Constitution of India, it is hardly open for this Court to upset the said decision and to take a different view in the matter."

38. In my considered view, in the light of the above conclusions contained in judgments dated 2-9-2006 and 30-11-2007, it is now not open to the petitioners to contend that the order dated 29-1-2007 of the Government is bad because there is no discontinuance of the three public streets. Moreover, the contention that the Gadhada Municipality did not pass a resolution for discontinuance of the streets is not available to the petitioners in the light of the observations in paragraph 14 of the judgment dated 2-9-2006 as affirmed by the Division Bench. It has to be borne in mind that this petition has been filed challenging the order granting permission for sale u/s 65(2) of the Act. The issue regarding the legality of the Resolution of the respondent No. 3-Municipality as well as the discontinuance of the streets/roads in question has already been concluded in the earlier litigations. These issues, which stand concluded cannot be sought to be re-opened by the petitioners, at this stage. The scope of this petition is limited to the determination of the legality and validity of the order dated 29-1-2007, granting permission for sale of the property u/s 65(2) of the Act. The contention of the learned Counsel for the petitioners to the effect that the impugned orders are bad for not discontinuing the public roads in question, cannot be accepted.

39. A submission has been advanced on behalf of the petitioners to the effect that the execution of the sale deed by the respondent No. 3 in favour of respondent No. 4 cannot be considered as a bar for filing the present petition since, according to the petitioners, there is a violation of Article 14 of the Constitution as the State has not acted fairly and justly and, therefore, the petition in its present form, is maintainable. As has already been discussed at length hereinabove, there is not an iota of material on record to support the contention of the petitioners, that the action of the State Government in passing the impugned order is unfair, unjust, arbitrary or discriminatory. On the other hand, there is sufficient material on record to prove the contrary. In this view of the matter, it cannot be said that the order dated 29-1-2007 as well as the consequential orders dated 20-2-2007 and 2-3-2007, suffer from any illegality or infirmity or are discriminatory, arbitrary or in violation of fundamental rights or statutory provisions.

40. The learned senior counsel for the petitioners has relied upon certain decisions in support of the submissions advanced by him. These are as under:

(a) State of Gujarat Vs. Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya and Another,

(b) Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

(c) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

(d) Chandra Singh Vs. State of Rajasthan and Another,

(e) Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court,

(f) Kunverji Lalji Parmar v. (Shri) C.M. Lenya 1994(2) GLH 182

(g) Satya Prakash Vs. State of U.P. and Others,

(h) Usha Harshadkumar Dalal Vs. M/s. Org Systems and Others,

(i) Sulochana Dadaji Vs. Commissioner, Nagpur Division, Nagpur and Others,

41. There is no dispute regarding the propositions of law enunciated in the above mentioned judgments, in the facts and circumstances which obtained in those cases. The point in issue in this petition is the legality and validity of the order of the State Government passed under the provisions of Section 65(2) of the Act. The above quoted judicial pronouncements are not relevant to the point in issue or to the facts and circumstances of the case. As there is sufficient material on record to fortify the view that the order dated 29-1-2007 has been passed after proper application of mind and in compliance with the directions of the Court and since, in my considered view, the said order is legal and valid and has been passed in accordance with law, the judgments relied upon by the learned Counsel for the petitioners are not applicable to the facts and in the circumstances of the case.

42. It is sought to be canvassed on behalf of the petitioners that public orders cannot be supplemented by explanations given in correspondence or affidavits and that the order dated 29-1-2007 does not specifically state that the State Government has complied with the directions of the High Court and, therefore, the order is vitiated. It has also been stressed that the Collector could not have looked into the issues regarding compliance as no power had been delegated to him and it is only the State Government that can exercise the power. As far as the affidavit-in-reply of the State Government is concerned, the procedure followed in cases wherein permission u/s 65(2) of the Act is granted has been detailed, in order to clarify that the market price of the property has been determined by following prescribed guidelines and relevant sale instances, and this procedure has been followed in other cases as well, some of which are mentioned. This clarification, in my view, becomes necessary in the context of the allegations of the petitioners that a fair and just procedure has not been followed

and that by not inviting tenders, the fundamental rights of the petitioners enshrined in Article 14 of the Constitution, are violated. The reports of the Collector dated 26-11-2006- and 17-1-2007 have been considered while passing the order granting permission to sell the property. The State Government has laid down the procedure while granting permission u/s 65(2) of the Act. The Collector, who is in control of the administration of the Municipality is required to appraise the State Government about the factual aspects of the property and the ground realities which have a bearing on the matter. In calling for the necessary reports and passing the order u/s 65(2) of the Act after considering them, it cannot be construed that there is an attempt on the part of the State Government to supplement the order. It is obvious that a conscious decision has been taken by the State Government after considering the said reports and no reasons are required to be recorded while passing the order u/s 65(2) of the Act. There is no bar in calling for a factual report from the Collector of the District and to do so does not, in my view, require a delegation of power. The Collector is the competent authority, well-versed with the factual situation as prevailing in the District under his administration. Ultimately, it is for the State government to consider the reports and weigh all the pros and cons, before exercising power u/s 65(2) of the Act. There is sufficient material on record to show that the order dated 29-1-2007 is a result of a conscious decision of the State Government, passed after due deliberation and consideration of all relevant aspects. The said order does not become vitiated only because it does not contain a recital of each and every aspect contained in the reports of the Collector. Moreover, such an exercise is not contemplated by the provisions of Section 65(2) of the Act. The submissions of the learned senior advocate for the petitioners in this regard are, therefore, not sustainable.

43. In *Tata Cellular v. Union of India* (Supra), the Supreme Court has held that only the decision-making process, and not the merits of the decision itself is reviewable as the Court does not sit as an appellate court while exercising the power of review. It has been held that:

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. (Paras 74,75,82,152 and 154)

The duty of the court is thus to confine itself to the question of legality. Its concern should be:

1. Whether a decision making authority exceeded its powers?
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) **Procedural impropriety**.

44. Applying the principles deduced by the Apex Court to the facts and circumstances of the case, in my considered view, in passing the impugned order the State Government has neither exceeded its power, nor committed an error of law. Similarly, there is no breach of the rules of natural justice or abuse of power. The order dated 29-1-2007 does not suffer from any illegality, irrationality or procedural impropriety and, therefore, it deserves to be upheld.

45. The cumulative effect of the above discussion is that the petition must fail. For the reasons stated hereinabove, it is held that the order dated 29-1-2007 passed by the State Government and orders dated 20-2-2007 and 2-3-2007 passed by the Collector, being legal and valid, do not warrant interference by this Court. There is no merit in the petition, which deserves dismissal. It is, accordingly, dismissed. Rule is discharged. The parties shall bear their own costs.

At this stage, Mr. Chirag B. Patel, learned Counsel for the petitioners, has prayed that the operation of the judgment may be kept in abeyance for a period of two weeks. This request has been strongly opposed by Mr. S.N. Shelat, learned senior advocate for respondent No. 4 as well Ms. Sangeeta Vishen, learned Assistant Government Pleader for respondents Nos. 1 and 2. Since this Court has come to the conclusion that the impugned orders are legal and valid, and as the sale deed regarding the land in question has already been executed on 7-3-2007 and the respondent No. 4 - Trust is in possession of the land, the request made by the

learned Counsel for the petitioners for stay of the judgment, cannot be acceded to.