

(2022) 09 GUJ CK 0125

In the Gujarat High Court

Case No : R/Special Civil Application No. 8034 Of 2015

Rammurti Umanath Yadav & 20 Other(S)

APPELLANT

Vs

State Of Gujarat & 2 Other(S)

RESPONDENT

Date of Decision : 21-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Gujarat Town Planning And Urban Development Rules, 1979 — Rule 16, 17, 18, 18(2), 21, 26, 33, 37, 68

Gujarat Town Planning And Urban Development Act, 1976 — Section 2 (xvi), 2(xviii), 13, 17, 17(1)(i), 19, 40, 40(3)(a), 40(3)(b), 40(3)(c), 40(3)(d), 40(3)(E), 40(3)(f), 40(3)(g), 40(3)(h), 40(93)(k), 41, 41(1), 42, 43, 44, 45, 46, 47, 48, 48A, 48A(i), 48(1), 48(2), 48A(3), 50, 50(1), 51, 52, 52(1), 65, 67, 68, 69, 70, 71, 82

Citation : (2022) 09 GUJ CK 0125

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : N R Desai, Sp Majmudar, Dhaval G Nanavat

Final Decision : Dismissed

Judgement

Sandeep N. Bhatt, J

1. Today, the present petition is heard for final disposal as agreed by learned advocates appearing for the respective parties. The present petition is filed by the petitioners seeking for following prayers:

“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions quashing and setting aside notification dated 12.07.2011 of the State Government in sanctioning Draft Town Planning Scheme No.61 (Parvat - Gadodara, Surat) (at ANNEXURE-E hereto) as well as orders dated 21.04.2015 passed by the respondent-Corporation (at ANNEXURE-K (Colly.) hereto), as far as it relates to the plots/lands where the properties of the petitioners are situated;

(B) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of notification dated 12.07.2011 of the State Government in sanctioning Draft Town Planning Scheme ND.61 (Parvat-Gadodara, Surat) (at ANNEXURE-E hereto) as well as orders dated 21.04.2015 passed by the respondent-Corporation (at ANNEXURE-K (Colly.) hereto) and further be pleased to direct the respondent authorities to maintain status-quo with regard to the plots/lands where the properties of the petitioners are situated;

(C) Pass any such other' and/or further orders that may _ be thought just and proper, in the facts and circumstances of the present case."

2. The brief facts of the present case are as under:

2.1 The petitioners are residing at the addresses mentioned in the cause - title of the present petition since last 25 years with their respective families. The petitioners have electric connections and are paying electricity bills as well as other taxes levied by the respondent - Corporation. As per the development plan of the then SUDA, minor portion of road was passing through Block No.172/2. Thereafter, Draft Town Planning Scheme No.61 (Parvat), Gadodara, Surat has been prepared in utter violation of law, wherein from the land where the properties of the petitioners are situated, considerable road is passing through the same. Further, Draft Town Planning Scheme No.61 has been sanctioned by the State Government by issuing notification dated 12.07.2011.

2.2 Further, before sometime, certain officers of the respondent - Corporation have visited the land where the houses of the petitioners are situated and have made survey and have also threatened that the action would be taken to demolish the houses to affect Draft Town Planning Scheme No.61. The petitioners have also made representation and have given their objections on 17.02.2011 to the aforesaid Draft Town Planning Scheme No.61, which have so far not been replied. On 22. 04.2013, the respondent-Corporation has issued notices to the petitioners for vacating the premises in question within a period of 15 days. Though, the same is styled as notices, it is in fact an order and the contents thereof clearly show that the respondent-Corporation has already made up its mind to demolish the premises of the petitioners and the petitioners have replied to the said notices. In view of the aforesaid facts, earlier the petitioners preferred a writ petition being Special Civil Application No.7582 of 2013 before this Hon'ble Court, which was disposed of vide order dated 11.03.2015 wherein it is clearly observed that it would be open for the petitioners to file representation(s) and raise all contentions, which are raised in the petition and after hearing the petitioners, appropriate reasoned order would be passed. Thereafter pursuant to the aforesaid order dated 11.03.2015 of this Hon'ble Court, the petitioners made representations to the respondent-Corporation and the said representation of the petitioners has been dismissed by the respondent- Corporation vide order dated 21.04.2015. While preparing and sanctioning the Draft Town Planning Scheme, no personal notice was issued to the petitioners though the respondent-

Corporation is collecting taxes from the petitioners and is aware that the petitioners are residing over the land situated at Block No.172/2. Further, major extension of the road in Town Planning Scheme in question is made from one side only so as to see that houses of the petitioners are demolished and the houses situated on the opposite side of the road are saved.

2.3 In the present case, the Town Planning Scheme in question has not been finalized and the preliminary scheme has not been sanctioned, and the authority cannot proceed to demolish the houses of the petitioners since the provision of Section 48A of the Act is subject to the objections which the petitioners give under the Act. there is also violation of Rules 26, 33, and 68 of the Rules along with violation of the provisions of Sections 50 and 51 of the Act.

2.4 Thereafter, the petitioners seek to challenge the aforesaid notification dated 12.07.2011 of the State Government in sanctioning Draft Town Planning Scheme No.61 (Parvat-Gadodara, Surat) as well as order dated 21.04.2015 passed by the respondent-Corporation.

3. Heard learned advocate Mr. S.P. Majmudar for the petitioners, learned Assistant Government Pleader Mr. Meet Thakkar for the respondent Nos.1 & 3 and learned advocate Mr. Dhaval G. Nanavati for the respondent No.2. Since the matter is of the year 2015, it is heard for final disposal.

4.1 Learned advocate Mr. Majmudar for the petitioners has submitted that is the petitioners are residing since more than three decades mentioned at the cause title mentioned in the petition and the petitioners have valid possession receipts in their favour. He has further submitted that on 12.7.2011, the draft Town Planning Scheme was sanctioned by the State Government with respect to the lands of the petitioners being draft Town Planning Scheme No.61 (Parvat) Godadara, Surat. He has further submitted that under the said draft Town Planning Scheme, the construction and occupation of the petitioner was substantially affected. He has further submitted that on 22.04.2013, notices were issued by the respondent corporation to the petitioners to vacate the premises. He has further submitted that on 24.04.2013, the petitioners had replied to the said notice. He has further submitted that the petitioners have preferred Special Civil Application No.7582 of 2013. He has further submitted that on 11.03.2015, Special Civil Application No.7582 of 2013 was disposed of by this Hon'ble Court wherein it was directed that the Corporation shall decide the objections of the petitioners after giving an opportunity of hearing to the petitioners, considering the law laid down by the Hon'bie Supreme Court in the case of Babubhai and Company v. State of Gujarat, reported in 1985 (2) GLR 833. He has further submitted that thereafter, the petitioners gave a fresh representation which has been dismissed on 21.04.2015.

He has further submitted that being aggrieved by the same as well as being aggrieved by the draft Town Planning Scheme, the petitioners have preferred the present petition. He has further submitted that by the impugned order of the

respondent Corporation dated 21.04.2015 is absolutely unreasoned order. He has further submitted that the said order does not deal with any of the objections raised by the petitioners. He has further submitted that the various factual objections were raised by the petitioner that they were never served with notices of the draft Town Planning Scheme and the petitioners also raised objection that the road is being made in a zig zag manner to specifically target the houses of the petitioners and thereby saving the adjoining lands of the influential persons. He has further submitted that the impugned order is completely silent on the objections of the petitioners and the said order is based on the finding that once the scheme is sanctioned, larger public interest requires that the petitioners have to vacate their premises. He has submitted that the impugned order is passed in complete violation of the principles of natural justice as the objections of the petitioners have not been dealt with properly. He has submitted that the impugned order is also in violation of the law laid down by the Hon'ble Supreme Court in the case of in the case of Babubhai and Company vs. State of Gujarat (Supra) . He has submitted that whereby the Hon'ble Supreme Court has held that even while implementing the Town Planning Scheme, the implementing Agency has to act as a quasi judicial authority and has to deal with the objections in objective and fair manner which has not been done in the present case, therefore, he has prayed that the impugned order may be set aside and the matter may be sent back to the corporation to decide the objections of the petitioner properly. He has submitted that even under Rule 26 of the Town Planning Rules, the Town Planning Officer is required to consider the objections of the affected persons after the draft Scheme is sanctioned.

4.2 He has relied on the judgment of the Hon'ble Apex Court in the case of Ahmedabad Municipal Corporation and Another v. Ahmedabad Green Belt Khedut Mandal reported in 2014 (7) SCC 357. He has submitted that in the present case, the petitioners made out cogent grounds why the road width is required to be reduced/changed. However, if the Scheme is implemented at this stage, then virtually Rule 26 of the Town Planning Rules become redundant and the petitioners be deprived of their opportunity of raising objections with the Town Planning Officer. He has further submitted that in view of the law laid down in judgment of the Hon'ble Apex Court in the case of Babubhai and Company vs. State of Gujarat (Supra) and in view of the provisions of Section 68 of the Act and as the petitions are having Kabja receipt, which clearly establish that the petitioners as a occupants, are required to be heard at the stage of implementing the scheme, therefore, merely because the petitioners are having Kabja receipt does not make any differences as far as duty cast upon the respondent corporation is concerned. He has further submitted that the contention of the respondent corporation that the petitioners have waived their rights as earlier objections were not been taken is completely erroneous because the petitioners have clearly stated that they were not served with the notices of the draft Town Planning Scheme and ultimately this Court directed the respondent authority to decide the objections of the petitioners and so the contentions of the respondent

Corporation that the objections are not to be decided in detail and each objection is not required to be dealt with and only opportunity of hearing is to be given is completely erroneous. Further, he has submitted that there cannot be any waiver against law and as per the decision of the Hon'ble Supreme Court in the case of Babubhai and Company v. State of Gujarat (Supra), the authority has to decide the objections of the petitioner objectively, therefore, he has submitted that the respondent Corporation is unnecessarily mixing the two stages and is not complying with the provisions of Section 68 read with Rule 33 of the Act & Rules in proper perspective. Further, he has submitted that the respondent corporation has contended that public interest has to be given precedence is also not applicable to the facts of the present case because in the present case, if the statute and the law laid down by the Hon'ble Supreme Court requires a thing to be done in a particular manner and requires the corporation to decide the objections in a specific manner, the corporation is required to do so and cannot take shelter of public interest and if the fair procedure is followed, public interest will even otherwise not be affected. Further, he has lastly submitted that the petitioners are residing over the places in question since number of years and that is the only place of residence available to the petitioners and the petitioners belong to poor Strata of Society and would be left without any accommodation if they are asked to vacate their houses and in the Town Planning Scheme, the petitioners are not given any final plot nor any compensation and, therefore also, the petition deserves to be allowed.

5. Per contra, learned advocate Mr. Dhaval Nanavati has submitted that some of the dates are relevant to decide the present petition. He has submitted that between 22.06.1995 to 03.01.2003, the various Kabja receipts were executed in favour of the writ petitioners. He has further submitted that on 15.09.2004, 45 meters Development Plan Road covered under the Revised Development Plan 2004, converted and proposed into 45 meters Town Planning Road in Town Planning Scheme No.61 (Parvat) Gaudadara. He has further submitted that the Surat Urban Development Authority not opposed or objected by the writ petitioners at any point of time inclusive of under Section 13 of the Gujarat Town Planning and Urban Development Act, 1976. He has further submitted that on the contrary that the petitioners have not acted upon and allowed the Urban Development and Urban Housing Department, Government of Gujarat to sanction the Revised Development Plan, 2004 in exercise of powers conferred under sub clause (i) of sub section (1) of Section 17 of the Act, 1976. He has further submitted that on 21.01.2008, consultation with the Chief Town Planner under the provisions of section 41(1) of Gujarat Town Planning and Urban Development Act -1976 by the Surat Municipal Corporation (for short "the Appropriate Authority") to make the Town Planning Scheme No.61. He has further submitted that the appropriate authority has declared its intension to prepare a draft Town Planning Scheme No. 61. He has further submitted that on 16.03.2008, intention of preparation a Draft Town Planning Scheme 61 was published in the Extra Ordinary Gazette. He has further submitted that intention of preparation a Draft

Town Planning Scheme 61 (Parvat) Gaudadara was published in the two Gujarati daily newspapers. He has further submitted that after following all due procedures as laid down in Gujarat Town Planning and Urban Development Act - 1976 and the Gujarat Town Planning and Urban Development Rule, 1979 the appropriate authority has called for public meeting under Rules 17 of the Gujarat Town Planning and Urban Development Rule, 1979. He has further submitted that though the suggestions and objections were called for from the public including the petitioners and therefore, he has submitted that statutory rights have been waived by the writ petitioner at the relevant time. He has further submitted that on 18.05.2009, after inviting objections under section 47 Act, 1976 from all the concerned affected stakeholders and after considering the same, the appropriate authority in exercise of powers conferred by sub section (1) of Section 48 of the Act, 1976 submitted the proposal of the Draft Town Planning Scheme No. 61 to the Urban Development and Urban Housing Department, Government of Gujarat for its sanction In exercise of powers conferred by sub section (2) of Section 48 of the Act, 1976. He has further submitted that so far as the Petitioners are concerned, they have not filed any objections in exercise of powers conferred by Section 47 of the Act, 1976 and in view of the ratio laid down in case of Babulal Badriprashad Varma versus Surat Municipal Corporation Reported in (2008) 12 SCC 401 more particularly in view of Paras 40, 41, 42 once the statutory right is waived. He has further submitted that 17.02.2011 D.K. Nagar Cooperative Housing Service Society has submitted communication to the Chief Town Planner. He has further submitted that on 12.07.2011 Urban Development and Urban Housing department of the Government of Gujarat in exercise of powers conferred by sub section (2) of Section 48 of the Act, 1976 accorded its sanctioned to said Draft Scheme No.61 by publishing notification bearing No.GH/V/97 of 2011/TPS-1409/2589/L. He has further submitted that on 12.10.2011 the Government in exercise of powers conferred by sub section (1) of Section 50 of the Act, appointed Town Planning Officer to finalize the Draft Town Planning Scheme No. 61 (Parvat) Gaudadara. He has further submitted that on 22.04.2013 notice came to be issued in exercise of powers conferred by Section 48A, 67, 68, 69 of the Act, 1976 read with Rule 33 of the Rules, 1979 by issuing notice to the affected persons affected by the scheme. He has further submitted that that on 24.04.2013 notice dated 22.04.2013 was responded and detailed reply was submitted by the noticee to the appropriate authority. He has further submitted that on 23.06.2014 a writ petition came to be filed by one Pravin Prakash Sukhramji Chaudhary before the Hon'ble High court of Gujarat in exercise of powers conferred by Article 226 of the Constitution of India and that petition is disposed of by order dated 24.06.2014 which is passed in Special Civil Application No.15767 of 2014 and pursuant to that order, on 17.07.2014, personal hearing as committed was given to the writ petitioners by appropriate authority, which was attended by the writ petitioners and the same was considered. He has further submitted that on 11.03.2015, Special Civil Application No.7382 of 2013 was preferred by one Rammurti Umanath Yadav and others and the said writ petition was ultimately

not pressed by the writ petitioner in view of the order dated 23.06.2014 passed in Special Civil Application No.7232 of 2013 and allied matters. He has further submitted that on 25.03.2015, notice came to be issued in exercise of powers conferred by Section 48A, 67, 68, 69 of the Act, therefore, he has submitted that after hearing the petitioners, the reasoned order dated 21.04.2015 came to be passed by appropriate authority after hearing and considering the submissions made on behalf of affected stakeholders affected by the Scheme. He has further submitted that as per the ratio laid down in case of M/s. Babulal and Co. vs. State of Gujarat reported in AIR 1985 SC 613 the writ petitioners were heard by the appropriate authority and after considering the contentions raised by the writ petitioners, the appropriate authority came to conclusion that sub Plot No.145 of the D.K. Nagar Cooperative Housing Service Society is absolutely vested with the appropriate authority for laying down 45 meters Town Planning Road and laying down other utility lines. He has further submitted that in view of the judgment of this Court in the case of Dharmendra Ravi Pratap Rajak Versus State of Gujarat delivered in Special Civil Application No. 16256 of 2021, wherein the Hon'ble High Court of Gujarat has observed that Public interest will have always precedence over a private interest of the parties and he has also reported the judgment of the Hon'ble Apex Court in case of Ramnikial N. Bhutta and another versus State of Maharashtra and others reported in AIR 1997 SC 1236, wherein the Hon'ble Apex Court has observed that the Courts have to weigh the public interest vis a vis the private interest while exercising power under Article 226 indeed any of their discretionary powers. He has further submitted that since the day writ petition is presented, this Court has not exercised its discretion in favour of writ petitioner and not granted any stay and therefore, since the land area vests with appropriate authority under Section 48A (1) of the Act, 1976 for the public purposes and as per provisions conferred under 48A (3) of the Act, 1976 qua laying down the 45 meters Town Planning Road the scheme become part of the Act and in view of ratio laid down in Kanjibhail Dahyabhai Malsattar versus State of Gujarat reported in (2005) 2 GLR 1649 and in case of Vimlaben Ramsagar Mishra versus Ahmedabad Municipal Corporation reported in (2009) SCC online (Guj) 6413 the Scheme become a part of the Act, no Interference is called for. He has further submitted that the writ petitioners have admittedly not filed any objections at any stage of the scheme and deliberately waived its statutory rights, and therefore, he has prayed that when principles of natural justice complied with by the appropriate authority, the present petition is required to be dismissed.

6.1 I have heard rival contentions of the respective parties. I have considered the possession receipt as well as agreement to sell. I have also gone through the impugned order passed on 12.12.2014.

6.2 It is clear from the rival contentions that it can be said that the petitioners have no locus to file the present petition in view of the judgment of the Hon'ble Apex Court in the case of Babulal Badriprasad Verma (supra), more particularly paras 40, 41 and 42 are relevant, which are reproduced herein below:

"40. It is not in dispute that:

(a) Appellant although filed an objection with regard to the draft scheme, did not choose to pursue it.

(b) He did not file objections for re-allotment and did not participate in the proceedings following acquisition instituted by the authorities under the Act.

41. In view of the above, the issue is whether it was open to him to assert his purported right to special notice in respect of the final allotment in the instant case given the fact that he did not pursue his objections to the draft scheme and subsequently did not object/participate during the proceedings for re-allotment.

42. It has been noticed by us hereinbefore that under Rule 26 of the Rules applicable in the instant case, as distinguished from the Bombay Rules (wherein special notice is required), no special notice is mandatorily required to be served. Assuming, however, that it was obligatory for the State to issue notice to the appellant, the question is whether the principle of waiver precludes him from claiming equitable relief in this case due to his earlier conduct which allowed the entire process of acquisition and allotment to become final. We are of the opinion that even if he had any such right, he waived the same."

Further, looking to the facts of the present case, where the petitioners have not pursued further of their rights of filing appropriate objection, the abovemention judgment is directly applicable to the facts of the present case and it can be said that the petitioners have waived their respective rights at relevant stages.

6.3 Section 47 of the Act, 1976 is relevant, which reads as follows:

"47. Objections to draft scheme to be considered. - If within one month from the date of publication of a draft scheme, any person affected by such scheme communicates in writing to the appropriate authority, any objections relating to such scheme, the appropriate authority shall consider such objections and may at any time before submitting the draft scheme to the State Government as hereinafter provided modify such scheme as it thinks fit.

[Provided that the appropriate authority may, in such circumstances as may be prescribed and with the previous sanction of the State Government, reduce the aforesaid period of one month to fifteen days for inviting objections to the draft scheme.]"

6.4 Further, considering the submission regarding the individual interest, it is noteworthy to refer the judgment of the Hon'ble Apex Court in the case of Ahmedabad Municipal Corporation and Another (supra), more particularly para 55 is relevant, which reads as under:

"55. It is a settled legal proposition that hardship of an individual cannot be a ground to strike down a statutory provision for the reason that a result flowing from a statutory provision is never an evil. It is the duty of the court to give full effect to the statutory provisions under all circumstances. Merely because a

person suffers from hardship cannot be a ground for not giving effective and grammatical meaning to every word of the provisions if the language used therein is unequivocal.”

6.5 It can be held that a person suffers from hardship, it cannot be a ground for not giving effective grammatical meaning to every word of the provisions of law if the language, used therein is unequivocal. It is also fruitful to refer the judgment of this Court in the case of Ramanbhai Hargovinddas Limbachina (supra), more particularly paras 3.3 and 3.5 are relevant, which are reproduced as under:

“[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 48-A(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.

[3.5] 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 hereinabove, 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.”

6.6 Further, considering the abovementioned judgments and material available on the record, I am of the opinion that the authorities have not committed any error and it is clear from the order passed by the competent authority that it has not only assigned reasons for not accepting the objections/representations of the petitioners but also recorded relevant contentions in brief raised in the said

representation. I find no illegality or infirmity in the impugned order passed by the authority concerned in rejecting the representation/objection.

6.7 I also found that having regard to the contention regarding the non-application of mind by authority in considering the representation made by the petitioners and order is passed without assigning reasons, I found that authority concerned, while deciding the representation has considered the relevant submissions made by the petitioners about the case of the petitioners that no notice was served and non service of individual notice to the petitioners I found that in view of Section 14, 46 and 52 of the Act, 1976, the order is passed in accordance with law.

6.8 It is also relevant to note that the Town Planning Officer is appointed under Section 50 of the Act, 1976 and in the present case, Executive Engineer has followed the procedures laid down under Rule 26 of the 1979 Rules under the Town Planning Act. After considering the objections raised on the part of the petitioners the decision has been taken, which has attained finality under Section 67 of the said Act and have followed by them. It is also relevant to note that considering the judgment of the Division Bench of this Court in the case of Cosmos Development Corporation Vs. State of Gujarat through Secretary reported in Letter Patent Appeal No.87 of 2011 dated 16.03.2016 , more particularly paras 12, 13, 16, 19, 20, 21, 23, 25, 27 and 28 are relevant, which are reproduced herein below:

"12 Per contra, Mr.Prashant Desai, learned senior counsel appearing for respondent Nos.2 and 3 would contend that the record of the case before the authority while considering representation made by the petitioner for variation of the scheme as prayed for under the provisions of Sections 70 and 71 of the Town Planing Act, averments made in the writ petition under Article 227 of the Constitution of India before the learned Single Judge and decisions taken in this regard by the authority including that on the representation made by the petitioner and procedure followed at every stage of the Act, 1976, would reveal that neither illegality nor any irregularity is committed by the competent authority at any stage. Taking the Court to the scheme of the Act, 1976, specially to provisions of Section 40 of chapter (v), pertaining to Town Planing Scheme and making contents of a Town Planing Scheme, Section 42 making and publication of draft scheme, Section 43 and 44 about power of State Government to require appropriate authority to make a scheme and contents of drafting scheme, Section 45 reconstitution of plots and Section 46 disputed ownerships and objections to drafting scheme to be considered under Section 47 and 48, power of State Government to sanction drafting scheme and subsequently inserted provision under Section 48 (A) vesting land in appropriate authority which is akin to provisions of Sections 68 and 69 of the Gujarat Town Planing and Urban Development Act, 1976 and finally to Section 50 about appointment of Town Planing Officer, duty cast upon such Officer, namely, Rule 16 about publication of declaration under Section 41 read with Rule 17. Rule 18 of draft

scheme and elaborate procedure to be followed by Town Planning Officer under Rule 26 while dealing with objection and forward the same to the Government that at no stage, any objection about clubbing of Revenue Survey Nos.609 and 607 was raised by the petitioner.

13. It is submitted that in absence of any legal right accruing in favour of the petitioner, the very representation for varying scheme was out of the context of the scheme of the Act, 1976. It is submitted that procedure followed by the authority under the Act, 1976 of issuing notices to which reference is already made by the learned counsel for the petitioner, to all concerned, whose names were appearing in the revenue record or the authority could find out from other official record. From 1993 to 2000, various opportunities at different stages were given to those who were entitled to receive notices to which no objection was raised. In addition to above, it is submitted that when the authority concerned issued notice under provisions of the Act, 1976, at no stage any reply was received to notice by the affected parties. Even a public notice is issued in widely circulated vernacular newspaper and thereafter, also no objection was received. According to Mr. Prashant Desai, learned senior counsel for the respondents while dealing with the representation submitted by the petitioner pursuant to opportunity granted by the Court in the order dated 17.7.2009 passed in Special Civil Application No.7248 of 2009, after recording contentions raised by the petitioner in representation and referring to provisions of Section 70 of the Act, 1976, reasons are assigned which include pending disputes about title, ownerships and even possession of the subject land. It is further submitted that in the above scenario, rejection of the representation of the petitioner was not only on the ground of pending civil disputes or litigation before appropriate civil suit but also other reasons or grounds contained therein.

16. Further reliance is placed on the decision in the case of Kashiben Wd/o Pitamber Devchand and anr. v/s State of Gujarat and anr. reported in GLR 1989 (2) 1177, to contend that once a final scheme is prepared, it must be deemed to be part of Act and that original owner loses all rights over the land and he is liable to be evicted and having no locus to even file a writ petition. Another decision relied in the case of N. Nanalal Kiklawala and anr. v/s State of Gujarat reported in AIR 2006 Supreme Court 1, in support of his submissions that statutory consequences would ordinarily follow and no stay can be granted when scheme received sanction in exercise of power under Section 65 of the Act. Thus, according to Mr. Prashant Desai, learned senior counsel appearing for the respondents in absence of any legal right of the petitioner to seek variation and fair and transparent procedure followed in exercise of statutory as well as executive power by the authority at every stage of preparing Town Planning scheme, in absence of merit, no interference is called for in this appeal filed by the petitioner appellant.

19. In the context as above reliance placed by Mr. Percy Kavina, learned Senior advocate appearing for the petitioner appellant on

“ Section2: Definition.

In this Act, unless the context otherwise requires ,

(i) “agriculture” includes

(a) horticulture;

(b) farming;

(c) raising of crops, fruits, vegetables, grass, fodder, other kind of cultivation; trees or any

(d) breeding and keeping live stock, including horses, donkeys, mules, pigs, fish, poultry and bees; and

(e) the use of land for any purpose which is ancillary to its cultivation or to any other agricultural purpose.

(xviii) “owner” in relation to any property, includes any person who is, for the time being receiving or entitled to receive, whether on his own account or on account of or behalf of, or for the benefit of, any other person or as an agent, trustee, guardian, manager or receiver for any other person or for any religious or charitable institution, the rents or profits of the property; and also includes a mortgagee in possession thereof;

Section40: Making and contents of a town planning scheme.

Section41: Power of appropriate authority to resolve on declaration of intention to make scheme.

Section42.: Making and publication of draft scheme.

Section43: Owner of State Government to require appropriate authority to make scheme.

Section44: Contents of draft scheme.

Section45: Reconstitution of plots.

(1) In the draft scheme referred to in Section 44, the size and shape of every plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot as already built upon, to ensure that the building, as far as possible, complies with the provisions of the scheme as regards open spaces.

(2) for the purpose of subsection (1), the draft scheme may contain proposals.

(a) to form a final plot by the reconstitution of an original plot by the alteration of its boundaries, if necessary;

(b) to form a final plot from an original plot by the transfer of any adjoint lands;

(c) to provide with the consent of the owners that two or more original plots

which are owned by several persons or owned by persons jointly be held in ownership in common as a final plot, with or without alteration of boundaries;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

e) to transfer the ownership of a plot from one person to another.

(3) Whereunder clause (k) of subsection 93) of section 40, the purpose to which buildings or specified areas may not be appropriated have been specified, the buildings shall cease to be used for a purpose other than the purposes specified in the scheme within such time as may be specified in the final scheme and the person affected by the provision shall be entitled to compensation from the appropriate authority in the manner and according to the method prescribed:

Provided that in ascertaining such compensation the time within which the person affected was permitted to change the use shall be taken into consideration.

Section46: Disputed ownership .

(1) Where there is a disputed claim to the ownership of any place of land included in an area in respect of which a declaration of intention to make a scheme has been made and any entry in record of rights or mutation relevant to such disputed claim is inaccurate or inconclusive, an inquiry may be held on an application being made by the appropriate authority or the Town Planning Officer at any time prior to the date of which the Town Planning Officer draws up the preliminary scheme under section 51 by such officer as the State government may appoint for the purpose of deciding as to who shall be deemed to be the owner for the purpose of this Act.

(2) Such decision shall not be subject to appeal but it shall not operate as a bar to a regular suit in a court of competent jurisdiction.

(3) Such decision shall, in the event of a Civil Court passing a decree which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree as soon as practicable after such decree has been brought to the notice of the appropriate authority by the person affected by such decree.

Section47: Objections to draft scheme to be considered.

Section48: Power of State Government to sanction draft scheme.

(1) The appropriate authority shall, within [three] months from the date of the publication of the draft scheme in the Official Gazette, submit the draft scheme with any modifications that may have been made therein under section 47 together with the objections which may have been communicated to it, to the State Government.

(2) If the State Government sanctions such scheme, it shall in such may think fit, the State Government may, within [three] months from the date of its receipt,

such notification, sanction such scheme with or without modifications or subject to such conditions as it may think fit to impose or refuse to sanction it.

(3) If the State Government sanctions such scheme, it shall in such notification state at what place and time the draft scheme shall be open for the inspection of the public.

Section48A: Vesting of land in appropriate authority.

Section50: Appointment of Town Planning Officer.

Section51: Duties of Town Planning Officer.

Section65: Power of Government to sanction or refuse to sanction the scheme and effect of sanction.

(1) On receipt of the preliminary scheme or, as the case may be, the final scheme the State government may

(a) in the case of preliminary scheme, within a period of two months from the date of its receipt, and

(b) in the case of a final scheme, within a period of three months from the date of its receipt, by notification, sanction the preliminary scheme or the final scheme or refuse to give sanction, provided that in sanctioning any such scheme, the State Government may make such modifications as may, in its opinion, be necessary for the purpose of correcting an error, irregularity or informality.

(2) Where the State Government sanctions the preliminary scheme or the final scheme, it shall state in the notification.

(a) the place at which the scheme shall be kept open for inspection by the public, and

(b) a date (xxxx) in which all the liabilities created by the scheme shall come into force:

(xxxx) Dated by Guj. Act No.11 of 2002 th words "(Which shall not be earlier than one month after the date of publication of the notification)"

Provided that the State Government may from time to time such date, by notification, by such period, not exceeding three months at a time, as it thinks fit.

(3) On and after the date fixed in such notification, the preliminary scheme or the final scheme, as the case may be, shall have effect as if it were enacted in this Act.

Section67: Effect of preliminary scheme.

On the day on which the preliminary scheme comes into force-

(a) all lands required by the appropriate authority shall, unless it is otherwise determined in such scheme, vest absolutely in the appropriate authority free

from all encumbrances;

(b) all rights in the original plots which have been reconstituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer.

Section 70: Power to vary scheme on ground of error, irregularity or informality.

(1) If after the preliminary scheme or the final scheme has come into force, the appropriate authority considers that the scheme is defective on account of an error, irregularity or informality, the appropriate authority may apply in writing to the State Government for the variation of the scheme.

(2) If on receiving such application or otherwise, the State government is satisfied that the variation required is not substantial, the State Government shall publish a draft on such variation in the prescribed manner.

(3) The draft variation published under subsection (2) shall stage every variation proposed to be made in the scheme and if any such variation relates to a matter specified in any of the clauses (a) to (h) of subsection (3) of section 40, the draft variation shall also contain such other particulars as may be prescribed.

(4) The draft variation shall be open to the inspection of the public at the head office of the appropriate authority during office hours.

(5) Within one month of the date of publication of the draft variation, any person affected thereby may communicate in writing his objections to such variation to the State Government through the Collector and send a copy thereof to the appropriate authority.

(6) After receiving the objections under subsection (5), the State Government may, after consulting the appropriate authority and after making such inquiry as it may think fit, by notification;

(a) appoint a Town Planning Officer and thereupon the provisions of this Chapter shall, so far as may be, apply to such draft variation as if it were a draft scheme sanctioned by the State Government, or

(b) make the variation with or without modification, or

(c) refuse to make the variation.

(7) From the date of the notification making the variation, with or without modification, such variation shall take effect as if it were incorporated in the scheme.

Section 71: Variation of town planning scheme by another scheme. Notwithstanding anything contained in section 70, a town planning scheme may at any time be varied a subsequent scheme made, published and sanctioned in accordance with the provisions of this Act.

Rule16: Publication of declaration under section 41.

(1) The declaration under subsection (1) of section 41 shall be published in the Official Gazette and shall also be published by means of an advertisement in one or more Gujarati newspapers circulating within the jurisdiction of the appropriate authority. The appropriate authority shall cause copies of such advertisement to be pasted in the prominent places in or near the area included in the scheme and at the head office of the appropriate authority.

(2) Every advertisement published under subrule (1) shall contain the resolution of the appropriate authority in respect of the declaration under section 41 and shall announce that a copy of the plan of the area proposed to be included in the town planning scheme and the surrounding lands is kept open for inspection of the public at the head office of the appropriate authority during office hours.

Rule17: Meeting of owners and framing of tentative proposals.

For the purpose of making the draft scheme under section 42 the appropriate included in a town planning scheme by a public notice as well as by individual notice to every owner whose address is known to the appropriate authority and explain in such meeting the tentative proposals of the draft scheme for eliciting public opinion and suggestions on the said proposals. The appropriate authority may take into consideration all such suggestions made and objections raised on the proposals for making the draft scheme under section 42.

Rule18: Publication of draft scheme under section 42.

(1) The draft scheme under section 42 shall be published by means of an advertisement in the Official Gazette and shall also be published in one or more Gujarati newspapers circulating within the area of the appropriate authority. The appropriate authority shall also cause copies of such advertisement to be pasted at the head office of the appropriate authority and at other prominent places in or near the area included in the draft scheme. The advertisement shall state that a copy of the scheme is open for public inspection at the head office of the appropriate authority during office hours.

(2) Every advertisement published under subrule (1) shall announce that if within one month from the date of publication of the draft scheme in the Official Gazette any person affected by such scheme communicate in writing to the appropriate authority any objection relating to such scheme, the appropriate authority shall consider such objections before submitting the draft scheme to State Government under section 48.

Rule26: Procedure to be followed by Town Planning officer under section 51 and under subsection (1) of section 52.

(1) For the purpose of preparing the preliminary scheme and final scheme the Town Planning Officer shall give notice in Form H of the date on which he will commence his duties and shall state therein the time, as provided in Rule 37

within which the owner of any property or right which is injuriously affected by the making of a Town Planning Scheme shall be entitled under section 82 to make a claim before him. Such notice shall be published in the Official Gazette and in one or more Gujarati newspapers circulating within the area of the appropriate authority and shall be pasted in prominent places at or near the areas comprised in the scheme and at the office of the Town Planning Officer.

(2) The Town Planning Officer shall after the date fixed in the notice given under subrule (1), continue to carry on his duties as far as possible on working days and during working hours.

(3) The Town Planning Officer shall, before proceeding to deal with the matters specified in section 52, publish a notice in Form H in the Official Gazette and in one or more Gujarati newspapers circulating within the area of the appropriate authority. Such notice shall specify the matters which are proposed to be decided by the Town Planning Officer and State that all persons who are interested in the plots or are affected by any of the matters specified in the notice shall communicate in writing their objections to the Town Planning Officer within a period of (fifteen days in the cases provided in the proviso to subrule(2) of Rule 18 of the said rules) from the publication of notice in the Official Gazette. Such notice shall also be pasted at the office of the Town Planning Officer and of the appropriate authority and the substance of such notice shall be pasted at convenient places in the said locality.

(4) The Town Planning Officer shall give every person interested in any land affected by any particular of the scheme sufficient opportunity of stating their views and shall not give any decision till he has duly considered their representations if any.

(5) If during the proceedings, it appears to the Town Planning Officer that there are conflicting claims or any difference of opinion with regard to any part of the scheme, the town Planning Officer shall record a brief minute in his own hand setting out the points at issue and the necessary particulars, and shall give a decision with the reasons therefore. All such minutes shall be appended to the scheme.

(6) The Town Planning Officer shall record and enter in the scheme every decision given by him. The calculations and estimates shall be set out and recorded in Form F, Form G and in other statements as may be prepared by the Town Planning Officer.

(7) The scheme as drawn up by the town Planning Officer shall include particulars specified in rule 21 read with section 52.

(8) The component parts of the scheme shall be so arranged that they may be readily referred to in connection with the map and plans.

(9) The Town Planning Officer shall publish the scheme drawn up by him by notification in the Official Gazette in Form I and also by means of an

advertisement in one or more local newspapers announcing that the scheme shall be open for the inspection of the public during office hours at his office and communicate forthwith the decisions taken by him in respect of each plot to the owner or person interested, by the issue of the requisite extract from the scheme in Form J and Form K as the case may be. The Town Planning Officer shall also inform the [State Government] about the publication of final scheme.”

20. We have heard learned senior counsel for the respective parties and taken into consideration the submissions made by learned senior counsel for the petitioner about not affording any opportunity of hearing to the petitioner, we find that as per available official record, at every stage, the competent authority under the Act, 1976 has issued notices to those whose names were found in revenue or official record and such notices dated 26.2.1992, 10.5.1994, 12.9.1995, 7.1.1999 and later on notices dated 7.9.2007 and 10.9.2007, were issued to legal heirs of the original owners, societies, vendors, even Court receiver and the concerned District Collector, but as nowhere name of holder of agreement to sale was reflected in any official record and no notice was issued, thus, it cannot be said that the petitioner was either eligible or entitled to receive such notices. Even if definition of Section 2 (xvi)(xviii) with regard to ‘occupier’ and ‘owner’ are broadly considered and interpreted, no right accrues to holder of agreement to sale the subject land, to complain about irregularity or any error or informality in the Town Planning Scheme and particularly in the facts of this case the very fact about title ‘ownership’ ‘Possession’, etc. was in dispute in a pending civil litigation. We find neither on the ground of merit namely, any error irregularity or informality nor on the aspect of pending civil disputes between the parties, the authority has erred in rejecting the representation.

21. There is a force in the arguments canvassed by Mr.Prashant Desai, learned senior counsel appearing for the competent authority of the Act, 1976 that not only individual notices were issued to affected persons, but public notices in vernacular daily newspaper were published and at no point of time any objection was lodged, though the span of taking decision by Town Planning Authority under Section 50 of the Act, 1976 relate to 1992 to 2007. So far as dispute to be decided by the authority under Section 46 is concerned, it would not detain us any longer since simple language of the provision referred to a disputed claim to the ownership in the place of land included an area for which a Town Planning Scheme is to be made is only with regard to entry of right or mutation relevant to such disputed claim is either inaccurate or in conclusive and upon application being made by the party. The enquiry may be held on an application made by the appropriate authority. The State of Gujarat appointed the officer for the purpose of deciding such dispute, etc. and so is not the case as revenue records clearly revealed the name of original landlords and legal heirs and other occupiers. It may not be out of place to mention that by virtue of Section 48(A) about vesting of land in appropriate authority, it is clear that when a draft scheme has been sanctioned by the State Government under sub Section (2) of Section 48, all lands required by the appropriate authority for the purpose specified in clause

(c), (f), (g) and (h) of sub Section (3) of Section 40 shall vest absolutely in the appropriate authority free from all encumbrances and sub Section (3) of Section 48(A) further makes it clear that the provisions of Sections 68 and 69 shall mutatis mutandis apply to the sanctioned draft scheme, as if sanctioned draft scheme were a preliminary scheme.

23. So far as the contention raised with regard to non application of mind to the representations submitted by the petitioner and order is passed without assigning reasons is concerned, we find that concerned authority, while deciding representation has reproduced main arguments and submissions made by the petitioner about not affording opportunity of hearing by Town Planning Officer and no notice was served and that Court receiver was not given any notice though the possession of the land was with Court receiver since 2008 and non service of individual notice to the petitioner and reliance placed on Sections 17, 46 and 52 of the Act, 1976.

25. Thus, it is clear that order passed by the competent authority has not only assigned the reasons for not accepting representation of the petitioner but also recorded all main and relevant contentions in the representation. We find no illegality in the above order passed by the authority in rejecting the representation and therefore, decision relied on by learned senior counsel for the petitioner in the case of Kartik Patel (*supra*) will have no applicability in the facts of this case. More so, while rejecting the petition, the learned Single Judge has not closed the rights in case if the petitioner is desirous to move the Civil Court to get appropriate order against the original owner or direction to the receiver to make an application to the competent authority.

27. Looking to the definition of Section 2 (xvi) 'occupier' and (xviii) 'owner', the appellant who holds only an agreement to sale of which no sale deed is executed and for which disputes of civil nature are pending in the Civil Court, has no locus or right to seek variation under Sections 70 and 71 of the Act, 1976.

28. Thus, the authority under the Act 1976 has followed the procedure in accordance with the provisions of the Act. 1976 and Rules 1979 at every stage of declaration of the scheme, preparation of draft scheme, sanctioning of the preliminary scheme and no error, irregularity or informality exists and further as stated earlier, in absence of any legal right under the Act, 1976 of the petitioner to request for variation in the scheme already sanctioned cannot be entertained. We find no merit in appeal and is hereby dismissed."

6.9 In view of the provisions of Section 2(xvi) of the said Act pertains to 'occupier' and (xviii) pertains to "owner", in the present case, the petitioners hold only an agreement sale and possession receipt, for which, no sale deed is executed and it cannot be said that the petitioners have any title or interest in view of the judgment of the Hon'ble Apex Court in the case of Yellapur Uma Maheswari and Anr. vs. Buddha Jagadheeswarwararao and Others reported in (2015) 16 SCC 787 and paras 15 and 36 are relevant. Therefore, it cannot be

said that the authorities concerned have committed any error in deciding the objections.

6.10 In view of the above, it is relevant to note that in view of the judgment of the Hon'ble Apex Court in the case of Vimlaben Ramsagar Mishra Vs. Ahmedabad Municipal Corporation reported in 2009 SCC (Online) Gujarat 6413 and the judgment of this Court in the case of Kanjibhai Dayabh , the scheme becomes a part of the Act and therefore, it is appropriate that the writ petition is required to be dismissed as the land's area vests with appropriate authority under Section 48A (1) of the Act, 1976 for the public purposes and as per the provisions conferred under the provisions of Section 48A (3) of the Act qua laying down 45 metres town planning road, the scheme become part of the Act, and therefore, in view of the judgment of this Court in the case of Dharmendra Ravi Pratap Rajak Vs. State of Gujarat rendering in Special Civil Application No.16256 of 2021, wherein this Court has observed that "Public interest will always have precedence over a private interest of the parties" and considering the judgment of the Hon'ble Apex Court in the case of Ramniklal N. Bhutta Vs. State of Maharashtra reported in AIR 1997 SC 1236, it is observed that the Court have to weigh the public interest vis-a-vis the private interest while exercising powers conferred under Article 226 of the Constitution of India indeed any of their discretionary powers, and therefore, considering the abovementioned judgment also, I found that there is no reason to interfere the order passed by the authority concerned.

6.11 Thus, the authority under the Act, 1976 has followed the procedure, in accordance with the provisions of the Town Planning Act, 1975 as well as under Rules of 1979 at every stage of declaration of the scheme. Preparation of draft scheme, no error, irregularity or infirmity exists and as stated earlier in absence of any legal right under the Act, 1976, the petitioner cannot be permitted to create hindrances in process of implementation of the scheme. Therefore, I found that there is no perversity, arbitrariness or illegality committed by the authority concerned in the impugned order and there is no justifiable reason to interfere by exercising the powers under Section 226/227 of the Constitution of India, therefore, the present petition is found meritless.

7. In view of the above, the present petition is dismissed, with no order as to costs.