
(2014) 09 GUJ CK 0019
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 269 of 2013

Hoshang Ardeskar Ichchhaporia	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat Town Planning and Urban Development Act, 1976 — Section 41, 42, 42(1), 47, 48

Citation : (2014) 09 GUJ CK 0019

Hon'ble Judges : J.B. Pardiwala, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.R. Marshall, Sr. Advocate and Arpit A. Kapadia, Advocate for the Appellant; Vandan Baxi, AGP and U.I. Vyas, Advocate for the Respondent

Judgement

J.B. Pardiwala, J.—By this writ application in the nature of a public interest litigation, the petitioner, a Deputy Sarpanch of Village Bhatha, Hazira Road, Taluka Choriasi, District Surat seeks to challenge the draft Town Planning Scheme no. 50 (Bhatha to Bet) prepared by the respondent no. 3- Surat Urban Development Authority.

2. The case made-out by the petitioner may be summed-up thus:-

2.1 The respondent no. 3-Surat Urban Development Authority has declared its intention to frame a Town Planning Scheme No. 50 (Bhatha-Bet) under Section-41 of the Gujarat Town Planning and Urban Development Act, 1976 (for short "the Act of 1976"). The intention to make such a scheme reflects from the Resolution No. 2768 dated 4th August 2012 passed by the respondent no. 3.

2.3 A Notification dated 6th August 2013 was published in a vernacular daily newspaper of the draft Town Planning Scheme no. 50 in exercise of powers under Section- 42 Clause (1) of the Act, 1976 inviting objections from one and all concerned within a period of one month.

2.4 The petitioner had visited the office of the respondent no. 3 and had procured the Form-F, map of the draft Town Planning Scheme and other relevant documents.

2.5 The perusal of the draft Town Planning Scheme revealed that various parcels of Gamtal land (Village site) had been included in the Town Planning Scheme. According to the petitioner, as many as 40 block numbers forming a part of Gamtal area have been included in the draft Town Planning Scheme no. 50.

2.6 An old burial place bearing Block nos. 15 and 23 has also been included in the Town Planning Scheme.

2.7 A huge parcel of open land owned by a private developer in the name of Green City has been practically left untouched. Only 8% deduction has been made from the said area, which reflects the mala fide intention and oblique motive on the part of the authorities concerned to favour the private developers with a view to achieve private gain.

2.8 An almost hundred years old Shiv Temple has also been included in the draft Town Planning Scheme, thereby hurting the religious feelings of the villagers.

2.9 A meeting was convened at the office of the Grampanchayat, Bhatha and it was unanimously resolved to lodge objections to the draft Town Planning Scheme no. 50.

2.10 The objections in details were lodged on 3rd September 2013 as regards the draft Town Planning Scheme no. 50.

2.11 The petitioner learnt through a newspaper report dated 20th September 2013 that the Town Planning Scheme no. 50 had been approved by the Surat Urban Development Authority and the same had been forwarded to the State Government for its approval.

2.12 According to the petitioner, the respondent no. 3 as an appropriate authority, failed to take into consideration the various objections raised and lodged as regards the feasibility of the draft Town Planning Scheme and forwarded the same mechanically to the State Government for its approval.

3. In such circumstances, the petitioner has prayed for the following reliefs:-

A. Be pleased to admit the present petition.

B. Be pleased to issue a writ of mandamus and an appropriate writ, order and direction, to quash and set aside the draft TP Scheme No. 50 (Bhatha-Bet) mouje Bhatha, Tal. Choriasi, Dist. Surat in as much as the survey nos./block nos. which are part of Gramtal of Village Bhatha-Bet are included in the Draft Town Planning Scheme No. 50 (Bhatha-Bet).

C. Be pleased to issue a writ of mandamus and an appropriate writ, order and direction, to quash and set aside the draft TP Scheme No. 50 (Bhatha-Bet) mouje Bhatha, Tal. Choriasi, Dist. Surat.

D. Be pleased to issue appropriate Writ, direction or order to respondent no. 3 to submit the revised draft TP Scheme No. 50 (Bhatha-Bet) under Sec. 48(1) of the Act to the State Government after considering the objections raised by the petitioners and making relevant changes.

E. Be pleased to issue appropriate writ, order or direction restraining the respondent no. 1 to approve the draft TP Scheme No. 50, Bhatha-Bet, Tal. Choriasi, Dist. Surat.

F. Pending admission and final disposal of this petition, be pleased to restrain the State Government from giving sanction to the draft TP Scheme no. 50, Bhatha-Bet.

G. Pending admission and final disposal of this petition, be pleased to stay implementation, operation & execution of the draft TP Scheme No. 50, Bhatha-Bet.

H. Any other and further relief as deemed fit and proper, in interest of justice.

4. Stance of the Respondent nos. 1 and 2:-

4.1 On behalf of the respondent nos. 1 and 2, an affidavit-in-reply has been filed duly affirmed by Shri Valjibhai Dahyabhai Vaghela, Senior Town Planner, Town Planning & Valuation Department, Gandhinagar, inter alia stating as under:-

4. It is stated that Surat Urban Development Authority i.e. respondent no. 3 had declared its intention in board by resolution no. 2768 on 04.08.2012 to prepare Draft Town Planning Scheme. 50 (Bhatha-Bet) under Section 41 of Gujarat Town Planning & Urban Act, 1976. It is stated that SUDA prepared tentative proposal of the said draft town planning scheme and explained the same in the owner's meeting on 29.07.2013 under Rule 17 of Gujarat Town Planning & Urban Rules, 1979 for eliciting public opinion and suggestion on the proposal of the Scheme. It is stated that SUDA finalized the proposal of the said draft scheme considering opinion/suggestion and objection received in owner's meeting. Thereafter SUDA published said draft scheme in accordance with Section- 42(1) of the said Act and prescribed in Rule 18 of the said Rules in the Gujarat Government Gazette Part II on 01.08.2013 for inviting any suggestion and objections relating to such scheme from any person affected by such proposed Scheme. It is stated that after considering all such objections/suggestions on merits, SUDA modified the said Draft Scheme suitably in its 231st board meeting held on 19.09.2013 and resolved vide resolution no. 2859 to approve the said draft scheme and decided to submit it to the State Government for sanction under Section 48 of said Act and finally submitted it on 30.09.2013 for State Government's sanction.

5. It is stated that after following due procedure as laid down in the said Act and Rules, SUDA prepared and submitted the said draft scheme for sanction to the Government.

6. It is stated that Development Plan of the SUDA was sanctioned by the

Government on 02.09.2004 and the said draft scheme is a detailed micro level planning to implement the proposal of the sanctioned development plan.

7. It is stated that the scheme area is situated on Western part of the SUDA area near the bank of river Tapi. The scheme area is adjoining to very fast developing area of Surat Municipal Corporation. The adjoining area of scheme has been covered under Town Planning Scheme of SMC.

8. It is stated that the SUDA felt the need to prepare a draft Town Planning for this area to prevent future problems of unauthorized development activities in the area and to promote planned and healthy development. It is stated that the aim is to develop the area in scientific and conceptual manner with functional value by providing networks of road, public amenities and facility. This will help in reducing the complexity in development in future.

9. It is stated that in view of the above, it is pertinent to note that the whole procedure has to be and has been undertaken by the concern development authority in accordance with law and has thereafter, been placed before the State Government for necessary procedure as prescribed under the Town Planning Act. It is further stated that if the petitioner has any grievance regarding any violation of law or procedure as prescribed under the Act, the same can be redressed in accordance with provisions of the Town Planning Act and therefore, Public Interest Litigation does not merits to be entertained when there are specific provisions for redressal of grievance self contained in the Town Planning Act."

5. Stance of the Respondent no. 3-Surat Urban Development Authority (SUDA):-

On behalf of the respondent no. 3, an affidavit-in-reply has been filed by Shri Dharmesh Mistry, Deputy Chief Town Planner, Surat Urban Development Authority, inter alia stating as under:-

"5. I submit that land in question is covered under the development are and situated in the residential zone under the sanctioned development plan of SUDA and lands designated under agriculture zone have not been included in the scheme area. It is pertinent to point out that the SUDA has resolved in its board meeting dated 04.08.2012 by resolution no. 2768 to declare intention of draft T.P. Scheme No. 50 (Bhatha) u/s. 41 of the Act in which petitioner's land is also included. I further submit that the intention of T.P. Scheme no. 50 (Bhatha) published in the Gujarat Government Gazette dated 21/08/2012 and also in the local news papers dated 23.08.2012.

6. I submit that the SUDA after following the due procedure published the scheme in the Official Gazette dated 1.8.2013 under section 42(1). This was published in the daily newspapers on 7.8.2013. I further say and submit that after considering the objections in its Board meeting held on 19.9.2013 SUDA decided to modify the draft scheme and submit it to the State Government for sanction and accordingly the Draft Scheme no. 50 was submitted to the State Government for sanction on 30.9.2013, SUDA has scrupulously followed all the

procedure.

7. I submit that the boundary of Draft TP scheme has been fixed as per the details confirmed by the DILR and the area of this TP Scheme excludes the area under Bhatha Gamtal, I say that SUDA has no role in fixing the boundary of Gamtal. I further say that area under Draft TP Scheme no. 50 Bhatha-Bet was first published in the local newspapers on 23.8.2012 after consulting the Chief Town Planner. I further say that the boundary of Draft TP Scheme does not include the area under Bhatha Gamtal and SUDA has absolutely no role in deciding the boundary or giving effect of the mutation entry and it is the function and duty of the DILR or Revenue authorities. I say that if the petitioner has any objection they may approach Revenue Authorities or DILR or the City Superintendent.

8. I say and submit that the objections on the proposals of Draft TP Scheme was invites vide notice in Gujarati daily newspapers dated 7.8.2013 within prescribed time limit of one month and all the objections and suggestions which were received within the statutory time limit were considered in its board meeting dated 19.9.2013 including the one under reference. After considering the objections the Board vide its resolution no. 2859 resolved and submit the revised Draft TP Scheme to the State Government for sanction vide its letter dated 30.9.2013. Herein annexed and marked as Annexure-M is the letter dated 30.9.2013.

9. I say and submit that the objections raised in the letter dated 3.9.2013 was considered and it was decided that the area under Draft TP Scheme was based on the latest Revenue Record (7/12) and as confirmed by the DILR the scheme boundary cannot be changed now and since it is the only Draft Scheme the Government shall appoint the Town Planning Officer and the owners of the land who has raised objections may approach the TPO. Town Planning Officer shall be appointed after the Draft TP Scheme is sanctioned by the Government and the land owners who have raised objection may approach to Town Planning Officer therefore in my respectful submission at present the issue is Pre-mature.

10. I say and submit that now the Draft TP Scheme no. 50 has been prepared, published and submitted to the State Government as per prescribed procedure and is legal, proper and as per law and there is no breach of mandate Article 14 of the Constitution of India. I further say that out of 172 original plots included in the TP scheme area, only 11 cases where development permission has been granted and N.A. order is obtained, the final plot is allotted accordingly to the development permission. Thus there is no question of favouring any particular class of people.

11. I say and submit that the development permission has been granted by the authority and N.A. permission was given by the Collector Office before declaration of the intention of the scheme and the final plot has been allotted as per the sanctioned plan. I further say that land is taken for purpose of public

road and there is no malafide and oblique motive or intention and in fact there is no deduction in the lands adjacent to Gamtal boundary of village Bhatha having old construction. I further say that there is no provision in the Act that debar the respondent authority in considering the land being used as residential premises which are already in existence and respondent authority can use the land for purpose of preparing the scheme and temple or for any religious purpose for TP Scheme, even though the proposal so made for the Draft Scheme the residential premises, Temple are not affected."

6. Submissions on behalf of the petitioner:-

Mr. Marshall, the learned senior advocate assisted by Shri Arpit Kapadia, the learned advocate appearing on behalf of the petitioner, vehemently submitted that under Section- 47 of the Act 1976, the appropriate authority owes a duty to consider the objections lodged by any person affected by the proposed scheme. According to Mr. Marshall, such exercise of considering the objections should not be treated as an eyewash. The objections must be considered by the appropriate authority in their true perspective, because ultimately the State Government would be guided by the opinion and remarks of the appropriate authority to the various objections lodged by the people at large.

Mr. Marshall, submitted that in the present case, it appears that although various objections were raised, as highlighted above, yet the appropriate authority seems to have not considered those properly and has forwarded the draft scheme to the State Government for its consideration and approval.

Mr. Marshall, further submitted that the element of favoritism appears to be writ large, as a vast parcel of open land owned by private developer in the name of Green City, has been excluded from the scheme and a paltry 8% deduction has been made from the said area. On the other hand, according to Mr. Marshall, there was no justification for the authority to include huge parcels of Gamtal land in the draft scheme, including an old burial ground and a temple of Lord Shiva.

Mr. Marshall, in such circumstances, prays that this Court should direct the appropriate authority to once again reconsider the objections raised by the people at large and thereafter, forward the draft scheme to the State Government for its approval.

7. Submissions on behalf of the Respondent no. 3-Surat Urban Development Authority (SUDA):-

Mr. U.I. Vyas, the learned advocate appearing on behalf of the SUDA, has opposed this petition and submits that the same is premature and deserves to be rejected solely on such count. Mr. Vyas, submits that the scheme is at the said stage of Section 48 and is pending for consideration with the State Government. According to Mr. Vyas, even if the draft scheme is approved by the State Government, various other stages would come when the people affected by such scheme will get an opportunity to lodge their claims and objections.

Mr. Vyas, submitted that the appropriate authority did consider all the objections, which were lodged by the people at large and after considering the same with appropriate remarks, the draft scheme has been sent to the State Government.

In such circumstances referred to above, Mr. Vyas, submits that no case has been made out by the petitioner for interference at the hands of this Court.

Mr. Vyas, in support of his aforementioned submissions has placed reliance on a Division Bench decision of this Court in the case of Sultanabad Bhimpore Social and Environmental Protection V/s. State of Gujarat, Writ Petition (PIL) No. 9 of 2013 decided on 5th September, 2014. Mr. Vyas, has placed reliance on the said decision mainly to contend that the petition should be rejected, as the same is premature.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this matter is, whether the petitioner is entitled to any of the reliefs prayed for in the petition.

9. Having regard to the submissions of Mr. Marshall, the learned senior advocate appearing on behalf of the petitioner, that the appropriate authority has failed to consider the objections in their true perspective and the whole exercise undertaken by it is nothing but an eyewash, we decided to look into the original files of the appropriate authority so as to satisfy ourselves whether the objections have been considered and in what manner.

10 Accordingly, we requested Mr. U.I. Vyas, the learned advocate appearing for the Surat Urban Development Authority, to make available the original files for our perusal.

11. When the matter was taken-up for hearing on 12th September 2014, the original files were shown to us. Mr. Vyas, also placed before us a chart indicating details as regards the name of the objector, the block number, the nature of the objection and the remarks in that regard of the appropriate authority.

12. We have perused the chart provided to us and it does appear that the objections of different individuals have been noted and some remarks have also been made in that regard in the last column of that chart.

13. The moot question that falls for our consideration is to what extent we should interfere in this type of matters. Since, Mr. Marshall has raised the point of due consideration of the objections at the end of the appropriate authority at the stage of Section- 47 of the Act, 1976, we should consider the exact nature of inquiry, which the appropriate authority undertakes.

14. We are sure that only because the rights of subjects are affected, it would not necessarily make an act of such inquiry, judicial in nature. There cannot be a judicial act, if it does not create rights or imposes obligation. The fact that an inquiry has to be made publicly and objections have to be heard of persons

affected, does not necessarily convert it into a judicial or quasi judicial act. Such a proposition has been well explained in the case of *Franklin V/s. Minister of Town and Country Planning*, 1948 AC 87. In that case, the Minister of Town and Country Planning prepared the draft Stevenage New Town (Designation) Order, 1946 and caused the same to be published. Objections were received from a number of persons including, the appellant. So, the Minister concerned instructed an Inspector of the department to hold a public enquiry under the provisions of the Act.

15. On receipt of a report from the Inspector, the Minister made an order in terms of the relevant section of the statute. The order was questioned on grounds, among other things, that the requirements of the Act were not complied with, and the interests of the appellant were substantially prejudiced in that before considering the objections the Minister stated that he would make the said order and was thereby biased in, any consideration of the said objections and the Minister did not before making the said order cause a public inquiry to be held with respect thereto.

16. In the context of the inquiry into those objections, the question arose whether the order of the Minister was a quasi-judicial act or purely an administrative one. Lord Thankerton remarked that the duty cast by the relevant statute on the Minister was only administrative and not a judicial one, but the Act prescribed certain methods or steps in the discharge of that duty. In the course of his judgment the learned Judge said: "In my opinion, no judicial, or quasi-judicial duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case."

17. Applying the aforesaid test to the case at hand the procedural machinery set-up by Chapter-V of the Act, 1976 aptly be said to have been designed to inform the mind of the Government in judging whether the draft scheme would be a sound one and to enable it to make-up its mind finally whether it should approve the scheme as promulgated or with modifications or cancel it. Thus, the purpose of inviting objections and hearing the persons concerned was all for the further information of the Government in order to aid the final consideration of the soundness of the scheme. Thus, these are all steps, which the Government takes in the discharge of its duty as prescribed by Chapter-V in the Act. In performing the functions contemplated by the Chapter, the Government is not acting judicially or in a quasi judicially capacity, but was doing purely an administrative or ministerial act.

18. In the aforesaid context, we may quote with profit a decision of the Supreme Court in the case of *Province of Bombay V/s. Khulsaldas S. Advani*, AIR 1950 SC 222. The question before the Supreme Court was whether a writ of certiorari was available to a person, whose property was requisitioned under Section- 3 of the Bombay Land Requisition Ordinance V of 1947 to quash the order made by the government requisitioning certain properties. It was held by the majority of the Judges that the decision of the Provincial Government about the existence of a

public purpose relating to the requisitioning of the property was not a judicial or quasi-judicial decision and therefore, an application for the writ of certiorari would not lie.

19. The majority also ruled that there was nothing in the Bombay Land Requisitioning Ordinance to show that in arriving at its decision about a public purpose that Provincial Government had to act judicially. It was also pointed out that it was not correct to say that every determination of a fact affecting the rights of parties could not be regarded as a quasi-judicial decision. The word "quasi-judicial" itself necessarily implies the existence of a judicial element in the process leading to the decision. Das, J. (as he then was) who concurred in the opinion of Kania, C.J. who gave the leading judgment for the majority observed thus:-

"It is well established that if the legislating simply confides the power of doing an act to a particular body, if in the opinion of that body it is necessary or expedient to do it, then the Act is purely an administrative i.e., an executive act as opposed to a judicial or quasi-judicial act, and in the absence of proof of bad faith, the Court has no jurisdiction to interfere with it and certainly not by the high prerogative writ of certiorari."

20. Assuming that the hearing of objections etc., partakes of the character of quasi judicial act, the final decision i.e. the approval of the scheme, which is an administrative act would remain unaffected. As observed by the Supreme Court in Province of Bombay (Supra) that although the preliminary inquiry had to be done in a quasi judicial manner, that fact could not alter the nature or character of the ultimate administrative act.

21. Therefore, in our opinion, we should not examine the feasibility of the draft scheme in question.

22. To a certain extent, we are at one with Mr. Vyas, the learned advocate appearing on behalf of the Surat Urban Development Authority that this petition should be rejected solely on the ground that it is pre-mature. In Sultanabad Bhimpore (supra) the draft scheme had already been approved by the State Government and a stage for appointing a Town Planner Officer, under Section- 50 of the Act, 1976 had reached. It was at that stage that the petitioner filed a writ petition in public interest substantially on the ground that the entire village was against the proposed Town Planning Scheme. The Division Bench, explained the various provisions of the Act, including the rules as under:-

".....The scheme as on today has reached upto the stage of Section 50 i.e. appointment of town planning officer.

"Section 50. Appointment of Town Planning Officer.

(1) Within one month from the date on which the sanction of the State Government to a draft scheme is notified in the Official Gazette, the State government shall appoint a Town Planning Officer possessing such

qualifications as may be prescribed, for the purpose of such scheme and provide him with such number of officers and staff as may be considered necessary and his duties shall be as hereinafter provided.

[Provided that the State Government may, on the request made by the Appropriate Authority, appoint a Town Planning Officer within one month from the date of the publication of Draft Scheme under subsection (1) of Section 42]

(2) The State Government may, if it thinks fit, at any time, remove, on the ground of incompetence or misconduct or any other good and sufficient reason a Town Planning Officer appointed under this section and shall forthwith appoint another person in his place and any proceeding pending before Town Planning Officer immediately before the date of his removal shall be continued and disposed of by the new Town Planning Officer appointed in his place.

Provided that no Town Planning Officer shall be removed under this sub-section except after an inquiry in which he has been informed of the charges against him and a reasonable opportunity of being heard in respect of those charges has been given to him.

(3) Subject to the provisions of sub-section(2), a Town Planning Officer appointed under sub-section (1) for the purpose of any scheme shall cease to hold office with effect from the date on which the final scheme is sanctioned under section 65."

The sixth step will be drawing of a preliminary scheme by the Town Planning Officer under Section 52, Clause (1) of the Act, which reads under:

"Section. 52 Contents of preliminary and final scheme.

(1) In a preliminary scheme, the Town Planning Officer shall,-

(i) after giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the areas allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots;

(ii) after giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the shares of such persons;

(iii) provide for the total or partial transfer of any right in an original plot to a final plot or provide for the transfer of any right in an original plot in accordance with provision of section 81.

(iv) determine the period within which the works provided in the scheme shall be completed by the appropriate authority."

Thereafter, the town planning officer will have to serve a notice in Form-H as provided under Rule 26, Clause (1) of the Rules. Rule 26 reads as under:

"Rule 26. Procedure to be followed by Town Planning Officer under section 51 and

under sub-section (1) of section 52.-

(1) For the purpose of preparing the preliminary scheme and final scheme the Town Planning officer shall give notice in form H of the date on which he will commence his duties and shall state the time, as provided in Rule 37 within which the owner of any property or right which is injuriously affected by the making of a Town Planning Scheme shall be entitled under section 82 to make a claim before him. Such notice shall be published under the Official Gazette and in one or more Gujarat newspapers circulating within the area of the appropriate authority and shall be pasted in prominent places at or near the areas comprised in the scheme and at the office of the Town Planning Officer.

(2) The Town Planning Officer shall after the date fixed in the notice given under sub-rule (1), continue to carry on his duties as far possible on working days and during working hours.

(3) The Town Planning Officer shall, before proceeding to deal with the matters specified in section 52, publish a notice in Form H in the Official Gazette and in one or more Gujarat newspaper circulating within the area of the appropriate authority. Such notice shall specify the matters which are proposed to be decided by the Town Planning Officer and State that all persons who are interested in the plots or are affected by any of the matters specified in the notice shall communicate in writing their objections to the Town Planning Officer within a period of [fifteen days in the cases provided in the proviso to sub-rule (2) of Rule 18 of the rules] from the publication of notice in the Official Gazette. Such notice shall also be posted at the office of the Town Planning Officer and of the appropriate authority and the substance of such notice shall be pasted at convenient places in the said locality.

(4) The Town Planning Officer shall give every person interested in any land affected by any particular of the scheme sufficient opportunity of stating their views and shall not give any decision till he has duly considered their representations if any.

(5) If during the proceedings, it appears to the Town Planning Officer that there are conflicting claims or any difference of opinion with regard to any part of the scheme, the Town Planning Officer shall record a brief minute in his own hand setting out the points at issue and the necessary particulars, and shall give a decision with the reasons therefore. All such minutes shall be appended to the scheme.

(6) The Town Planning Officer shall record and enter in the scheme every decision given by him. The calculations and estimates shall be set out and recorded in Form F, Form G and in other statements as may be prepared by the Town Planning Officer.

(7) The scheme as drawn up by the Town Planning Officer shall include particulars specified in rule 21 read with section 52.

(8) The component parts of the scheme shall be so arranged that they may be readily referred to in connection with the map and plans.

(9) The Town Planning Officer shall publish the scheme drawn up by him by notification in the Official Gazette in Form I and also by means of an advertisement in one or more local newspaper announcing that the scheme shall be open for the inspection of the public during office hours at his office and communicate forthwith the decisions taken by him in respect of each plot to the owner or person interest by the issue of the requisite extract from the scheme in Form J and Form K as the case may be. The Town Planning Officer shall also inform the State Government about the publication of final scheme."

Thereafter, a public notice would be published in a newspaper as well as in the Official Gazette in terms of the Rule 26, Clause (3).

Under Rule 26, Clause (4), the Town Planning Officer will give opportunity to the person interested in any land affected by any particular of the scheme.

The Town Planning Officer thereafter shall publish the scheme under Section 52, Clause (1), read with Rule 26, Clause (9) of the Rules.

The seventh step in the process will be the submission of the preliminary scheme by the Town Planning Officer to the State Government under Section 64 of the Act.

"Section 64. Submission of preliminary scheme and final scheme to Government;

The Town Planning Officer shall submit to the State Government for sanction the preliminary scheme also before the final scheme is submitted to the State Government under sub-section (2) of section 52, together with a copy of his decision under section 53."

The last and the final step would be sanctioning of the scheme by the State Government under Section 65 of the Act.

"Section 65. Power of Government to sanction or refuse to sanction the scheme and effect of sanction:

(1) On receipt of the preliminary scheme or, as the case may be, the final scheme, the State Government may- (a) in case of a preliminary scheme, within a period of two months from the date of its receipt, and (b) in the case of a final scheme, within a period of three months from the date of its receipt, by notification, sanction the preliminary scheme or the final scheme or result to give sanction, provided that in sanctioning any such scheme, the State Government may make such modifications as may, in its opinion, be necessary for the purpose of correcting an error, irregularity or informality.

(2) Where the State Government sanctions the preliminary scheme or the final scheme, it shall state in the notification-

(a) a place at which the scheme shall be kept open for inspection by public, and

(b) a date (xxxx) in which all the liabilities created by the scheme shall come into force:

(xxxx) Deleted by Guj. Act No. 11 of 2002, the words (which shall not be less than one month after the date of the publication of the notification)

Provided that the State Government may from time to time such date, by notification, by such period, not exceeding three months time, as it thinks fit.

(3) On and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act."

The purpose of giving a fair idea of the steps aforementioned which are yet to be undertaken is to indicate that at every stage an opportunity will be given to the petitioners and to other persons likely to be affected by the scheme and it would be open for such persons to lodge their objections and suggestions which the appropriate authority is otherwise obliged to consider.

Thus, we are convinced by the submission of Mr. Prashant Desai, the learned senior advocate appearing on behalf of the Corporation that the petition has been filed at a premature stage and should not be entertained."

23. However, leaving apart the position of law, we are of the view that ultimately it is for the State Government to apply its mind and take an appropriate decision. Without citing it as a precedent, we permit the petitioner, who is the Deputy Sarpanch of the Village and has filed this petition in public interest, to invite the attention of the State Government to the three major issues (1) substantial inclusion of Gamtal land, (2) inclusion of old burial ground and (3) leaving aside vast parcel of private land in the name of Green City, within a period of fortnight from today in the form of a representation. If the State Government receives such representation, then the same should be considered and dealt with appropriately in accordance with law. We make it clear that we have otherwise not gone into the merits of the objections raised by the people of the village including the reasonableness and feasibility of the proposed Town Planning Scheme. We leave it for the State Government to consider the same appropriately in accordance with law.

24. With the above observations, we dispose of this writ application. Interim order granted earlier stands vacated forthwith. No costs.