
(2000) 09 GUJ CK 0110
In the Gujarat High Court
Case No : L.P.A. No. 984 of 1997

Shah Pradipkumar Kantilal and Others	APPELLANT
Vs	
Patan Municipality and Others	RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 146

Citation : AIR 2001 Guj 140

Hon'ble Judges : R.R. Tripathi, J;M.R. Calla, J

Bench : Division Bench

Advocate : Hardik C. Rawal, for the Appellant; N.V. Anjaria and Patel Advocates for Respondent 1, Govt. Pleader for Respondent 2 and H.C. Patel, for Respondents 3 and 4, for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Calla, J.—This Letters Patent Appeal is directed against the order dated 21-7-97 passed in Special Civil Application No. 3956/97. The contents of this order are reproduced as under :--

"Heard Mr. Patel for the petitioners. Mr. Kodekar, AGP, appears for Mr. Patel Advocate for respondents Nos. 2, 3 and 4. None present for respondent No. 1. The petitioner seeks a direction to set aside the order of the State Government which finalises the revised development plan of the Patan Municipal area, vide Government Notification dt. 22nd May, 1987. It is too late in the day to challenge the same.

1A. The grievance of the petitioner is that plots Nos. 5, 6, 15, 16 and 26 belonged to him, will be going in road widening. As pointed out by Mr. Kodekar, and rightly so, that there was a settlement between the respondent No. 1 Municipality and the petitioner and the said settlement was recorded on stamp papers Nos. 70, 71 purchased on 6-9-1996. In that, the petitioner had recorded that he intends to withdraw the proceedings that he had filed, challenging the

road widening. The Municipality had offered to give 214 sq.mts. of land to the petitioner in exchange and the letter of the Municipality dt. 19-8-1996 is also on record. The Municipality has recommended the case of the petitioner in that behalf and it is for the petitioner to follow it up with the State Government along with the respondent No. 1, Municipality. There is no reason to entertain this petition. For this reason alone, he seeks to challenge the Town Planning Scheme which is finalised way back in the year 1987. The petition is, therefore, dismissed. Notice is discharged. No costs.

After the above order is dictated, Mr. Patel for the Petitioner states that he will make a representation to the Government. On his making the representation, the same will be appropriately decided by the Government."

2. We find it necessary and appropriate to narrate some details.

2.1. The appellants herein as the original petitioners came with a case that they occupy and hold the land in question as owners. The land in question is situated at Patan Town Revenue Survey No. 81 of Ashish Society, the Plot Nos. 5, 6, 15, 16 and 26.

2.2. A development plan for the City of Patan was prepared on the Rajmahal Road, Kungdl Pati area. Revenue Survey No. 81 in the town of Patan in the Ashish Society and the Plot Nos. 5, 6, 15, 16 and 26 of the appellants herein were covered in the road line. The appellants filed Regular Civil Suit No. 17/94 before the Court of Civil Judge (J.D.), Patan seeking a declaration and injunction that their lands, as above, may not be acquired without following due process of law for the purpose of development plan. The injunction application was rejected by the Civil Judge (J.D.), Patan on 12-1-95 and against this order Civil Misc. Appeal No. 36/95 was prepared before the District Court. The Assistant Judge. Mehsana granted injunction in the said Appeal on 15-11-95. The appellants then moved an application on 4-12-95 before the Municipality stating therein that they want 214 sq.mts. of land to the north-east corner of Ashish Society in lieu of their land, which was sought to be included in the said development plan. Said Application was moved by the appellant --Pradipkumar before the Municipality, Patan. Thus, alternative land admeasuring 214 sq.mts. was applied for by the appellants as a compensation and they also agreed for widening of the road under the development plan. The Town Planning Committee of the Patan Municipality passed a Resolution No. 125 in response to the appellants' application to place the subject matter before the general body meeting. On 4-1-96 the general body of the Patan Municipality passed a Resolution No. 510/95-96 acceding to the request of the appellants made in the application dated 4-12-95 for the land admeasuring 214 sq. mts. On behalf of Patan Municipality a letter was addressed on 16-2-96 to Collector, Mehsana seeking approval for granting 214 sq.mts. of land to the appellants and it was also pointed out by the Patan Municipality that even after granting of this land in favour of the appellants, the width of the road remains available for about 7 mts. Patan Municipality then granted permission to the appellants to construct thereon

and such permission was granted on 23-7-96. Whereas the Collector did not pass any order on the Municipality's letter dated 16-2-96, the Patan Municipality cancelled its permission vide its letter No.G 4165 dated 19-8-96 treating the construction raised by the appellants to be unauthorised and taking it a case of wrongful and unlawful utilisation of the land of 214 sq.mts. The appellants yet wrote a letter on 2-9-96 to the Municipality for executing the documents with regard to the land in question and an agreement was executed by the appellants clearly undertaking that they will withdraw the Civil Appeal No. 36/95 and further that they would not raise any construction until the approval from the Government is received. On 12-9-96 Patan Municipality addressed a communication to the Collector, Mehsana seeking approval of its Resolution dated 4-1-96 for grant of the aforesaid land in exchange to the appellants. On 7-12-96 the Deputy Collector, Patan required the Municipality to send the copies of the Resolution No. 510 dated 4-1-96 and Resolution No. 125 dated 13-12-95. Copies of these Resolutions were then forwarded to the Collector office on 13-12-96. Thereupon the Collector, Mehsana vide his letter dated 3-1-97 stated to the Municipality on the question of road effect of the land admeasuring 640.24 sq.mts. owned by the appellants (the Plot where the apartments were constructed by the appellant) and 214 sq.mts. of land adjacent to it and granted by the Municipality to it stating therein that the construction was not authorised. The Collector sought opinion from the Municipality for the purpose of regularisation of the said unauthorised construction. On 8-1-97 Patan Municipality replied to the Collector that on the land having road effect construction put up by the appellants would be regularised and as far as construction on 214 sq.mts. of land is concerned, necessary permission was required from the Collector and said permission had already been applied for earlier. On 17-3-97 the Collector sent a letter to the Municipality stating therein that the plot having road effect owned by the appellants, the construction measured by City Survey Patan is to the extent of 579.50 sq.mts., out of 741.47 sq.mts. 161.67 sq.mts. was open land and, therefore, the opinion of the Patan Municipality was sought as to whether this could be regularised and the Patan Municipality replied to the Collector that it had no objection if it is regularised. Thereafter, on 19-5-97 the Collector passed an order regularising the construction of Abhishek Apartments on the plot having road effect, subject to the conditions stipulated therein including condition No. 2 to the effect that the construction raised on the land in question admeasuring 214 sq.mts. shall be removed by the appellants at their own expenses immediately. At this juncture on 21-5-97 the appellants sent a notice to the Municipality that Plot Nos. 2, 5, 6, 15, 16 and 26, which belongs to them, are not to be used as a road and that the undertaking given by them was of no consequence and the same had become infructuous and was no more binding on them and that the injunction order, which had been passed by the Court, was required to be followed. The Patan Municipality gave a reply on 26-5-97 and thereupon the appellants herein preferred Special Civil application No. 3956/97 with the following prayers :--

"(A) Your Lordships may be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to issue a writ of mandamus, prohibition or any other appropriate writ, order or direction quashing and setting aside the order at Ann. H and further be pleased to declare the suit land to be not effected in the road line and to restore the possession to the petitioner;

(C) Your Lordships may be pleased to issue mandatory direction to the respondent No. 1 to remove the road upon the suit land of plot Nos. 5, 6, 16 and 26 of S.No. 81 and to hand over the possession to the petitioner and/or to offer the exchange the land of 214 sq.mtrs. with approval of construction :

(D) During the pendency and final hearing of this petition, be pleased to issue a mandatory injunction restraining the re-spondentNo. 1 from interfering with the suit land of the petitioner and from removing and dispossessing the petitioner without following the due process of law;

(E) any other and further relief may be granted;"

3. The learned single Judge in the first instance found that the finalization of the revised development plan of the Patan Municipality vide Government Notification dated 22-5-87 could not be challenged now and it was too late in the year 1997 for challenging the Government Notification dated 22-5-87. We do not find any reason to disagree with the said finding reached by the learned single Judge.

4. However, the facts of this case depict a triangular context between the appellants, Patan Municipality and the Town Planning Department of the State Government because according to the Town Planning Department, the land in question admeasuring 214 sq.mts. is a part of the development plan and the Patan Municipality had no right to give it to the appellants in exchange for the land of the appellants, which had been acquired and utilised by the Patan Municipality. While the case of the Patan Municipality is that this land in question is not a part of the development plan and it Is further the case of the Patan Municipality that when the appellants had agreed for this land in exchange, it has no case even to claim compensation because this land was given to them and that the appellants have already raised construction thereon and further that the Collector has not passed any order either way in this regard despite the permission sought by the Municipality under the provisions of the Municipalities Act.

5. We find that the learned single Judge has dismissed the petition on the basis of the fact pointed out on behalf of the Patan Municipality that there was a settlement between the respondent Municipality and the present appellants, such settlement was recorded on Stamp Paper Nos. 70 and 71 purchased on 6-9-96 and that the petitioner had recorded that he intends to withdraw the proceedings, which were pending before the Civil Court, challenging the road widening and that the Municipality had offered to give 214 sq. mts. of land to the appellants in exchange of the Municipality's letter dated 19-8-96 and that the

Municipality had recommended the case of the petitioner for grant of this land and now it was open for the petitioner to follow It up with the State Government along with the respondent-Municipality. The learned single Judge, therefore, did not find any reason to entertain the petition and accordingly the petition was dismissed. At the time when the Special Civil Application was dismissed, it was stated on behalf of the petitioner that it would make a representation to the Government and the Court while rejecting the petition also observed that on making representation, the same will be appropriately decided by the Government. It is given out by the learned counsel for the appellants that a representation was made thereafter on 25-9-97 but so far no reply has been given on such representation.

6. We find that the sum and substance of the appellants' grievance is that either they should get compensation for their land, which is utilised for the Patan Municipality development plan or they should get an alternative land in lieu of compensation and the appellants cannot be deprived of their land and yet left without any compensation or alternative land in lieu thereof. Patan Municipality is contesting and resisting the appellants' claim on the ground that the land in dispute i.e. 214 sq. mts. is not a part of the revised development plan but we find that the stand of the Town Planning Department of the Government of Gujarat, as has been taken in the reply filed on behalf of respondents Nos. 2 and 4 on 9-8-2000 through the Senior Town Planner, namely, R. S. Gandhi is very categorical wherein it is stated in para 7 as under :--

"7. I say and submit that this appeal is mainly related to the action of Patan Area Development Authority (Patan Nagarpalika). I submit that the agreement of 9-9-96 between the petitioner and the Patan Area Development Authority has been signed without considering the proposals of the revised Development Plan which has been sanctioned by the State Government and came into force with effect of 26-6-87. The Patan Area Development Authority has not considered the importance of the main arterial 80" feet wide road of Patan town and agreed to give the part of this land which has been shown as the 80" feet wide road in the sanctioned development plan against the land of the petitioner acquired for the less important 40 feet wide development plan road in the South of the R. S. No. 81. If the 214 sq. mts. of the land is given to the petition as per the agreement, then the bottleneck will be created in front of this land on the main arterial road of the town which is against the planning principle of traffic and transportation. I say and submit that the Patan Area Development Authority should have acquired the petitioner's lands which are affected by the proposal of the revised development plan by giving appropriate monetary compensation to the petitioner. Therefore, I submit that the 214 sq. mts, of land which is under reference could not be given to the petitioner as this land is part of the main arterial road of Patan and is included in the sanctioned development plan of Patan which is under implementation. Until and unless the revised development plan is varied u/s 19 of the Gujarat Town Planning and Urban Development Act, 1976, the land under reference could not be given to the petitioner."

This claim of the Town Planning Department of the State Government is contested by Patan Municipality and Mr. Anjaria appearing for the Patan Municipality has placed strong reliance in this regard on the affidavit in surrejoinder dated 9-8-2000 filed by the Municipality and the further affidavit in reply dated 24-8-2000 filed on behalf of respondent No. 4 through one M.R. Varsani, Chief Officer of Patan Municipality. While it is not possible for this Court to decide this inter party question and dispute raised by the Municipality against the Town Planning Department in these proceedings, when the thing is very clear and admits of no controversy, that the appellants are either entitled to the compensation or land in exchange of their land which was acquired and utilised by the Patan Municipality and the Town Planning Department appears to be right in taking the stand that since land in question could not be given to the appellants by the Municipality contrary to the sanctioned development plan of Patan, which is under implementation, it is for the Patan Municipality to give appropriate monetary compensation to the appellants. Mr. Anjaria has submitted that on this land of 214 sq. mts. the appellants have already raised a construction. However, Mr. Raval appearing on behalf of the appellants has stated that he has raised the construction on his own land and that so far as this land of 214 sq. mts. is concerned, there is no construction, of course it is surrounded by a compound wall. He has also submitted that he is prepared to demolish this compound wall and he has no objection if this 214 sq. mts. of the land is utilised by the Town Planning Department as per the sanctioned development plan of Patan, which is under implementation and, therefore, if this piece of land admeasuring 214 sq. mts. cannot rest with the appellants, the Patan Municipality be directed to compensate the appellants accordingly. Mr. Anjaria has submitted that in the Special Civil Application no prayer has been made for compensation. That may be so, but when it is found that the prayer under item (C), which has been made by the petitioners for the aforesaid land of 214 sq. mts. in exchange and when the Court finds that this land cannot be allowed to be utilised by the petitioner and that the same had been wrongly given to it in exchange by the Municipality i.e. contrary to the sanctioned revised plan, it is open for the Court to mould the relief. It is clear that the appellants cannot legally make use of the land of 214 sq. mts. given to it by the Municipality. Merely because the Municipality had offered this land of 214 sq. mts. to the appellants and the Municipality had entered into some settlement, now that it has become clear that this land according to Town Planning Department is a part of the sanctioned revised development plan of Patan, the appellants have to be paid compensation by the Municipality and the appellants cannot be left absolutely high and dry.

7. In the facts and circumstances of this case, therefore, while partly allowing this Appeal, the directions as under are issued :--

(i) The appellants shall remove the compound wall or any other construction, which may be there on the land under reference i.e. 214 sq. mts. as a part of Revenue Survey No. 81 of Town Patan.

(ii) After the demolition of the compound wall or construction, if any, on this land of 214 sq. mts. the appellants herein would make an application before the Town Planning Department to certify that this land of 214 sq. mts. is open and that the same is available for the purpose of widening of the road by Town Planning Department in terms of the sanctioned revised plan of Patan.

(iii) On such an application being moved by the appellants, the concerned Officer of the Town Planning Department shall verify the factual position immediately within one month from the date of such application and communicate to the Patan Municipality such factual position as may be found by the Town Planning Department with an intimation to the appellants also.

(iv) The factual verification shall be made in presence of the appellants or their representative and also in presence of the representative of the Patan Municipality.

(v) In case the Town Planning Department certifies in the communication, as aforesaid, that no construction or compound wall is there on this land admeasuring 214 sq. mts. and that the same is clearly available for the purpose of widening of the road, the Patan Municipality shall take immediate steps to determine and grant compensation to the appellants in exchange of the appellants' land, which has already been acquired and utilised by the Patan Municipality, within a period of six weeks, in accordance with law.

8. This Appeal is partly allowed, as above, with no order as to costs.