

(2016) 04 GUJ CK 0099

In the Gujarat High Court

Case No : Letters Patent Appeal No. 318 of 2016 and In Special Civil Application No. 1089 of 2015 with Civil Application No. 3346 of 2016

Ramanbhai Hargovinddas Limbachia

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Gujarat Town Planning and Urban Development Act, 1976 — Section 48A, 67, 68
Gujarat Town Planning and Urban Development Rules, 1979 — Rule 33

Citation : (2016) 2 GCD 1792 : (2016) 3 GLR 2695

Hon'ble Judges : Mr. M.R. Shah and Mr. A.J. Shastri, JJ.

Bench : Division Bench

Advocate : Mr. N.R. Desai, Advocate, for the Appellants No. 1 to 46; Mr. S.P. Majmudar, Advocate, for the Respondents No. 1 to 46

Final Decision : Dismissed

Judgement

Mr. M.R. Shah and Mr. A.J. Shastri, JJ.—Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge in Special Civil Application No.1089/2015 by which the learned Single Judge has dismissed the said Special Civil Application preferred by the appellants herein—original petitioners (hereinafter referred to as "original petitioners"), the original petitioners have preferred the present Letters Patent Appeal.

2. Facts leading to present Letters Patent Appeal in nutshell are as under:

2.1. That the original petitioners claimed to be the occupiers of the land bearing Revenue Survey No.53/1, Plot No.72 of village Dumbhal, which is now within the local limits of Surat Municipal Corporation and is part of the Town Planning Scheme No.33, Dumbhal, Surat. That with respect to the area in question including the aforesaid revenue survey number, the draft scheme came to be sanctioned under section 48(2) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "Town Planning Act") vide notification dated 21.01.2000. It appears that thereafter the Town Planning

Officer was appointed to prepare and publish the preliminary Town Planning Scheme. That the Town Planning Officer submitted the preliminary Town Planning Scheme to the State Government for its sanction, however after its scrutiny, the State Government refused to sanction the scheme as preliminary scheme vide notification dated 01.07.2010. As provided in the said notification, it was provided that Town Planning Officer shall afresh, draw the preliminary scheme in accordance with the provisions of the Town Planning Act and observation of the inquiry report has also to be considered. That under the sanctioned draft Town Planning Scheme, the lands occupied by the petitioners is forming part of Town Planning 36 meter road. Therefore, the respondent Corporation, as an implementing authority issued a notice to each of the occupiers/petitioners dated 27.05.2014 for implementation of the said scheme as provided under Sections 48A, 67, 68 of the Town Planning Act and Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as "Town Planning Rules"). That the petitioners filed their reply to the same and thereafter filed a writ petition before this Court being Special Civil Application No.8760/2014 which came to be disposed of by the learned Single Judge of this Court vide order dated 02.07.2014 directing the respondent Corporation/appropriate Authority to give an opportunity of being heard and pass a reasoned order. That thereafter the respondent Corporation has passed an order dated 03.01.2015 and has been pleased to direct the petitioners to evict the 36 meter scheme road. That being aggrieved and dissatisfied with the orders dated 03.01.2015 the respective petitioners who are 46 in number preferred the Special Civil Application No.1089/2015 before the learned Single Judge and by impugned judgment and order the learned Single Judge has dismissed the aforesaid Special Civil Application. Hence, the original petitioners-occupiers of the land in question which is needed for widening of the 36 meter road under the draft Town Planning Scheme, have preferred the present Letters Patent Appeal.

2.2. Shri S.P. Majmudar, learned advocate appearing on behalf of the original petitioners has vehemently submitted that while dismissing the Special Civil Application, the learned Single Judge has not properly appreciated the provisions of the Town Planning Act and Town Planning Rules.

It is vehemently submitted by Shri Majmudar, learned advocate appearing on behalf of the original petitioners that the learned Single Judge has not properly appreciated the fact the earlier preliminary scheme which was submitted by the Town Planning Officer was not sanctioned by the Government and as such the Government refused to sanction the said preliminary scheme and therefore, the respondent Corporation was required to again follow the whole procedure and the Corporation therefore, cannot implement the draft Town Planning Scheme and therefore, the impugned notices/orders passed by the authority directing the petitioners to evict were without authority under the law with illegal.

2.3. Shri Majmudar, learned advocate appearing on behalf of the original petitioners has reiterated what was submitted before the learned Single Judge

and has assailed the orders passed by the appropriate Authority/Corporation mainly on the following grounds.

(1) That once the earlier preliminary Town Planning Scheme which was submitted by the Town Planning Officer was not sanctioned by the Government and Government refused to sanction the same, thereafter unless and until the entire and whole procedure required to be followed under the provisions of the Town Planning Act and the Town Planning Rules is followed, the Corporation cannot implement the draft Town Planning Scheme and therefore, the very action of the respondent Corporation in issuing the impugned notices/orders of implementation of the draft Town Planning Scheme is dehors the provisions of the Town Planning Act and Town Planning Rules.

(2) That some of the petitioners have purchased the land in question by a sale deed and that some of the petitioners are occupying the land in question since 1985 and that there are five sons situated therein and therefore, the implementation of the scheme qua the land of the petitioners is not in consonance with the provisions of the Town Planning Act.

(3) That there is no justification of having 36 meter road at the present road which is available is sufficient enough to cater the needs of the traffic.

(4) That as the scheme is still at large i.e. at the stage of section 52 of the Town Planning Act, the scheme qua the right in question should be implemented only after the preliminary scheme is sanctioned.

Making above submissions it is requested to admit/allow the present Letters Patent Appeal.

3. Heard Shri Majmudar, learned advocate appearing on behalf of the original petitioners at length. We have perused and considered the impugned well reasoned order passed by the learned Single Judge. At the outset it is required to be noted that the dispute is with respect to the land bearing Revenue Survey No.53/1, Plot No.72 of village Dumbhal, which is as such required for 36 meter wide town planning road as per the draft Town Planning Scheme which is sanctioned on 21.01.2000. It is true that after the draft Town Planning Scheme was sanctioned by the State Government on 21.01.2000, the Town Planning Officer was appointed who prepared the preliminary Town Planning Scheme and submitted before the State Government for its sanction, however the State Government refused to sanction the same and return the same to the Town Planning Officer to prepare and draw a fresh preliminary town planning scheme. Therefore, at present the scheme is at the stage of preparation/drawing the preliminary town planning scheme. However, the sanctioning of the draft Town Planning Scheme on 21.01.2000 continues. Therefore, it can be said that at present the scheme is at the stage of finalised draft town planning scheme and that for the area in question draft town planning scheme has been sanctioned by the State Government. As it emerges from the record and it is an admitted position that the notification to prepare the scheme was declared on 21.04.1997

and the draft Town Planning Scheme has been sanctioned under section 48(2) of the Town Planning Act vide notification dated 21.01.2000. At this stage section 48A and 49 of the Town Planning Act are required to be referred to which reads as under:

"48A. Vesting of land in appropriate authority:-

(1) Where a draft scheme has been sanctioned by the State Government under subsection (2) of section 48, (hereinafter in this section, referred to as "the sanctioned draft scheme"), all lands required by the appropriate authority for the purposes specified in clause (c), (f), (g), or (h) of subsection (3) of section 40 shall vest absolutely in the appropriate authority free from all encumbrances.

(2) Nothing in subsection (1) shall affect any right of the owner of the land vesting in the appropriate authority under that subsection.

(3) The provisions of sections 68 and 69 shall mutatis mutandis apply to the sanctioned draft scheme as if,

(i) sanctioned draft scheme were a preliminary scheme, and

(ii) in subsection (1), for the words "comes into force", the words, brackets and figures "the date on which the draft scheme is sanctioned under subsection (2) of section 48" were substituted.

49. Restrictions on use and development of land after declaration of a scheme:

(1)(a) On or after the date on which a draft scheme is published under section 41, no person shall, within the area included in the scheme, carry out any development unless such person has applied for and obtained the necessary permission for doing so from the appropriate authority in prescribed form and on payment of such scrutiny fees as may be prescribed by regulations;

(b) where an application for permission under clause (a) is received by the appropriate authority, it shall send to the applicant a written acknowledgment of its receipt and after making such inquiry as it deems fit and in consultation with the Town Planning Officer, if any, may either grant or refuse such permission or grant it subject to such conditions as it may think fit to impose;

(c) if the appropriate authority does not communicate its decision to the applicant within three months from the date of acknowledgments of its receipt, such permission shall be deemed to have been granted to the applicant;

(d) if any person contravenes the provisions of clause (a) or of any condition imposed under clause (b), the appropriate authority may direct such person by notice in writing to stop any development in progress, and after making an inquiry in the prescribed manner remove, pull down, or alter any building or other development or restore the land or building in respect of which such contravention is made to its original condition;

(e) any expenses incurred by the appropriate authority under clause (d) shall be

a sum due to it under this Act from the person in default;

(f) the provisions of section 35 shall so far as may be, apply in relation to the unauthorised development or use of land included in a town planning scheme;

(g) the restrictions imposed by this section shall cease to operate in the event of the State Government refusing to sanction the draft scheme or the preliminary scheme or in the event of the withdrawal of the scheme under section 66 or in the event of the declaration of intention lapsing under subsection (3) of section 42;

(h) any diminution in the value of an original plot occasioned by any contravention of the provisions of clause (a) or of any condition imposed under clause (b) shall, notwithstanding anything contained in sections 77, 78 and 79 be taken into account in fixing the market value of such plot.

(2) No person shall be entitled to compensation in respect of any damage, loss or injury resulting from any action taken by the appropriate authority under the subsection (1) of section 70 except in respect of a building or work begun or contract entered into before the date on which a declaration of intention to make a scheme is published under section 41 or the publication of the draft scheme under subsection (1) of section 42 :

Provided that where any person is entitled to any compensation in respect of any building or work under this subsection, he shall be so entitled only in so far as such building or work has proceeded at the time of the declaration of intention or publication, as the case may be, and subject to the conditions of any agreement entered into between such person and the appropriate authority.

(3) On and after the date referred to in clause (a) of subsection (1), the appropriate authority intending to carry out development of land, within the area included in the scheme, for its own purpose in exercise of its powers under any law for the time being in force shall carry out such development in conformity with the provisions of such scheme, and of the byelaws and regulations relating to construction of buildings.

(4) The provisions of this section shall not apply to any operational construction undertaken by the Central Government or a State Government."

According to the petitioners the status of the petitioners over the land in question in a tabular form is as under.

Petitioners

Name of petitioners

Sale Deeds/possession receipts

Date

1.

Ramanbhai Hargovinddas Limbachia (plot No.12)

Sale deed

31.03.2008

2.

Kiritbhai Mangubhai Patel (plot No.7)

Sale deed

31.03.2008

3.

Ramrajbhai Ramprasad Yadav (plot No.89)

Sale deed

31.03.2008

4.

Dalichand Harkishandas Rana (plot No.1011)

Possession receipt

24.12.1988

5.

Narendrabhai Bhavanlal Sharma (plot No.1315)

Possession receipt

1989

6.

Sumanben Ishwarsinh Thakor (plot No.16)

Possession receipt

05/04/89

7.

Vijaybhai Atmaram Patil (plot No.17)

Possession receipt

13.12.1986

8.

Rajendrabhai Atmaram Patil (plot No.18)

Possession receipt

13.12.1986

9.

Chandravadan Chhotalal Modi (plot No.19)

Possession receipt

24.12.1988

10.

Hemaliben Dipakkumar Modi (plot No.20)

Possession receipt

12.01.1990

11.

Jesinghbhai Khimibhai Rajpurohit (plot No.21)

Possession receipt

24.12.1988

12.

Jitendra Arunbhai Patil (plot No.2223)

Possession receipt

1986

13.

Ushaben Ratilal Rajpurohit (plot No.24)

Possession receipt

1986

14.

Dhanaram Manaram Suthar (plot No.2526)

Possession receipt

1988

15.

Vijaybhai Chhotalal Dalal (plot No.27)

Possession receipt

1989

16.

Pravinbhai Uttamram Chapadia (plot No.29)

Possession receipt

24.02.1987

17.

Dhansukhbhai Uttamram Chapadia (plot No.28)

Possession receipt

24.02.1987

18.

Chetankumar Jamiyatram Rana (plot No.3031)

Possession receipt

1986

19.

Bimalkumar Gyanchand Jain (plot No.32)

Possession receipt

1989

20.

Ravindra Kashiram Kale (plot No.3435)

Possession receipt

1985

21.

Bhagwanbhai Sajanbhai Patil (plot No.36)

Possession receipt

24.02.1989

22.

Hanshaben Rameshchandra Jariwala (plot No.36A)

Possession receipt

24.02.1989

23.

Sandipbhai Laxmanbhai Patil (plot No.37)

Possession receipt

24.02.1989

24.

Pravinbhai Jamiyatram Sherdiwala (plot No.38)

Possession receipt

15.05.1990

25.

Vivekbhai Suryakant Katiya (plot No.39)

Possession receipt

15.05.1990

26.

Kalaben Mohanbhai Rodawala (plot No.40)

Possession receipt

27.

Pravatiben Nareshbhai Rodawala (plot No.41)

Possession receipt

28.

Tusharbhai Rameshbhai Bhandari (plot No.4243)

Sale deed

31.03.1908

29.

Minaxiben Chandrakant Modi (plot No.44)

Possession receipt

15.03.98

30.

Geetaben Sureshchandra Dudhwala (plot No.45)

Possession receipt

15.03.1998

31.

Sureshbhai Satyanarayan Sharmar (plot No.4852)

Possession receipt

24.12.1988

32.

Hemantbhai Pravinchandra Dalal (plot No.52A)

Possession receipt

1990

33.

Vivek Namdev Pawar (plot No.53)

Sale deed

31.03.2008

34.

Vinodbhai Uttamram Rodawala (plot No.55)

Sale deed

31.03.2008

35.

Dalpatbhai Ratilal Rodawala (plot No.56)

Sale deed

31.03.2008

36.

Farshuram Raitlal Rodawala (plot No.57)

Sale deed

31.03.2008

37.

Dipakbhai Dayaljibhai Patel (plot No.61)

Sale deed

31.03.2008

38.

Vikrambhai Bhaichandbhai Joshi (plot No.62)

Possession receipt

24.12.2088

39.

Mukeshbhai Bhaichandbhai Joshi (plot No.63A)

Sale deed

31.03.2008

40.

Chhayaben Mukeshbhai Joshi (plot No.63B)

Sale deed

31.03.2008

41.

Hirabhai Hukamram Chaudhary (plot No.6364)

Possession receipt

24.12.1988

42.

Ashokbhai Kesaram Chaudhary (plot No.65)

Possession receipt

24.12.1988

43.

Jayvadan Babulal Mehta (plot No.66)

Sale deed

31.03.2008

44.

Gahnshyam Ramjibhai Navadia (plot No.67)

Possession receipt

24.12.1988

45.

Veenaben Dineshchandra Goswala (plot No.68)

Possession receipt

24.12.1988

46.

Sarojben Manharlal Gandhi (plot No.69)

Possession receipt

24.12.1988

Thus, the petitioner Nos.1, 2, 3, 28, 33, 34, 35, 36, 37, 39, 40 and 43 have purchased the land in question by sale deed dated 31.03.2008 whereas rest of the petitioners claim on the basis of the possession receipts only which are on different dates and years ranging from 1995 to 1998.

3.1. Now, therefore, so far as those who are in occupation and/or purchased the plots/lands after the draft Town Planning Scheme came to be sanctioned, they have no legal, valid title and therefore, they cannot make any grievance when the sanctioned draft town planning scheme is being sanctioned considering section 48 of the Town Planning Act qua the land which is required for 36 meter Town Planning Road. As per Section 48A of the Town Planning Act where a draft scheme has been sanctioned by the State Government under subsection (2) of Section 48, all lands required by the appropriate Authority for the purposes specified in Clause (e), (f), (g) or (h) of subsection (3) of section 40 shall vest absolutely in the appropriate Authority free from all encumbrances.

3.2. As observed herein above, even as per section 49 of the Town Planning Act on or after the date on which a draft scheme is published on section 41, no person shall, within the area included in the scheme, carry out any development unless such person has applied for and obtained the necessary permission for doing so from the appropriate authority. Thus, the date on which the draft scheme is published under section 41 of the Town Planning Act, restriction on the development of land shall apply, which would mean that when the land in question is earmarked for the Town Planning Road purpose, the same cannot be used for any other purpose.

3.3. Considering section 48A of the Town Planning Act and as the land in question is needed for 36 meter road under the sanctioned Draft Town Planning Scheme, the provision of sections 68 and 69 shall mutatis mutandis apply to the sanctioned draft scheme as if sanctioned draft scheme were a preliminary scheme. Under the circumstances, when the land in question is forming part of Town Planning Road of 36 meter and therefore, by virtue of section 48A(i) of the Town Planning Act, the said land shall vest absolutely in the appropriate Authority free from all encumbrances on the date on which the draft scheme is sanctioned under section 48(2) of the Town Planning Act and thereafter when the impugned orders are passed in exercise of powers under Sections 48A, 67 and 68 of the Town Planning Act and Rule 33 of the Town Planning Rules, the same cannot be said to be either illegal and/or contrary to the provisions of the Town Planning Act. The action of the respondent Corporation/appropriate Authority is absolutely in consonance with the provisions of the Town Planning Act more particularly section 48A of the Town Planning Act. Under the circumstances, the learned Single Judge has rightly dismissed the main Special Civil Application.

3.4. Now, so far as the submission on behalf of the petitioners that there is no justification of having 36 meter road as the present road, which is available,

cater the needs of the traffic is concerned, it is not either For the Petitioners and/or even for the Court to consider whether there is any justification of having 36 meter road or not. Whether there is a need of 36 meter road or not is left to the wisdom of the expert body and the appropriate Authority considering the public interest.

3.5. It is required to be noted that even such objection could have been raised at the time when before the draft Town Planning Scheme was sanctioned, objections were invited. Nothing is on record that those persons who claim to be in possession prior to 2000 raised any objection against the draft Town Planning Scheme under which 36 meter road was proposed. Now, so far as those who have purchased the land in 2008 are concerned, as observed herein above, they would have no locus to raise any objection against the draft Town Planning Scheme as neither they have any valid title as they purchased the premises in the March 2008 i.e. after the draft Town Planning Scheme came to be sanctioned in the year 2000 and after the land in question was vested absolutely in the appropriate authority for implementing the Town Planning Scheme and more particularly as mentioned in section 48A, 67, 68 of the Town Planning Act and Rule 33 of the Town Planning Rules.

3.6. Now, so far as the submission on behalf of the petitioners that no speaking/reasoned order has been passed is concerned, on considering the impugned orders it cannot be said that the impugned orders deserve to be quashed and set aside on the aforesaid ground. The objections raised by the petitioners have been considered and thereafter the impugned orders are passed which, as observed herein above, are absolutely in consonance with the provisions of the Town Planning Act and Town Planning Rules more particularly sections 48A, 67, 68 and Rule 33.

3.7. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the learned Single Judge dismissing the petition. We see no reason to interfere with the impugned judgment and order passed by the learned Single Judge in exercise of the appellate jurisdiction. We entirely agree with the view taken by the learned Single Judge and we confirm the same.

4. In view of the above and for the reasons stated above, present Letters Patent Appeal deserves to be dismissed and is, accordingly, dismissed.

Civil Application No. 3346 of 2016:

In view of dismissal of main Letters Patent Appeal, Civil Application No.3346/2016 also stands dismissed.