

(2003) 09 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No's. 3526 to 3536, 6325 of 1995 and 12476 and 12500 of 2002

Jayantibhai Becharbhai Patel and Others

APPELLANT

Vs

Vadodara Urban Development Authority and Others

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Gujarat Town Planning and Urban Development Act, 1976 — Section 20 20(1), 20(2), 21
Land Acquisition Act, 1894 — Section 12(2), 4

Citation : (2003) 09 GUJ CK 0079

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : M.C. Bhatt and M.P. Prajapati, for the Appellant; M.D. Pandya, for Resp. No. 1, Ketty A. Mehta, in SCA No. 6325 of 1995, P.C. Bhate, AGP for Respondent No. 3 in SCAs No. 12476 and 12500 of 2002, Shailesh Pandit, for GHB in SCA Nos.12476 and 12500 of 1995, Pranav G. Desai, Adv, for respondent No.2 VMC and A.D. Oza, G.P. for State in SCA 3526 to 3536 of 1995, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—All these petitions deal with a common issue with regard to reservation of lands under the development plans and the effects thereof while construing the provisions contained in Sections 20 and 21 of the Gujarat Town Planning and Urban Development Act, 1976 and hence they are disposed of by this common judgment.

2. In Special Civil Application No. 6325 of 1995, a declaration is sought for from this Court that the respondent No.1 may be directed to make suitable entry in the record of Respondent No.1 and/or in the record of the development plan to the effect that the reservation of the Gujarat Housing Board as indicated in respect of Block No. 418, 422, 424, 425, 431 and 447 situated in Village Kapurai, District and Sub-district Vadodara, has lapsed. The petitioners have also sought

for direction to the respondents to accept and sanction the development plan for disputed lands that may be submitted by the petitioners on the basis that the disputed lands have ceased to be lands reserved for Gujarat Housing Board.

3. In Special Civil Applications No. 3526 to 3536 of 1995, directions are sought for from this Court that the lands bearing Survey Nos. 320, 319, 325, 375, 255, 374, 321, 373, 376/1 Paiki, 364 and 360 situated in Village Gorva, District & Sub-District Vadodara, do not continue to be reserved after 21st January 1995. The petitioners have also sought for direction to the respondents No. 1 and 2 to permit the petitioners to submit the development plan and building plan to develop the land and to process the petitioners' application for development of the land in accordance with law.

4. In Special Civil Applications No. 12476 of 2002 and 12500 of 2002, the directions are sought for from this Court that the respondent No.1 may be directed to make suitable entry in the record of the respondent No.1 and/or in the record of the development plan to the effect that the reservation of the Gujarat Housing Board in respect of land bearing Survey Nos. 831, 832/1, and 833/1 as well as Survey Nos. 834 in Village Bapod of District-Vadodara has lapsed. The petitioners have also sought for direction to the respondents to accept and sanction the plan for development of the disputed lands that may be submitted by the petitioners on the basis that the disputed lands have ceased to be the lands reserved for Gujarat Housing Board.

5. As far as the issue regarding reservation of the lands in question is concerned, the same is squarely covered by the decision of the Hon'ble Supreme Court in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, . In fact, the Hon'ble Supreme Court has confirmed the decision of this Court in the case of Palitana Sugar Mills (Pvt.) Ltd., Vs. State of Gujarat and Others 1942(4) GLR 3048. The view canvassed by the petitioners in the present petition is no longer now res integra. If the lands are reserved in the final development plan of Vadodara Urban Development Authority ("VUDA" for short) for the public purpose and if the same are not acquired within 10 years and notice of 6 months is given under sub-section (2) of Section 20 of the Gujarat Town Planning and Urban Development Act, 1976, ("Act" for short) and the authority for whose purpose the reservation would lapse.

3. For appreciating the issue raised in the present petitions, in the light of the statutory provisions as well as the judicial pronouncements made by the Apex Court, it is necessary to narrate the brief facts, which are given in the following tabular form:-

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===== Spl.CA	
No. Petitioner's First Plan Village Date of Survey No. CA. No. Name Ten Years	
came into Six Notice u/s.20(2) months on force Expired on Expired	=====
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6325/1995 Jayantibhai 25.1.84 to 25.1.94 Kapurai 15.2.94 16.8.94 418,422 B.Patel To VUDA- To-VUDA- Block To 28.12.94 28.6.95 424,425 GHB-To 431,447 -GHB Revised Development Plan came into force: 26.11.1996.

3526/1995 Sarojben H.Patel 25.1.84 25.1.94 Gorva 27.1.94 21.1.95 320

3527/95 Jitsinh Bhikhabhai -do- -do- Gorva -do- -do- 319

3528/95 Diwaliben P.Patel -do- -do- Gorva -do- -do- 325

3529/95 Pragjibhai J.Patel -do- -do- Gorva -do- -do- 375

3530/95 Kantilal L.Patel -do- -do- Gorva -do- -do- 255

3531/95 Bhikhabhai P.Patel -do- -do- Gorva -do- -do- 374

3532/95 Hamanbhai B.Patel -do- -do- Gorva -do- -do- 321

3533/95 Lalubhai N.Patel -do- -do- Gorva -do- -do- 373

3534/95 Dahiben C.Patel -do- -do- Gorva -do- -do- 364

3535/95 Bababhai C.Patel -do- -do- Gorva -do- -do- 376/1

3536/95 Ratilal M.Patel -do- -do- Gorva -do- -do- 360

12476/2002 Abasali S.Kadri 25.1.84 25.1.94 Bapod 6.1.2001 6.7.2001 831-1@ 833-1

Revised Development Plan came into force: 26.11.1996.

12500/2002 Samsunnisa Mazhar 25.1.84 25.1.94 Bapod 6.1.2001 6.7.2001 834 Ali & Others

Revised Development Plan came into force: 26.11.1996.

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===== 4. Mr. MC Bhatt learned Senior Advocate appearing for the petitioners submitted that Section 20(1) and Section 20(2) of the Act are mandatory in nature. No steps whatsoever were taken by the Gujarat Housing Board for acquisition of the lands of the petitioners which were reserved. It is further submitted that no proceedings were commenced for acquisition within the longer period of 10 years from the date when the final development plan was sanctioned by the VUDA. No action for acquisition was taken within 6 months notice period in accordance with sub-section (2) of Section 20. He has, therefore, submitted that the inaction on the part of the authorities showed that there was no need of the petitioners' lands for the specified purpose for which the same were reserved. He has, therefore, submitted that on expiry of 10 years' period from the coming into force of the final development plan and thereafter inability of the authorities to acquire the land within six months from the date of service of notice for

acquisition by the petitioners, the statutory result, as provided in sub-section (2) of Section 20 of the Act, is dereservation of the land designated for particular specified rules or purpose, and entitlement to grant of relief to the petitioners of restoration of land for development by them, in accordance with law. In support of his submission, he has relied on the decision of this Court in the case of Palitana Sugar Mills (P) Ltd & Anr. vs. State of Gujarat & Others (Supra), which is confirmed by the Hon''ble Supreme Court in the case of Bhavnagar University vs. Palitana Sugar Mills (P) Ltd & Others (Supra). He has submitted that after pronouncement of judgment by the Hon''ble Supreme Court on this issue, this Court has disposed of several petitions involving identical question more particularly Special Civil Application No. 5468 of 1995 to 5478 of 1995, decided by this Court [Coram: H.K. Rathod, J.] on 27.12.2002 and Special Civil Application No. 769 of 2002 decided by this Court [Coram: C.K. Buch, J.] on 20th February 2002.

5. As far as Special Civil Application No. 6325 of 1995 is concerned, Ms. K.A. Mehta, learned advocate appearing for Gujarat Housing Board has submitted that it is not correct to state that Gujarat Housing Board (GHB) has not taken any steps for acquisition of the lands in question. She has invited the Court's attention to the letter dated 6.1.1985 addressed to the petitioners wherein it was mentioned that the steps for acquisition of the lands in question were already taken by the GHB. Even in the affidavit-in-reply which is filed on behalf of GHB, it is specifically stated that the proceedings for acquisition were already started and were continuing. It was further stated that since the proceedings for land acquisition were started in respect of the lands in question, the reservation would not lapse u/s 20(2) of the said Act. She has further submitted that the notice dated 16th March 1994 was received only on 30th December 1994 and therefore within six months from 30th December 1994 steps were already taken to acquire the said lands and therefore Section 20(2) of the said Act does not apply to the facts of the present case.

6. As far as Special Civil Applications No. 12476 of 2002 and 12500 of 2002 are concerned, Mr. Shailesh B. Parikh, learned advocate appearing for respondent No.2, i.e., GHB submitted that the steps for acquisition were taken but because of the pendency of petition no action was taken for some time. He has further submitted that the steps taken by the Housing Board were narrated in detail in Para 8-A of the Affidavit-in-Reply filed by the Housing Board. He has submitted that the Executive Engineer, Housing Division No.1, GHB had prepared acquisition proposal along with all necessary details and documents and submitted the same vide his letter dated 2.9.1995 to the Superintending Engineer, Vadodara Circle, Vadodara for further action in the matter. However, on account of pending proceedings before this Court, no action was taken in the matter. He has further submitted that the pending petition was disposed of by the Court on 18.11.1995 and thereafter revised development plan came into effect on 26.11.1996 showing that the said lands continued under the reservation of the GHB. Thereafter, the Board of Directors of GHB in their

meeting held on 22.11.96 passed a Resolution No. 245/96 to submit proposal for acquisition of the said lands along with other lands under reservation of the Housing Board to the Collector, Vadodara. By the said Resolution, the Board resolved to request the Government for grant of Government waste land adjacent to the lands in question for making approach road, and for that purpose to submit necessary proposal. By communication dated 27.3.1997, the Executive Engineer, Housing Division No.1, GHB, requested Talati-cum-Secretary, Bapod Village Panchayat to furnish at the earliest copies of Village Form No. 7/12, 8-A etc., in respect of Government waste land so that necessary proposal for development of the said land may be made to the Government. He has further submitted that communication dated 8.8.1997, the Chief Engineer, GHB submitted proposal for acquisition of land to the Collector, Vadodara, requesting him to forward the said proposal to Special Land Acquisition Officer for necessary further action in the matter by his letter dated 16.9.97. The Collector, Vadodara, forwarded the said proposal to the Special Land Acquisition Officer. The Special Officer, vide his letter dated 6.11.1997 returned the said proposal to the Superintending Engineer, GHB for compliance of various requirements. These requirements, inter alia, required GHB to pass a resolution for acquisition of the said lands to obtain NOC under the Urban Land Ceiling & Regulation Act in respect of the lands proposed to be acquired, to resubmit the acquisition proposal after excluding Government waste land, to furnish evidence from the Urban Development Authority that the lands proposed to be acquired are under reservation of the GHB and a resolution of the Board to that effect, and to furnish latest extracts from Village Form No. 7/12 of all Survey numbers covered in the acquisition proposal and other things mentioned therein. On the basis of these details, he has submitted that adequate steps were taken by the GHB for acquisition of the lands in question and hence as per the provisions contained in Section 20(2) of the Act if the steps are taken by the acquiring body, the reservation would not automatically lapse as contended by the petitioners.

7. Mr. Shailesh B. Parikh has further submitted that since adequate steps were taken by the Respondent authorities, the time may be extended to complete the acquisition proceedings and till then the reservation may be continued. In this connection, Mr. Parikh relied on the Division Bench Judgment of this Court in S.C.A. No. 771 of 2002 decided on 21.7.2003, wherein six months time was granted during which period the Respondent authorities were directed to complete all formalities for acquisition of land in question. The Division Bench has given following directions on consensual submissions;

"1. It will be open for the respondent No.2 Gujarat Housing Board to acquire the subject land and to pay the amount of compensation as per the settled proposition of law, either by agreement or by negotiations or by settlement with the party or by pursuing process of law, within a period of six months, by way of an additional opportunity for accomplishing the object with which earlier the land was acquired.

2. In the event of non-fulfilment and non-implementation of the directions hereinabove within the time frame, the resultant effect ipso facto would be that the reservation of the subject land (reserved land) shall stand lapsed and/or reservation of the land shall stand released."

He has, therefore, submitted that the similar order may also be passed in the present group of petitions.

8. While dealing with these contentions raised on behalf of GHB by Mrs. KA Mehta and Mr. Shailesh B. Parikh, Id. advocates appearing for the Board, Mr. MC Bhatt, Id. advocate appearing for the petitioners in all these petitions has submitted that what is envisaged by Section 20(1) and (2) of the Act is that the acquisition proceedings must have been commenced before the expiry of the period of 10 years and within the period of six months from the date of service of the notice by the occupiers. The steps to be taken would mean that the acquisition proceedings as contemplated in Section 4 of the Land Acquisition Act which talks of the issuance of the notification and from that date, the acquisition proceedings are said to have been commenced, and if it is not done, mere initiation of some steps would not save the reservation which was made in the earlier development plan. He has therefore submitted that since Sec. 4 notification has not been issued till this date in any of these matters, it cannot be said that the acquisition proceedings have been initiated by the GHB and hence the submissions made by the Id. advocates appearing for the Housing Board should not be accepted. With regard to Division Bench Judgment of this Court for extension of time, Mr. Bhatt submitted that the said order was passed on consensus and hence cannot be relied upon.

9. To appreciate the controversy raised in the present petition, it is necessary to have a close look at the provisions contained in Section 20 of the Act. It reads as under; "

20(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b) clause (d) [clause (f), clause (k), clause (n) or clause (o)] of sub-section (2) of section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894.

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed."

10. While interpreting the above provisions in the context of the entire scheme of the Act, this Court in the case of Palitana Sugar Mills (P) Ltd., & Anr. vs. State of

Gujarat & Others (Supra), has observed that sub-section (2) of Section 20 in the event of failure of the authorities to acquire the land by agreement or in land acquisition proceedings, confers a right on the owner or a person interested in the designated or reserved land, to serve a notice on the authority to acquire the land, and if within six months after service of notice, no steps are commenced for its acquisition, designation of the land for the purpose mentioned in clauses specified in sub-section (2) of Sections 12 and 20, would lapse. It was further observed that the words "so far as may be" used in Section 21 for applying to the provisions, Sections 9 to 20 of the Act clearly intend to convey that the provisions of Sections 9 to 20 in so far as they can be made available would be followed in the process of revision u/s 21. The previous operation of Sections 9 to 20 resulting into preparation of a final development plan and on its commencement with expiry of 10 years, a right created in favour of the land owner to serve 6 months" notice to get his land dereserved is not nullified by subsequent revision of the plans. Thus, after observing this, the Court held that on the interpretation of Sections 20 and 21 of the Act, mere issuance of a draft revised final development plan u/s 21 of the Act by the Authority, shall not take away the right already accrued and vested in the land owner on expiry of 10 years" period from the existing Final development plan and failure of the authority to acquire the land in six months" notice period. In the case of all the land owners before the Court, provisions of Section 20 have been availed and would, therefore, operate to their benefit into resulting of dereservation of the land from designated purposes specified in Section 12 of the Act, because of the failure of the authorities in acquiring the land.

11.The above decision of this Court was confirmed by the Hon"ble Supreme Court in the case of Bhavnagar University vs. Palitana Sugar Mills (P) Ltd & Others (Supra). While dismissing the appeals preferred by the Bhavnagar University against the judgment of this Court, the Hon"ble Supreme Court has held that by reason of the provisions of the said Act, a reasonable restriction has been imposed upon the owner on the user of its property u/s 12 of the Act, Town Planning is contemplated through preparation of draft development plan. In terms of such development plan, reservation of certain lands for public use is also provided. Sections 20 and 21 of the said Act are required to be read conjunctively with Sections 12 and 17 of the Act, whereas in terms of Section 12 and 17 of the said Act, reservation and designation have been provided, sub-section (1) of Section 20 is an enabling provision in terms whereof the State becomes entitled to acquire the land either by agreement or by taking recourse to the provisions of the Land Acquisition Act. If by reason of a revised plan, any other area is sought to be brought within the purview of the development plan, evidently in relation thereto the State will be entitled to exercise its jurisdiction under sub-section (1) of Section 20 but the same would not confer any other or further power upon the State to get duration of designation of land, which has lapsed, extended.

The Hon"ble Supreme Court has further held that sub-section (2) of Section 20,

however, carves out an exercise of powers by the State as regards acquisition of the land for the purpose of carrying out the development of the area in the manner provided therein; it provides that in the event the land referred to in sub-section (1) of Section 20 thereof is not acquired or proceedings under the Land Acquisition Act are not commenced, and further, in the event an owner or a person interested in the land serves a notice in the manner specified therein, certain consequences ensue, namely, the designation of the lands shall be deemed to have lapsed. A legal fiction, therefore, has been created in the said provision and when such a legal fiction is created, it must be given its full effect. The Hon"ble Supreme Court has, therefore, emphatically held that the relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain reading of the said provisions would lead to only one conclusion, namely, that in the event of a notice issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein, viz., ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.

The Hon"ble Supreme Court has also taken a note of the fact, that it is true that Section 21 of the Act imposes a statutory obligation on the part of the State and the appropriate authorities to revise a development plan and for the said purpose, Section 9 to 20 "so far as may be" would be applicable thereto, but thereby the rights of the owners in terms of sub-section (2) of Section 20 are not taken away. Only because Section 20 has been referred to therein, it would not mean that thereby the Legislature contemplated that the time of 10 years specified by the Legislature for the purpose of acquisition of the land would get automatically extended. Following the principle of interpretation that all words must be given their full effect, full effect must be given to the words "so far as may be" which shall apply to such revision. The said words indicate the intention of the Legislature to the effect that by providing revision of final development plan from time to time or at least once in 10 years, in which the procedure or preparation thereof as provided therein, is required to be followed. Such procedural requirement must be followed so far as it is reasonably possible. Section 21 of the Act does not and cannot mean that the substantial right conferred upon the owner of the land by the person interested therein shall be taken away. It is not and cannot be the intention of the Legislature that what is given by one hand should be taken away by the other. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 21 does not manifest a legislative intent to curtail or take-away the right acquired by land owner u/s 20(2) of getting the land which is defreezed. What is contemplated in Section 21 is to meet the changed situation and contingencies which might not have been contemplated while preparing the first final development plan. The power of the State enumerated under sub-section (1) of Section 20 does not

become ipso facto available in the event of issuance of a revised plan as the said provision has been specifically mentioned therein so that the same may use the same power in a changed situation.

12. After the aforesaid judgment of the Hon'ble Supreme Court, this Court [Coram: H.K. Rathod, J.] has disposed of Special Civil Applications No. 5468 of 1995 to 5478 of 1995 on 27.12.2002 by holding that the lands reserved by the respondent authorities, having not been acquired within 10 years from the date of coming into force of the existing final development plan or within six months of the notice period, shall stand released in favour of the petitioners for development by them in accordance with law. The reservation of the land in question by order dated 22.12.1994 is declared to have been lapsed with all consequential effects under Gujarat Town Planning Act, 1976.

13. In Special Civil Application No. 769 of 2002, this Court was concerned with the case whereby, pursuant to the earlier order passed by this Court while dealing with Special Civil Application No. 9990 of 1995 on 2.8.2001, the directions were sought for against the respondents to sanction the plan submitted with Valsad Municipality. The grievance of the petitioner was that though this Court has positively held that the reservation in the development plan 1994 qua the land bearing City Survey No. 1809 of Municipal House No. 7/92 situate at Valsad has lapsed and the respondent municipality should sanction the development as submitted by the petitioner if it was otherwise found in accordance with the norms, byelaws etc., the demand has not been accepted. In this context, this Court, while disposing of the said Special Civil Application on 20th February 2003, directed the respondent Municipality to act in accordance with law and sanction the plan as already submitted by the petitioners. It was also clarified that if any defect in the plan was found, the petitioner would be asked by the Municipality to make appropriate changes or alteration in the same. The Court has also made it clear that in the event of Municipality not complying with the directions issued by the Court within 45 days from the date of receipt of writ of this Court or production of certified copy of decision of this Court, then the petitioner would be at liberty to proceed with the development of the land in question as if the plan was deemed to have been approved by the authority under the relevant provisions of laws and byelaws.

14. In view of the fact that no notification u/s 4 of the Land Acquisition Act is issued till this date, in any of the present group of petitions, the arguments canvassed by learned Advocates appearing for the Respondent GHB, the reservation still continued inasmuch as the steps are taken by the authorities, cannot be accepted. Even Division Bench order of this Court in SCA No. 771 of 2002 dated 21.7.2003 extending time, would not render any assistance to the GHB as that order was passed on consensus and Mr. M.C. Bhatt, the learned Advocate appearing for the petitioners did not agree to any of such suggestions or proposals.

15. In view of the above settled legal position, the prayer made with regard to

dereservation of the lands in question in all these petitions is granted and it is declared that the reservation of the lands of the petitioners has lapsed and the said lands are no longer under reservation now. However, with regard to the prayers made for sanction of the development plans or to grant permission for construction, the respondent authorities are directed to process the same in accordance with law and appropriate decision may be taken in accordance with relevant statutory provisions, rules and regulations and byelaws. It is, however, made clear that neither the development permission nor permission for construction can be refused or denied to the petitioners merely on the ground that the lands are still under reservation and if the demand of the petitioners is found to be in order complying with all the statutory requirements and fulfilling the criteria laid down in the relevant rules and regulations as well as byelaws, the same may be granted to the petitioners, within a reasonable time which cannot be in any case beyond the period of 3 months from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier, or not beyond the period of three months from the date of receipt of any fresh application in this regard from the petitioners if made within one month from today.

16. With the aforesaid observations and directions, all these petitions are allowed. Rule is made absolute to the above extent, without any order as to costs. rnr. [K.A. Puj, J.]