

(2022) 04 GUJ CK 0011
In the Gujarat High Court

Case No : R/Special Civil Application No. 6505, 6506, 6508, 6509 Of 2022

Sultanbhai Jamalbhai Mansuri

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Town Planning And Urban Development Rules, 1979 — Rule 26
Gujarat Town Planning And Urban Development Act, 1976 — Section 65

Citation : (2022) 04 GUJ CK 0011

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Nanavati, Jyoti Bhatt

Final Decision : Disposed Of

Judgement

A.Y. Kogje, J

1. These group of petitions under Article 226 of the Constitution of India are arising out from the same identical issues with regards to the Town Planning Scheme No.93-A (Maktampur). The same are taken up for joint hearing and disposal. The facts are taken up from Special Civil Application No.6505 of 2022.

2. Learned Advocate for the petitioners submitted that the petitioners are occupants in the Housing Society and are occupying their respective residential premises and when the Town Planning Scheme No.93-A (Maktampur) came to be framed, the Draft Town Planning Scheme came to be sanctioned at that time. It came to the knowledge of the petitioners that plot of land on which the residential premises of the petitioners is located, has been reserved for the purpose of social infrastructure.

3. Learned Advocate for the petitioners has drawn attention of this Court to Annexure-P7, which is the Plan, which according to the petitioners gives Fina Plot to the entire residential society, which even as per the Revenue Record of

Village-Maktampur indicates to be that of society, where the petitioners residences located. From that in the draft plan, Final Plot No.36 is caved out for the aforesaid purpose.

4. It is submitted that in so far as the Town Planning Road are concerned, the same are also shown to be passing from within the society, but to which noone has raised any objections as it pertains to Town Planning Road and is not affecting the petitioners. However, it is the case of the petitioners that there is apprehension that the petitioners residential premises will be on the plot of land, now reserved for social infrastructure, will have to lose their residential premises.

5. Learned Advocate for the petitioners submitted that moment the petitioners came to know about the reservation on the plot, the petitioners have made individually Representation dated 04-02-2022 to the Town Planning Officer. However, till date, the petitioners have not received any communication from the Town Planning Officer in this regard. Learned Advocate for the petitioners in pleadings has stated that there is apprehension that the petitioners will stand to lose their residential premises and without being given opportunity of hearing.

6. Learned Advocate for the petitioners has drawn attention of this Court to oral Judgment of this Court dated 04-01-2016 passed in Special Civil Application No.12566 of 2014, wherein this Court has issued directions to the Town Planning Officer to act in accordance with the provision of the Law and also directed to consider the objections and while doing so, afford an opportunity of hearing.

7. Learned AGP appearing on behalf of the State, submitted that the Town Planning Officer is duty bound to act in accordance with the provisions of the Town Planning Act and therefore, apprehension of the petitioners is unfounded that the objections of the petitioners would not be taken into consideration. Learned AGP has relied upon the judgment of Apex Court in case of Ahmedabad Municipal Corporation and another v. Ahmedabad Green Belt Khedut Mandal and others reported in (2014) 7 Supreme Court Cases 357.

8. In rejoinder, learned Advocate for the petitioners submitted that the Court may have to issue independent directions that in case, the Town Planning Officer is not in agreement with the objections raised by the petitioners especially with regards to the acknowledging existence of the residential premises of the petitioners, in that case, the Town Planning Officer is required to forward the Town Planning Scheme along with the objections of the petitioners for consideration of the State Government.

9. Considering the aforesaid facts situation and considering the averments made in the petition, there does not appear to be any serious apprehension to indicate that the Town Planning Officer will not perform his part as provided under the Law. However, as there is lapse of time after the petitioners have put their objections in February, 2022 and there is no communication, it would be appropriate to adopt the same method as laid down in the oral Judgment of this

Court dated 04- 01-2016 passed in Special Civil Application No.12566 of 2014 and direct the Town Planning Officer as under:

(a) The Town Planning Officer shall consider the objections that are already filed by the petitioners as provided under Rule 26 of the Rules before submitting the Town Planning Scheme to the State Government for its sanction as provided under Section 65 of the Act. The Town Planning Officer shall also give an opportunity of being heard to the petitioners on such objections.

(b) The State Government is further directed to consider the objections that are filed by the petitioners before sanctioning the preliminary Scheme as provided under Section 65 of the Act.

10. In view of the aforesaid, the petitions stand disposed of accordingly. Direct service is permitted.