

(2022) 01 GUJ CK 0009

In the Gujarat High Court

Case No : R/Special Civil Application No. 13751 Of 2020 For Approval And
Signatu

Nirmalaben Pranjivan Bhagat

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Town Planning And Urban Development Act, 1976 — Section 52, 58, 65, 67, 68

Citation : (2022) 01 GUJ CK 0009

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Mehul Shah, Arpit A Kapadia, Meet Thakkar, Kaushal D Pandya

Final Decision : ?Dismissed

Judgement

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Biren Vaishnav, J"////////

1. RULE. Mr.Meet Thakkar learned AGP waives service of Rule for respondent No.1 and Mr.Kaushal Pandya learned advocate waives service of,////////

Rule for respondent nos.2 to 5.,////////

2. By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for the following relief:"////////

â??(A) Your Lordships may be pleased to admit and allow this petition;////////

(B) Your Lordships may be pleased to appropriate writ, order or direction to declare the action of respondents in attempting to cause demolition in or"////////

upon the land bearing survey no 17 (Original Plot No 13) as per the sanctioned Preliminary Town Planning Scheme No 24 (Tunki) Final Plot No 22, 28"////////

and 29, Katargam, Surat as illegal, arbitrary, against the principles of natural justice and de hors the provisions of Gujarat Town Planning and Urban",,,,,,,,,

Development Act;,,,,,,,,

(C) Your Lordships may be pleased to appropriate writ, order or direction to restrain the respondents from causing any demolition in the land bearing",,,,,,,,,

survey no 17 (Original Plot No 13) as per the sanctioned Preliminary Town Planning Scheme No 24 (Tunki) Final Plot No 22, 28 and 29, Katargam,",,,,,,,,

Surat.,,,,,,,,,

(D) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondents to maintain the status-quo",,,,,,,,,

with respect to the land bearing survey no 17 (Original Plot No 13) as per the sanctioned Preliminary Town Planning Scheme No 24 (Tunki) Final Plot,,,,,,,,

No.22, 28 and 29, Katargam, Surat; And further be pleased to direct the respondents to maintain status-quo with respect to the approach road which is",,,,,,,,,

being used by the petitioner since last about 40 years.â??,,,,,,,,,

3. Facts in brief are as under:,,,,,,,,

3.1 It is the case of the petitioner that he along with one Shri Ramanlal Dahyabhai Patel entered into a partnership deed in the name and style of,,,,,,,,

M/s.P.B.Processing. Vide the partnership deed, Shri Dahyabhai Patel has brought land bearing Revenue Survey No.18 measuring 24,648 sq.meters",,,,,,,,,

into the partnership. A cloth processing unit was established on the land. Subsequently Mr.Patel resigned from the partnership and according to the,,,,,,,,

petitioner for more than three decades now the petitioner is running the industrial unit of cloth processing upon the plot.,,,,,,,,,

3.2 A Preliminary Town Planning Scheme No.24 was sanctioned by the State of Gujarat vide notification dated 18.05.2012. According to the,,,,,,,,

petitioner, a notice was issued on 10.05.2019 by the Executive Engineer, North Zone (Katargam), Surat Municipal Corporation under Section 67 of the",,,,,,,,,

Town Planning and Urban Development Act, whereby, it was conveyed that land bearing survey no.17 (original plot no.13 which was owned by the",,,,,,,,,

petitioner) was allotted Final Plot nos.22, 28 and 29. As per the notice, the petitioner was asked to hand over the possession of Original Plot No.13.",,,,,,,,

The petitioner challenged the said notice by filing Special Civil Application No.9682 of 2019 wherein initially by an order dated 17.05.2019, status-

quo",,,,,,,,,

was granted. However subsequently vide an order dated 01.07.2019, the Special Civil Application was disposed of in view of the instructions from one",,,,,,,,,

Mr.Vatsal Gamit, Assistant Engineer that the Surat Municipal Corporation does not want to proceed with the notice dated 10.05.2019. According to",,,,,,,,,

the petitioner without any fresh notice nor any demarcation of land of the property of the petitioner, the respondents on 06.10.2020, demolished the",,,,,,,,,

compound wall of the petitioner's structure and hence, the prayers.",,,,,,,,

4. Mr.Mehul Shah learned Senior Advocate appearing with Mr.Arpit Kapadia made the following submissions:,,,,,,,,

4.1 Relying on the map at page 67 which was the part plan of the draft T.P.Scheme, Mr.Shah would submit that the petitioner's factory was on",,,,,,,,,

the original plot no.14 and there was a road on the original plot no.13 by virtue of which, the petitioner had rights of ingress to his original plot no.14",,,,,,,,,

which was subsequently granted Final Plot no.25. He would submit that if the same is compared with page 68 part plan of the preliminary scheme of,,,,,,,,

Surat, the original plot no.13 which has now become part of the final plot no.28, the dotted portion of the road which had ingress to the original plot",,,,,,,,,

14/final plot 25 of the petitioner has been shifted to a 9 meter road at a distance from the plot of the petitioner. He would submit that there was no,,,,,,,,

reservation in the original plot no.13.

4.2 Drawing the attention of the Court to the order passed by this Court dated 01.07.2019 wherein, a statement was made by the Corporation that a",,,,,,,,,

fresh notice will be issued, Mr.Shah would submit that for demolishing the wall on the periphery of the petitioner's original plot no.18 (original plot",,,,,,,,,

no.14), no notice has been given and without following the procedures under Section 68 of the Act, the demolition has taken place."

4.3. Mr.Shah would further submit that even otherwise, if pages 67 of the draft scheme is compared with that of the preliminary scheme, the road",,,,,,,,,

which was shown on the final plot no.28 which marked and was an ingress to the petitioner's property as shown in the draft plan, was not in the",,,,,,,,,

part preliminary plan at page 68 inasmuch as, the road was shown at a distance and what was envisaged now was that the original plot 13 which is",,,,,,,,,

final plot no.28 was to be used for the school. This was a variation in the intention of the Town Planning Scheme which was without following the,

procedure under Section 65 of the Town Planning Act.,,,,,,,,,

4.4 Mr.Shah relying on the provisions of Section 52 of the Town Planning Act, would submit that the proviso to Section 52 would indicate that if the",,,,,,,,,

Town Planning Officer has to vary a scheme from the Draft Scheme and if such variation is of a substantial nature, the owners have a right to object.",,,,,,,,,

Mr.Shah would submit that when specifically a road in terms of the dotted line shown in the final plot no.28 in the draft plan was shifted at a distance,,,,,,,,

and original plot 28 was to be used by the Corporation for the school, the petitioner ought to have been given an opportunity of hearing. In support of",,,,,,,,,

his submissions that the petitioner ought to be heard, Mr.Shah relied on the following decisions:",,,,,,,,,

(I) In case of M/s. Babubhai & Co. and others v. State of Gujarat and Ors. reported in AIR 1985 SC 613,,,,,,,,

(II) In case of Usha Agarwal v. Union of India and Others reported in (2007) 1 SCC 295,,,,,,,,

He would rely on paras 9 to 12 thereof.,,,,,,,,,

4.5 He would submit that the action of the Corporation was de-hors the provisions of law. Reliance was also placed on the decision of this Court in,,,,,,,,

case of Babubhai Maganbhai Desai v. Ahmedabad Municipal Corporation reported in 2019 (1) GLR 797. Reliance was placed on paras 7 and 8 to,,,,,,,,

submit that when there is a variation in the scheme, no action can be taken without issuing notices to the owners. He would submit that now that the",,,,,,,,,

scheme has been reconstituted and the plots redetermined, persons who continued to occupy the land, cannot be summarily evicted without following",,,,,,,,,

the procedure under Section 68 of the Act.,,,,,,,,,

Sr No,Case No,"Name of the

Owner",Te nu re,"R.S.No /CTS

No",Original Plot,,Final Plot,,Remarks

,,,,,No,"Area

in Sq.

Mts",No,"Area

in Sq.

Mts",

(1),(1a),(2),(3),(3a),(4),(5),(6),(7),(8)

////////

15,15,"SMC FOR

CATTLE

BREEDING" ,,17,13,8802,"22

28

29","3537

3287

596

7422","1.Part of the

buildings are

affected by

T.P.proposals

but

compensation

is not

proposed as

said portion is

constructed

without

permission

either in

margin or in

full.

16,16,"1. Partners Of

Ms.P.B.Processors

Nirmalaben

Pranjivan Bhagat

2. Diwaliben

Bachubhai

3.Rekha

Harishkumar

4.Jayashree

Maheshchandra

5. Gita

Ashvinkumar

7. Partners Of Shri

Reshma Textiles

Champak Ratilal

Jayshree

Shashikant

7. Harish

Dalpatram Vinod

Dalpatram Ashvin

Dalpatram

8. Kamini

Vinodchandra

9.Hansa

Harishchandra

10. Shashikant

Champaklal Baman

Nirmala

Champaklal Baman

11. Dinesh Hiralal

12. Umarji Ibrahim

Patel

13. Pravin

Harkishan

14 Hitesh Kantilal

15. Chandrika

Pravin

16. Ramesh

Zaverbhai

17. Rajendra

Sakarlal Ashok

Sakarlal

18. Partners Of

Laxmi Textiles",,,18,14,24787,25,23296,"1. Rights of
owners in

Final Plot shall

be in

proportion to

their share in

Original Plot

10. The reliance placed on the judgments therefore by Mr.Mehul Shah would be
misconceived.,,,,,,,,,

11. Therefore what is evident is that since the Corporation was allotted the Final
Plot Nos.22, 28 and 29 of Revenue Survey No.17 / Original Plot",,,,,,,,,

No.13 and before the scheme, the petitioner had access from the original plot
no.13 to enter upon his plot, merely because of this right of access has",,,,,,,,,

been changed to the access through a nine meter T.P. road at a little distance,
cannot be made a tool by the petitioner for invoking the Section 52 read",,,,,,,,,

with Section 68 of the Act.,,,,,,,,,

12. For the aforesaid reasons, the petition stands dismissed and the interim relief
granted by this Court stands vacated forthwith. Rule is discharged.",,,,,,,,,

(BIREN VAISHNAV, J)",,,,,,,,,

FURTHER ORDER.,,,,,,,,,

After the above judgment is pronounced," ,,,,,,,,,

Mr.Arpit Kapadia learned advocate for the petitioner requested for the stay of this
judgment. The request is rejected.,,,,,,,,,