
(2010) 05 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 4578 of 2010

Keyur D. Gandhi and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat Town Planning and Urban Development Act, 1976 — Section 41, 42, 47

Gujarat Town Planning and Urban Development Rules, 1979 — Rule 16, 17

Citation : (2010) 05 GUJ CK 0039

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Mihir H. Joshi and S.N. Thakkar, for the Appellant; Kamal Trivedi, General and Sangeeta Vishen, Assistant Government Pleader for Respondent 1, RR Marshall and Adil R. Mirza, for Respondent 2, for the Respondent

Judgement

Abhilasha Kumari, J.—Leave to annex Annexure-H1 to the petition is granted. Leave to amend the prayer-clause at Paragraph 25-B and Paragraph-2 of the petition is granted. The amendment may be carried out forthwith.

2. This petition, has been filed under Article 226 of the Constitution of India with the following prayers:

(A) Your Lordships be pleased to issue a writ of or in the nature of mandamus quashing and setting aside Draft Town Planning Scheme No. 204 (Makarba-Sarkhej-Okaf-Ambli-Vejalpur) made by the respondent No. 2, as being illegal, unreasonable, unjust, inequitable and void.

(B) In the alternative your Lordships be pleased to issue a writ of or in the nature of mandamus quashing and setting aside that part of the Draft Town Planning Scheme No. 204 (Makarba-Sarkhej-Okaf-Ambli-Vejalpur) proposing to lay down a road through the land of the petitioners bearing Survey Nos. 738/2 and 738/3 of Village Makarba, Dist. Ahmedabad as being illegal, unreasonable, unjust, inequitable and void.

(C) Your Lordships be pleased to issue a writ of or in the nature of mandamus restraining the respondent No. 1 from sanctioning the Draft Town Planning Scheme No. 204 (Makarba - Sarkhej - Okaf - Ambli - Vejalpur) as submitted by the respondent No. 2 on 2/7/2009.

(D) Pending admission, hearing and final disposal of this petition your Lordships be pleased to restrain the respondent No. 1 from sanctioning the Draft Town Planning Scheme No. 204 (Makarba-Sarkhej-Okaf-Ambli-Vejalpur) as submitted by the respondent No. 2 on 2/7/2009.

(E) Ex-parte ad interim reliefs in terms of prayer D above be granted.

(F) Such other and further reliefs as deemed just and expedient be granted.

3. Briefly stated, the relevant facts of the case are that the petitioners are the co-owners of land bearing Survey Nos. 738/2 and 738/3 of Village: Makarba, District: Ahmedabad ("the subject land" for short). In or about the year 2006, the petitioners were informed about the framing of a Draft Town Planning Scheme which included the subject land and after considering the objections raised by the petitioners, they were called upon to pay betterment charges on the assurance that they would be allotted a Final Plot, as per their Original Plot. The petitioner No. 1 made the payment of Rs. 33,96,842/- and the petitioners Nos. 2 and 3 made payment of Rs. 33,85,445/-. Thereafter, the petitioners received the information that on 09.04.2008, respondent No. 2 - The Ahmedabad Urban Development Authority (AUDA) made a Declaration of its intention to make a Scheme u/s 41 of the Gujarat Town Planning and Urban Development Act, 1976 ("the Act" for short), which was published in the local newspaper "Prabhat" on 27.04.2008. According to the petitioners, the said newspaper does not have wide circulation and there was no adequate publication of the said Declaration, as contemplated under the Act and Rule 16 of the Gujarat Town Planning and Urban Development Rules, 1979 ("the Rules" for short). Respondent No. 2 appears to have called a meeting of the owners, whose lands were proposed to be included in the Town Planning Scheme under Rule 17 of the Rules, vide Notice published on 17.02.2009 in the local daily newspaper "Divya Bhaskar" regarding holding of the said meeting on 21.02.2009. It is the case of the petitioners that they were not aware of the said Public Notice and nor were they served with any individual notice regarding the holding of such a meeting, as required under the Act and the Rules and, therefore, they were precluded from making any suggestion or raising objections to the proposals contemplated under the Draft Scheme. Respondent No. 2 thereafter framed the Draft Town Planning Scheme No. 204 (Makarba - Sarkhej - Okaf - Ambli - Vejalpur), which was published in the Official Gazette on 04.04.2009 and in the local newspaper "Gujarat Samachar", on 10.04.2009. According to the petitioners, such notice was not published on or around the land of the petitioners and the said Scheme has also not been made and published within the time stipulated for the purpose u/s 42 of the Act, being a period of nine months from the date of declaration of intention with the maximum three months" extension. The grievance of the

petitioners is that under the said Scheme, there was no proposal to lay down a road through the land of the petitioners but the petitioners were called upon to pay betterment charges, which have been paid. The petitioners submitted their objections to the levy of such charges vide letter dated 07.05.2009. According to the petitioners, as there was no proposal for laying of road under the Scheme in respect of the subject land, the petitioners applied for Development Permission for constructing residential bungalows on the basis that the Final Plot would be as per the Original Plot. However, on 25.08.2009, the petitioner No. 2 received a letter from respondent No. 2 calling upon the petitioners to submit revised Development Plans in accordance with the said Scheme which, according to respondent No. 2, had been submitted to the State Government for sanction on 02.07.2009. The petitioners made inquiries regarding the said Scheme and learnt that the said Scheme, as published, had been substantially modified by respondent No. 2 by laying down a network of roads in and around the subject land, including a road through the subject land itself on the south-eastern side, thereby substantially reducing the subject land and altering the boundary in a manner that the existing structure and trees have to be removed. It is the specific case of the petitioners that such a modification is not of the nature contemplated u/s 47 of the Act and tantamounts to framing of new Scheme. Moreover, the petitioners were not put to notice to this modification and were not given any opportunity of submitting their objections thereto. The petitioners sought to make a representation against the modified Scheme before respondent No. 2 but were informed that the said Scheme has already been submitted to respondent No. 1 (State of Gujarat). The petitioners then filed a detailed representation to both respondents Nos. 1 and 2 pointing out the aforementioned facts but till date, no decision has been communicated to them regarding the said representation. Apprehending that there is a likelihood of an irreversible situation being created which would render the petitioners remedyless, the petitioners are constrained to approach this Court by filing the present petition.

4. Mr. Mihir Joshi, learned Senior Advocate with Mr. S.N. Thakkar, learned Counsel for the petitioners, has submitted that even if it is assumed that the impugned action of respondent No. 2 is within the ambit of Section 47 of the Act, such fresh proposals that have been incorporated in a published Scheme resulting in substantial modification thereof would require fresh publication and an opportunity ought to have been given to the petitioners, who are affected persons, of submitting their objections to the same. This would necessarily have to be read into the provisions of Section 47 of the Act, otherwise, the provisions would be unconstitutional on the ground of being unreasonable as the affected persons have not been afforded an opportunity of submitting the objections to the modified Scheme. It is further submitted by the learned Senior Advocate that there is a clear non-compliance of the mandatory provisions of the Act relating to the Scheme as published by respondent No. 2, and though several grounds have been raised by the petitioners in the petition, at this stage, the petitioners would press the ground of affording an opportunity of submitting their objections to the

modified scheme. In support of the above submissions, the learned Senior Advocate has relied upon a judgment dated 10.02.2010 of this Court (Coram: M.R. Shah, J.) in Kishanbhai Hargovandas Patel v. State of Gujarat - Special Civil Application No. 26785 of 2007 2010 (0) GLHEL HC 223273

5. I have heard Mr. Mihir Joshi, learned Senior Advocate for the petitioners, Mr. Kamal Trivedi, learned Advocate General with Ms. Sangeeta Vishen, learned Assistant Government Pleader, for respondent No. 1 - State of Gujarat and Mr. R.R. Marshall, learned Senior Advocate with Mr. Adil R. Mirza, learned Counsel for respondent No. 2 - AUDA and perused the averments made in the petition and other documents on record.

6. From the submissions made by the learned Counsel for the respective parties, and the material on record, it appears that the petitioners, who are the co-owners of land bearing Survey No. 738/2 and 738/3 of Village Makarba, District: Ahmedabad, have challenged the Draft Town Planning Scheme No. 204 (Makarba - Sarkhej - Okaf - Ambli - Vejalpur) submitted by the AUDA to the State Government for its sanction, are aggrieved principally on the ground that the said Scheme was substantially modified by AUDA after its publication and proposals prejudicial to the petitioners have been incorporated in the modified Scheme forwarded to the State Government, without affording any opportunity to the petitioners to object to the same.

7. The petitioners have raised several factual and legal contentions in the petition. In addition to the same, the petitioners have also produced a plan showing that even after the removal of the proposed roads through the plots of the petitioners, all other surrounding plots have due and proper access, and it is submitted that the same ought to have been considered by AUDA.

8. It is an undisputed position that the petitioners have not been heard and afforded an opportunity to submit their objections before substantial modification in the Scheme has been made and on this short ground alone, the petition deserves to be partly-allowed by giving appropriate directions to the respondents and without entering into the merits of the other grounds raised by the petitioners. Even otherwise, the learned Senior Advocate appearing for the petitioners has confined his arguments to this ground alone.

9. The observations made in Kishanbhai Hargovandas Patel v. State of Gujarat (supra) are relevant in the factual matrix of the present case and are, therefore, being reproduced hereinbelow:

22. The sum and substance of the aforesaid discussion is that in a case where the State Government sanctions the Preliminary Town Planning Scheme with modification in the Preliminary Town Planning Scheme suggested by the Town Planning Officer and instead of Final Plot "A" suggested by the Town Planning Officer under the Town Planning Scheme, Final Plot "B" is allotted to the land owner at the time of sanctioning the Preliminary Town Planning Scheme No. 65 of the Town Planning Act i.e. modifying the Preliminary Town Planning Scheme

suggested by the Town Planning Officer to the aforesaid extent, before such a modification, an opportunity is required to be given to the original land owners to submit their objections and suggestions and at that stage, principles of natural justice is required to be read into. Under the circumstances, the impugned Preliminary Town Planning Scheme No. 6(Unja) sanctioned by the State Government with respect to the lands of the petitioners - original land owners deserves to be quashed and set aside.

23. Now the next question is what further steps to be taken by the State Government. It was suggested that the Preliminary Town Planning Scheme No. 6 sanctioned by the State Government allotting Final Plot No. 294 to the petitioners - original land owners in lieu of their original Survey No. 296- Original Plot No. 207 admeasuring 4876 sq. mtrs. be treated as Notices to the petitioners - original land owners and other persons likely to be affected inclusive of the private respondent Nos. 5 and 6 so that the petitioners and private respondent Nos. 5 and 6 and any other affected persons can submit their objections and suggestions to the same.

10. In view of the fact that the petitioners have not been heard and afforded an opportunity to submit their objections before modification of the Scheme and the observations of the Court made in the judgment quoted hereinabove, the following order is passed:

(I) The petition is partly-allowed to the extent that Draft Town Planning Scheme No. 204 (Makarba - Sarkhej - Okaf - Ambli - Vejalpur) only insofar as it incorporates proposals/ modifications affecting the lands of the petitioners being Survey No. 738/2 and 738/3 and the immediately adjoining land touching the road affecting the petitioners" land of Village: Makarba, District: Ahmedabad, is quashed and set aside.

(II) The modified Draft Town Planning Scheme submitted by AUDA to the State Government shall be treated as a notice to the petitioners, inviting their objections/ suggestions to the proposals in respect of their land. The petitioners may submit their objections/ suggestions to the proposals within a period of two weeks from today and the AUDA shall take a decision thereon, after affording an opportunity of hearing to the petitioners, within a period of four weeks from receipt of the objections/ suggestions.

(III) Respondent No. 2 - AUDA shall communicate its decision on the objections/ suggestions submitted by the petitioners to them and would thereafter submit the Draft Scheme, as published or modified, to the State Government for sanction in accordance with Section 47 of the Act.

(IV) In case the petitioners are aggrieved by the decision of AUDA, the petitioners are granted liberty to take appropriate proceedings in accordance with law to challenge the said decision and it will be open to the petitioners to raise all available contentions in such proceedings, including those raised in the present petition.

(V) It is clarified that this order shall not be treated as a precedent as it has been passed on the peculiar facts, as narrated in the petition.

11. Rule is made absolute to the aforestated extent. There shall be no orders as to costs.