

(2014) 09 GUJ CK 0038
In the Gujarat High Court

Case No : Writ Petition (PIL) No. 9 of 2013 and Civil Application No. 4544 of 2013 in Writ Petition (PIL) No. 9 of 2013

Sultanabad Bhimpore Social and Environmental Protection	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Gujarat Town Planning and Urban Development Act, 1976 — Section 122, 124, 23(1)(ii), 23(1)(iv), 23(2)

Citation : (2014) 09 GUJ CK 0038

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : S.H. Sanjanwala, Sr. Advocate and Dilip L. Kanojiya, Advocate for the Appellant; Parth Bhatt, AGP, Prashant G. Desai, Sr. Advocate, Dhaval G. Nanavati and U.I. Vyas, Advocate for the Respondent

Judgement

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J.B. Pardiwala, J.—By this writ-application in the nature of a public interest litigation, the petitioner, a committee of individuals constituted for the protection of environment, more particularly concerned with Sultanabad, Bhimpore and Dumas villages of the Surat district, has prayed for the following reliefs:

"(A) Your Lordships may be pleased to restrain the respondents herein from implementing the Town Planning Scheme No. 79-80 (Sultanabad-Bhimpore) and they may be directed to keep the said Town Planning Scheme in status-quo position and not to act in furtherance of the said Town Planning Scheme and the said Town Planning Scheme No. 79-80 (Sultanabad-Bhimpore) be quashed and set aside by an appropriate writ of this Hon'ble Court and/or writ of mandamus be issued to the respondents to withdraw the said Town Planning Scheme;

(B) Your Lordships may be pleased to issue a writ of mandamus and/or any other appropriate order or direction directing the State Government to withdraw Town Planning Scheme No. 79-80-(Sultanabad-Bhimpore);

(C) Your Lordships may be pleased to declare that it is not permissible to frame the Town Planning Scheme in villages Sultanabad, Dumas and Bhimpore for its green cover as also the environmental value and for its status as health centre and tourism spot and not to destroy the salient features by framing any Town Planning Scheme and enforcing reservation and allowing the construction on the said lands;

(D) Your Lordships may be pleased to issue a writ of mandamus and/or any other writ, order or direction directing the State Government not to implement the said Town Planning Scheme and direct status-quo to be maintained till the old record is corrected and brought in conformity with the present real situation;

(E) Pending the hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondent authorities to maintain status-quo position and not to act in furtherance of the Town Planning Scheme No. 79-80 (Sultanabad-Bhimpore) and the respondents authorities may further be restrained from not implementing the said Town Planning Scheme;

(F) Your Lordships may be pleased to grant such other and further reliefs as the Hon"ble Court may deem fit in the facts and circumstances of the case."

2. The case made out by the petitioner may be summed up thus:

The petitioner no. 1 is an Environmental Protection Committee and the petitioner nos. 2 and 3 are the President and the Secretary respectively of the said Committee. The petition in public interest has been filed by the Committee on behalf of the residents of the three villages, viz. Sultanabad, Bhimpore and Dumas. Almost 10,000 to 12,000 people residing in the area have filed their objections to the Town Planning Scheme No. 79-80 proposed by the authorities as the area comprising of the three villages named above is to be preserved as a tourism centre and health centre. If the Town Planning Scheme is given effect to and permitted to be implemented, then in such circumstances, almost 4 lac trees between 100 and 400 years old will have to be cut, resulting in a severe ecological imbalance.

3. The village Sulatanabad is a "Nawabi" village which was maintained by the Nawab of the erstwhile Sachin State, and much before the independence, the village Dumas was a famous tourist spot. These places were considered to be important health centres especially for those suffering from tuberculosis. The Nawab of the then State of Sachin had framed a town planning scheme in the year 1919 with the help of a French architect named Edwin. The entire area was surveyed and has been known as the Town Planning Scheme No. 1 and 2, Sachin State Dumas Development Scheme (Scheme No. 1 and 2 of 1919). All the necessary infrastructure has been provided in the said scheme like post office, temple, police station, roads, public utility, mosque, Parsi fire temple, guest house, civil hospital, school, sanatorium for the Hindus, Parsis, Muslims and Christians. Many people come and stay at the sanatoriums and the service is also provided at a very nominal rate.

4. The revenue record was also prepared under the said town planning scheme and accordingly the plots were allotted. The said record prepared during the time of the Nawab was also accepted by the Collector, Deputy Collector and the Prant Officer. In the year 1990, the Nawab of the Sachin State had decided to develop Dumas as a tourist spot. For the purpose of the town planning scheme, all the survey numbers of the lands of Sultanabad were measured. Most of the buildings situated are heritage buildings with ancient monuments, and in such circumstances, if the town planning scheme is permitted to be implemented, then the rich heritage of people's composite culture would get destroyed.

5. If large number of trees would get cut, then it will have a direct impact on large number of birds, such as, peacocks, etc. There has been no industrial development in the area past 60 years. The population before couple of years was around 7500, and as on today, around 16000.

6. Under Section 66 of the Town Planning Act, at any time before a preliminary scheme is forwarded by the Town Planning Officer to the State Government, if majority of the owners of the area request that the scheme should be withdrawn, then in such circumstances the State Government is obliged to consider the objections, and after making necessary inquiry, may direct, by notification, that the scheme should be withdrawn, and upon such withdrawal, no further proceeding would be taken with regard to such a scheme. Such representation has been filed by majority of the people almost consisting 80% of the total population to the State Government with a request to withdraw the town planning scheme in the interest of nature keeping in mind many relevant aspects like ecology, preservation of heritage, etc.

7. The then Nawab of the Sachin State had already framed the town planning scheme and, therefore, there cannot be any other scheme for the same area. If at all, the said scheme is to be varied, it has to be varied under the provisions of the Gujarat Town Planning and Urban Development Act, 1977 by taking recourse to the provisions of Sections 70 and 71, but at any rate, a new scheme cannot be implemented. In such circumstances, the very idea of framing of the town planning scheme no. 79-80 is contrary to the provisions of the Act and much against the public interest.

I. Stance of the Respondent No. 5-Surat Municipal Corporation:

8. The petition is not maintainable as the same is premature. There is no public interest involved, and on the contrary, the town planning scheme proposed is in the public interest. The Corporation is the implementing authority of the town planning scheme and the powers are delegated to the Corporation under Section 23(2) of the Gujarat Town Planning and Urban Development Act, 1976 (for short, "the Act").

9. The State of Gujarat through its Urban Housing and Urban Development Department, Gandhinagar, vide its notifications dated 14th February 2006 and 20th July 2006, expanded the limits of the Surat Municipal Corporation by

including 27 Gram Panchayats and 8 Nagar Palikas in the administrative control of the Corporation and since then the area in question has been brought under the administrative control of the Corporation.

10. The State of Gujarat, through its Urban Housing and Urban Development Department, Gandhinagar, vide its order dated 27th December 2006 issued under Section 122 of the Act 1976, delegated all its powers to the Corporation for the purpose of preparing a draft town planning scheme and to implement the same.

11. With a view to develop a newly added area falling within the administrative control of the Corporation, the Town Planning Committee of the Corporation, vide its Resolution No. 26 of 2008 dated 30th May 2008, resolved that 7 town planning schemes be framed for the newly included area, and as a part of the same, the Corporation declared its intention to propose a draft town planning scheme no. 79-80 (Sultanabad-Bhimpore).

12. The Corporation, in consultation with the Chief Town Planner under the provisions of Section 41 of the Act 1976, accordingly declared its intention to prepare a draft town planning scheme no. 79-80 (Sultanabad-Bhimpore) which was published in the Extraordinary Gazette Part-II Central Section of the Government of Gujarat and the same was also published in the two daily newspapers after following the due procedure as prescribed in the Act 1976 and the rules framed therein. The Corporation prepared and submitted the draft town planning scheme no. 79-80 to the State Government for the purpose of according sanction under Section 48(2) of the Act 1976.

13. The State Government accorded its sanction to the said draft scheme no. 79-80 under Section 48(2) of the Act 1976 vide its notification dated 1st May 2012 issued by the Urban Housing and Urban Development Department of the State Government.

14. The State Government, after according sanction to the draft scheme submitted by the Corporation, appointed a town planning officer under Section 50(1) of the Act 1976 vide its notification dated 16th July 2012 to finalize the draft town planning scheme no. 79-80.

15. In light of the fact that the draft town planning scheme was approved and sanctioned by the State Government vide its notification dated 1st May 2012, all lands required by the appropriate authority for the purposes specified in clause (c), (f), (g) or (h) of sub-section (3) of Section 40 stood vested absolutely in the appropriate authority free from all encumbrances.

16. The draft town planning scheme no. 79-80 has been sanctioned by the State Government, and as an implementing authority, the Corporation is required to implement the scheme in its true letter and spirit. As an implementing authority, the Corporation has issued the notices under Section 68 of the Act 1976 read with rule 33 of the rules framed therein to one and all concern to vacate the land

in question.

17. After the intention to frame a scheme was declared under Section 41 of the Act 1976, notices in the newspapers were issued inviting objections and suggestions in that regard.

18. The petitioners at no point of time had raised any objection in respect of the draft scheme at the time of declaration of intention as well as at the time of drawing of the draft scheme, and accordingly, the same was sanctioned on 1st May 2012 and thereafter the town planning officer was appointed on 16th July 2012.

19. In such circumstances, the Corporation has prayed that there being no merit in this petition, the same may be rejected.

20. We have heard Mr. S.H. Sanjanwala, the learned senior advocate assisted by Mr. Dilip L. Kanojia, the learned advocate appearing on behalf of the petitioners, Mr. Prashant G. Desai, the learned senior advocate assisted by Mr. Dhaval G. Nanavati, the learned advocate appearing on behalf of the respondent no. 5 Corporation, Mr. U.I. Vyas, the learned advocate appearing on behalf of the Surat Urban Development Authority, and Mr. Parth Bhatt, the learned AGP appearing on behalf of the State Government.

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this petition filed in public interest is, whether the petitioners are entitled to any of the reliefs as prayed for in the petition.

22. Ordinarily, court would allow litigation in public interest if it is found:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busy body or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or

prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

23. That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy body or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest.

24. It appears that the main concern of the petitioners is that if the town planning scheme as proposed is implemented, then the areas comprising all the three villages, viz. Sultanabad, Bhimpore and Dumas will badly get affected on account of the ecological imbalance that may be caused due to cutting of around 5000 trees which are almost more than 100 years old. One more concern expressed by Mr. Sanjanwala, the learned senior advocate appearing on behalf of the petitioners is that there are many ancient monuments in the area possessing rich heritage value and the same may also get affected. In short, the principal argument of Mr. Sanjanwala is that there is no requirement of any town planning scheme as proposed by the authorities as way back in the year 1919, the then Nawab of the Sachin State had already framed a town planning scheme providing with all the basic amenities, and when more than 80% of the population of that area does not want the scheme, then in such circumstances, the State Government is obliged to consider their objections in accordance with the provisions of Section 66 of the Act 1976.

25. Taking into consideration the object with which the Legislature thought fit to enact the Act of 1976 makes it very clear that for the appropriate framing of schemes and implementing them, the individual rights are made subordinate to the wider social interests of the society and civic amenities. The individual interests are not allowed to outweigh and prevail over the wider social interests so as to thwart or frustrate the salutary social schemes of the town planning for the benefit of the public as a whole. The Bombay Town Planning Act, 1954 was enacted to consolidate and amend the law for the making and execution of the town planning schemes enjoining a duty on every local authority to prepare a development plan for the entire area within its jurisdiction. This Act of 1954 was repealed with the saving provision in Section 124 thereof. It was felt that if the planning activities were undertaken on a more rational and scientific basis with

reference to development of areas which are not necessarily restricted to the areas within the jurisdiction of the local authorities, it will be possible to create better environmental conditions. Therefore, the Act of 1954 was replaced by a more comprehensive legislation.

26. The area of any town planning scheme is a part and parcel of a larger municipal area or a development area where the reconstitution of plots is done and along with that the facilities like roads, water supply, drainage and other infrastructure is provided. Therefore, for proper development it is essential that the powers to make such a scheme, the implementation of the scheme and providing of infrastructure is delegated to the Municipal Corporation. The whole object appears to be to see that the development takes place smoothly. It is with such object in mind that the State Government issues directions under Section 122, Clause-1 for delegation of powers under Section 23(1)(ii) and 23(1)(iv).

27. City planning is globally recognized as a normal and identifiable function of the government. As a government function, it involves the coordination of all governmental activities that bear upon community growth and developmental change. The ultimate goals of modern urban planning have always been social with deep involvement with intermediate economic objectives. The physically oriented urban planning has the following environmental objectives:

- (i) The orderly arrangement of parts of the city residential, business, industrial- so that each part could perform its functions with minimum cost and conflict;
- (ii) An efficient system of circulation within the city and to the outside world, using to the maximum advantage all modes of transportation;
- (iii) The development of each part of the city to optimum standards, in terms of lot size, sunlight, and green space in residential areas, and parking and building spacing in business areas;
- (iv) The provision of safe, sanitary, and comfortable housing in a variety of dwelling types to meet the needs of all families;
- (v) The provision of recreation, schools, and other community services of adequate size, location, and quality;
- (vi) The provision of adequate and economical water supply, sewerage, utilities, and public services.

28. For these purposes, the devolution of powers to the cities occurs through legislative acts that delegate limited self-government to local corporations. By the Constitution (Seventy-Fourth) Amendment Act, 1992, Parts IX & IXA were introduced in the Constitution of India entrusting the planning function to the local bodies. Article 243-W enables the legislature of a State to endow Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government with respect to;

- (i) preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. (These include, (i) Urban Planning including town planning, (ii) Regulation of land use and construction of buildings (iii) Planning for economic and social development, and (iv) Public amenities and public conveniences and other items mentioned in the Schedule.)

29. The moot question is, whether we should go into the merits of the submissions canvassed on behalf of the petitioners or we should hold that the petition filed is premature as many stages are yet to come when the petitioners will have an opportunity of making their suggestions and lodging of their objections as well with regard to the scheme.

30. The scheme as on today has travelled beyond Section 48A of the Act 1976. Section 48A reads as under:

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

1. Where 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 purposes specified in clauses (c), (f), (g) or (h) of sub-section (3) of Section 40 shall vest absolutely in the appropriate authority free from all encumbrances.

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

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 sub-section (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."

31. Although all lands vest absolutely in the appropriate authority free from all encumbrances, on the draft scheme being sanctioned by the State Government, sub-clause (2) to Section 48A makes it clear that nothing in sub-section (1) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section.

32. To meet with the submission canvassed on behalf of the Corporation that the petition is at a premature stage, Mr. Sanjanwala, the learned senior advocate, vehemently submitted that Section 48A which provides for vesting of land in the appropriate authority upon draft scheme being sanctioned takes away the valuable right of the owner of such land as provided under Sections 49 to 67 of the Act.

33. We are not impressed by such submission of Mr. Sanjanwala. As a matter of fact, this very Bench had an occasion to consider such submission in the case of

Bharatbhai Ishwarbhai Patel and others v. State of Gujarat and others (Letters Patent Appeal No. 2449 of 2010, decided on 20th January 2012). In the said case, the constitutional validity of Section 48A of the Act 1976 was challenged on the ground that the same conferred unbridled and unfettered power to the authority and the same was in conflict with the provisions of Sections 49 to 67 of the Act. While dealing with such challenge to the constitutional validity of Section 48A of the Act 1976, we relied on one earlier decision of a Division Bench of this Court in the case of Govindbhai Hirabhai Surati and Others Vs. State of Gujarat and Others, . In Govindbhai Hirabhai Surati (supra), the Court held as under:

"The Court has read and reread the provisions of Section 48-A extracted above, with the assistance of the learned counsels appearing for the parties, but, has not been able to find any fetter on the right of the petitioners to invoke the power of "judicial review" of the Courts having such power. Undoubtedly, power of "judicial review" has been identified as one of the basic structures of the Constitution, and any attempt to take away that power from its repository would be unconstitutional. In the instant case, there is no inkling of any such attempt by any stretch of imagination. The argument of the learned counsel of the petitioners in this regard is totally devoid of substance, and deserves to be rejected.

The submission of the learned counsel of the petitioners that Section 48-A of the Act confers upon the State Government unguided power for taking possession of the land covered by the sanctioned Draft Town Planning Scheme rendering it arbitrary and unconstitutional is utterly misconceived. A bare perusal of the provisions of Section 48-A of the Act indicates that it, by itself, does not confer any power on the State to take possession of the land covered by the sanctioned Draft Town Planning Scheme. Indeed, it declares automatic vesting of the land upon existence of the conditions prescribed therein. The Government has not been given any power, discretion or choice in the matter of vesting. In other words, vesting contemplated under Section 48-A is legislative vesting for specific purposes.

The submission of the learned counsel of the petitioners that Section 48-A of the Act, in substance, has the effect of depriving the petitioners of their land either without compensation or with inadequate compensation has no legs to stand. The argument clearly betrays the ignorance of the provisions of Sections 82 to 87 of the Act, which provide detailed mechanism in respect of compensation to the affected persons. Therefore, the argument of the learned counsel of the petitioners cannot be sustained."

34. We may also quote some of the relevant observations made by us in the decision of Bharatbhai Ishwarbhai Patel (supra):

"The contention of the learned counsel that Section 48-A which provides for vesting of land in appropriate authority upon draft scheme being sanctioned takes away the valuable right of the owner of such land as provided under

Sections 49 to 67 of the Act, is without any merit and it deserves to be rejected outright for a very simple reason. Section 48-A(2) is the answer to the contention of the learned counsel for the petitioners.

Section 48-A(2) reads as under:

"Nothing in sub-section (1) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section."

Thus, clause (2) to Section 48-A makes it very clear that the right of the owner of the land vesting in the appropriate authority under sub-section (1) shall not be affected in any manner. The legislature itself has taken care to protect the right of the owner of the land vesting in the appropriate authority despite the fact that the Act provides for vesting of land in appropriate authority upon draft scheme being sanctioned by the State Government.

On this short ground alone, the challenge to the constitutional validity of Section 48-A of the Act of 1976 must fail and we hold it accordingly. As we have answered the issue as regards the constitutional validity of Section 48-A of the Act of 1976 in negative, the matters may now be placed before the regular Bench so far as the other issues are concerned."

35. Thus, Section 48A should not come in the way of the petitioners so far as their right of giving suggestions and lodging of objections to the proposed town planning scheme is concerned. The scheme as on today has reached upto the stage of Section 50 i.e. appointment of town planning officer.

"Section 50. Appointment of Town Planning Officer.

(1) Within one month from the date on which the date on which the sanction of the State Government to a draft scheme is notified in the Official Gazette, the State government shall appoint a Town Planning Officer possessing such qualifications as may be prescribed, for the purpose of such scheme and provide him with such number of officers and staff as may be considered necessary and his duties shall be as hereinafter provided.

[Provided that the State Government may, on the request made by the Appropriate Authority, appoint a Town Planning Officer within one month from the date of the publication of Draft Scheme under sub-section (1) of Section 42]

(2) The State Government may, if it thinks fit, at any time, remove, on the ground of incompetence or misconduct or any other good and sufficient reason a Town Planning Officer appointed under this section and shall forthwith appoint another person in his place and any proceeding pending before Town Planning Officer immediately before the date of his removal shall be continued and disposed of by the new Town Planning Officer appointed in his place.

Provided that no Town Planning Officer shall be removed under this sub-section except after an inquiry in which he has been informed of the charges against him and a reasonable opportunity of being heard in respect of those charges has

been given to him.

(3) Subject to the provisions of sub-section(2), a Town Planning Officer appointed under sub-section (1) for the purpose of any scheme shall cease to hold office with effect from the date on which the final scheme is sanctioned under section 65."

36. The sixth step will be drawing of a preliminary scheme by the Town Planning Officer under Section 52, Clause (1) of the Act, which reads under:

"Section. 52 Contents of preliminary and final scheme.

(1) In a preliminary scheme, the Town Planning Officer shall,-

(i) after giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the areas allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots;

(ii) after giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the shares of such persons;

(iii) provide for the total or partial transfer of any right in an original plot to a final plot or provide for the transfer of any right in an original plot in accordance with provision of section 81.

(iv) determine the period within which the works provided in the scheme shall be completed by the appropriate authority."

37. Thereafter, the town planning officer will have to serve a notice in Form-H as provided under Rule 26, Clause (1) of the Rules. Rule 26 reads as under:

"Rule 26. Procedure to be followed by Town Planning Officer under section 51 and under sub-section (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 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 under the Official Gazette and in one or more Gujarat 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 sub-rule (1), continue to carry on his duties as far 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 Gujarat newspaper 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 sub-rule (2) of Rule 18 of the rules] from the publication of notice in the Official Gazette. Such notice shall also be posted 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 newspaper 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 interest 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."

38. Thereafter, a public notice would be published in a newspaper as well as in the Official Gazette in terms of the Rule 26, Clause (3).

39. Under Rule 26, Clause (4), the Town Planning Officer will give opportunity to the person interested in any land affected by any particular of the scheme.

40. The Town Planning Officer thereafter shall publish the scheme under Section 52, Clause (1), read with Rule 26, Clause (9) of the Rules.

41. The seventh step in the process will be the submission of the preliminary scheme by the Town Planning Officer to the State Government under Section 64 of the Act.

"Section 64. Submission of preliminary scheme and final scheme to Government;

The Town Planning Officer shall submit to the State Government for sanction the preliminary scheme also before the final scheme is submitted to the State Government under sub-section (2) of section 52, together with a copy of his decision under section 53."

The last and the final step would be sanctioning of the scheme by the State Government under Section 65 of the Act.

"Section 65. 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 case of a 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 result 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) a place at which the scheme shall be kept open for inspection by public, and

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

(xxxx) Deleted by Guj. Act No. 11 of 2002, the words (which shall not be less than one month after the date of the 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 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."

42. The purpose of giving a fair idea of the steps aforementioned which are yet to be undertaken is to indicate that at every stage an opportunity will be given to the

petitioners and to other persons likely to be affected by the scheme and it would be open for such persons to lodge their objections and suggestions which the appropriate authority is otherwise obliged to consider.

43. Thus, we are convinced by the submission of Mr. Prashant Desai, the learned senior advocate appearing on behalf of the Corporation that the petition has been filed at a premature stage and should not be entertained.

44. Mr. Sanjanwala has laid much stress on the provisions of Section 66 which provides for withdrawal of the scheme. Section 66 of the Act 1976 provides that at any time before the preliminary scheme is forwarded by the Town Planning Officer to the State Government, if a representation is made to the Town Planning Officer by the appropriate authority and a majority of the owners in the area that the scheme should be withdrawn, the Town Planning Officer shall, after inviting objections to such representation from all the persons interested in the scheme, forward such representation together with the objections, if any, to the State Government and the State Government, after making such inquiry as it may deem fit, may, if it is of the opinion that it is necessary or expedient so to do, by notification, direct that the scheme shall be withdrawn, and upon such withdrawal, no further proceeding shall be taken in regard to such a scheme. Mr. Sanjanwala submitted that 80% of the population of the area likely to be affected by the town planning scheme have tendered their objections to the Town Planning Officer and the Town Planning Officer should be asked to forward the same to the State Government so that the State Government can take an appropriate decision in that regard. On the other hand, Mr. Prashant G. Desai, the learned senior advocate, submitted that strictly speaking Section 66 will have no application because it speaks of a representation made to the Town Planning Officer by the appropriate authority and a majority of the owners in the area. In the present case, the appropriate authority has not chosen to file any representation with the Town Planning Officer requesting to withdraw the scheme. Be that as it may, we are not going into this question at this stage having once taken the view that the petition is at a premature stage. We may only say that when the scheme reaches to an appropriate stage in accordance with the procedure as prescribed in the Act of 1976, if any such objections are brought to the notice of the State Government, then it would be for the State Government to consider the same in accordance with law and take an appropriate decision, whether to go ahead with the scheme or withdraw the scheme.

45. We make it clear that we have not gone into the merit of the same and it would be for the State Government to take an appropriate decision taking into consideration the materials which may be adduced before it by the persons concerned.

46. For the foregoing reasons, we hold that the petition is at a very premature stage and need not be entertained. The petition is accordingly rejected. No costs.

47. In view of the order passed in the main petition, the connection Civil Application has also become infructuous and the same is accordingly disposed of. The order of status quo granted earlier as regards the existing position, nature and character of the property stands vacated forthwith.