

(2005) 02 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 9979 of 1996

Khodaji Mafatji Thakor

APPELLANT

Vs

Ahmedabad Urban Development Authority

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2005 Guj 200

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : R.M. Chhaya, for Petitioner Nos. 1-5, for the Appellant; P.S. Champaneri, for the Respondent

Judgement

M.R. Shah, J.—In this petition, under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, order or direction, directing the respondents to implement the Town Planning Scheme, Vejalpur-3 and to direct the respondents to give possession of Final Plot No. 181 as per the provisions of the scheme.

2. It is the case of the petitioners that the petitioners are the heirs and legal representatives of deceased, Maftaji Ramtuji who was owner of the land bearing Survey No. 1255 and after his death the petitioners have become owners of the aforesaid land in question. It is also further submitted that under the Town Planning Scheme, Vejalpur-III the land bearing Survey No. 1255 was allotted Original Plot No. 173 admeasuring 15884 sq.mtrs., and on reconstitution of the original plot, the petitioners are given three different plots, namely, Final Plot No. 181 admeasuring 5482 sq.mtrs; Final Plot No. 182 admeasuring 4789 sq.mtrs.; and Final Plot No. 38 admeasuring 940 sq.mtrs. of land. It is further submitted that in lieu of original plot No. 173 admeasuring 15884 sq.mtrs., the petitioners have been allotted area admeasuring 11211 sq.mtrs. of land. It is also the case of the petitioners that on the scheme being sanctioned by the State Government, the respondent No. 1 authority took possession of the original plot No. 173 and

had in fact given possession of Final Plots No. 182 and 38. However, possession of Final Plot No. 181 admeasuring 5482 sq.mtrs. of land is not handed over to them and therefore they have not implemented the Town Planning Scheme which has not become final and therefore the aforesaid prayer has been made.

3. Affidavit-in-reply is filed on behalf of the respondents by the Assistant Town Planner, Ahmedabad Urban Development Authority. It is submitted in the affidavit-in-reply that some portion of the land from the land bearing Original Plot No. 173 bearing Revenue Survey No. 1255 and rest of the area covered under the said Revenue survey is still with the petitioners. As the petitioner has not handed over possession of the entire area of the land of original plot No. 173 bearing Revenue Survey No. 1255, possession of Final Plot No. 181 allotted to the petitioners has not been given to the petitioners. It is submitted that as and when the petitioners hand over possession of the rest of the land from the land bearing Revenue Survey No. 1255, i.e., Original Plot No. 173, the respondents herein will hand over possession of Final Plot No. 181 allotted to the petitioners in lieu of original plot No. 173. Therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties. It is an admitted position, that in the Town Planning Scheme, the petitioners are allotted three Final Plots bearing No. 181, 182 and 38 in lieu of Revenue Survey No. 1255, Original Plot No. 173. The petitioners are allotted the land admeasuring 11211 sq.mtrs. of land against their original holding of 15884 sq.mtrs. Thus, the petitioners are required to hand over some portion of the land to the appropriate authority. As stated in the affidavit-in-reply, which is not disputed by the petitioners, some portion of the land from the land bearing Survey No. 1255, O.P. No. 173 which is required to be handed over to the appropriate authority under the Town Planning Scheme Vejalpur-III is not handed over by the petitioners. On the one hand the petitioners are not handing over possession of the land which is required to be handed over to the appropriate authority under the town planning scheme which has become final, and on the other hand the petitioners are making a prayer with regard to handing over of the possession of the land in question which is allotted to the petitioners under the town planning scheme. When the petitioners are not ready to fulfil their obligation of handing over possession of the land which is required to be handed over to the appropriate authority under the town planning scheme which has become final which is the duty of the petitioners, it is not open for the petitioners to make a grievance that the respondents are not handing over possession of the land which is allotted to them. If the petitioners want possession of the land which is allotted to them simultaneously the petitioners are bound to hand over possession of the land which is required to be handed over to the appropriate authority under the town planning scheme.

5. Under the circumstances, it is required to be observed that unless and until the petitioners hand over possession of the land which is required to be handed

over by the petitioners to the appropriate authority under the town planning scheme which has become final, no relief can be granted in favour of the petitioners. However, as and when the petitioners hand over possession of the land to the appropriate authority which they are required to hand over under the town planning scheme which has become final, simultaneously the respondents are directed to hand over possession of final plot No. 181 to the petitioners as per the town planning scheme which has become final. With these observations and direction, the present Special Civil Application is disposed of. Rule is discharged.