

(1999) 01 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 9629 of 1992

Surat Panjrapole

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 62

Constitution of India, 1950 — Article 226

Gujarat Town Planning and Urban Development Act, 1976 — Section 12, 12(2), 13(2), 17(1), 40(3)

Citation : (1999) 01 GUJ CK 0008

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

Bench : Single Bench

Advocate : K.J. Brahmbhatt, for the Appellant; S.N. Shelat, A.A.G., Pranav Desai, for State Bank of India and Bank of Baroda, respondents nos. 4 and 6, Rashant Desai, for Surat Municipal Corporation, respondent no. 2, S.S. Shah, for Bank of India, respondent no. 3, G.N. Shah, for Indian Oil Corporation, respondent no. 5, L.R. Pujari, AGP respondent no. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla, J.—Through this Special Civil Application, the petitioner seeks to challenge the Resolution dated 9th April 1992 passed by the Standing Committee of the Surat Municipal Corporation, based on an earlier Resolution dated 15th October 1991 and a relief has been sought that the land of which the petitioner Trust was deprived of, on the basis of the schemes evolved out under the Gujarat Town Planning and Urban Development Act, 1976, may be restored back to the petitioner.

2. The petitioner claims to be a public Charitable Trust registered under the Bombay Public Trust Act and claims to be functioning for the last more than 100 years and it has also been submitted that this public Trust has been taking care of the stray, abandoned, weak and handicapped, infirmed, feeble and old cattle, which are otherwise, in the process of actually being sent to the slaughter house.

The petitioner claims that this Trust has been doing a laudable work of protecting this cattle. The petitioner Trust held the land admeasuring about 1,76,739 sq.mtrs. in the municipal area of Surat. The Gujarat Town Planning Act, 1976 came into force on 19th June 1976 and thereupon the Town Planning Scheme No. 9 (Majura) was prepared to reconstitute the various plots so as to make the allotment of the final plots. Whereas the petitioner's land covered in this Town Planning Scheme as per the original plot No. 5825-C and the plots were reconstituted, in lieu of the final plots which were held by the petitioner Trust, Final Plot No. 5825-I admeasuring 1,24,667 sq.mtrs. of the land was given to the petitioner Trust and while giving this land, the petitioner claims that this Trust was deprived of a land admeasuring 52,027 sq.mtrs. of the land. A compensation was determined to be paid to the petitioner Trust to the tune of Rs. 3,59,193/- which was paid to the petitioner Trust after adjusting the incremental charges. It is the petitioner's case that the land of which the petitioner was deprived of, was surrounded by some other plots and the land of which the petitioner Trust was deprived of along with other such plots was reserved by the Surat Municipal Corporation for a particular public purpose of sub-centres. In this regard, a reference has been made to the Resolution passed by the Surat Municipal Corporation dated 15th October 1991, i.e. Resolution No. 252 annexed with the petition at page 22 and a further reference has been made to the Resolution passed by the Standing Committee of the Surat Municipal Corporation dated 9th April 1992 vide its Resolution No. 86 annexed with the Special Civil Application at page 21. It has been submitted that the Surat Municipal Corporation had decided in its meeting held on 15th October 1991 vide Resolution No. 252 as aforesaid, to make allotment of the lands for a period of 99 years on the conditions mentioned therein and thereafter the Standing Committee of the Surat Municipal Corporation, by its Resolution dated 9th April 1992 as aforesaid, allotted the land reserved for public purpose to Bank of India (respondent No. 3), State Bank of India (respondent no. 4), and the Indian Oil Corporation Ltd. (respondent no. 5). The petitioner also stated that out of the land admeasuring 52,072 sq.mtrs. of which the petitioner was deprived of and which was placed under reservation, a final plot no. M-4 was demarcated and it is out of this plot no. M-4, that certain sub-plots, namely, P-1, P-2, P-3, P-4 and P-5 etc. were made out. The petitioner submits that the land which is covered by final plot M-4 as aforesaid includes the petitioner's land to the extent of 52,072 sq. mtrs. and it is out of this land that the lands were reserved as under:

22,018 sq. mtrs. reserved for roads.

10,603 sq.mtrs. merged with other final plots.

Thus, 19,451 sq.mtrs. of land out of the petitioner's land was left in balance, whereas 22,514 sq.mtrs. of land was of other plots. The balance land of 19,451 sq. mtrs. of land was added to the other lands admeasuring 22514 sq.mtrs. and the aggregate of it, i.e. 41,965 sq.mtrs. of land was used for constituting the final plots Nos. M-2, M-4 and M-10 respectively. The whole land covered of this

final plots M-2, M-4 and M-10 was reserved for public purposes and it is given out that the land of Plot No. M-2 was reserved for school, M-4 was for the sub-centres and land of Plot No. M-10 was for the shopping centres. The area of Plot No. M-4 admeasuring 16,443 sq.mtrs. includes the petitioner's land. It has also been given out that the land of Plot No. M-4 which was reserved for sub-centres was further divided into six sub-plots and out of these sub-plots, the land admeasuring 2250 sq.mtrs. was allotted to State Bank of India (respondent no. 4) as P-1. The land of Plot Nos. P-3 and P-4 admeasuring 2400 sq.mtrs. and 3024.10 sq.mtrs. making a total of 5424.19 sq.mtrs. was allotted to the Indian Oil Corporation Ltd. (respondent No. 5) and the land of Plot No. P-5 admeasuring 2387 sq.mtrs. was allotted to the Bank of India (respondent No. 3). The aggregate of all these Plots, i.e. P-1, P-3 & P-4, and P-5 comes out to 10,061.19 sq.mtrs. It is then said that subsequently, Bank of Baroda was also allotted the land admeasuring 3044.82 sq.mtrs. out of Plot No. M-4, i.e. land No. P-6. The land of Plot No. P-2 was retained by the Surat Municipal Corporation itself. The lands as aforesaid have been given to the respondents on long term lease for a period of 99 years. The grievance has been raised that while the petitioner was paid a sum of Rs. 3,59,193/- only for the land of which it was deprived of, the Surat Municipal Corporation has made heavy benefits by transferring the part of the same land to the respondents nos.3 to 6 and has earned an amount of nearly Rs. 6,87,30,430/-. The learned Counsel for the petitioner has branded it to be a case of unjust enrichment by the Surat Municipal Corporation at the cost of the petitioner's land. The basic challenge thrown by the petitioner is that the land which was reserved for sub-centres could not be diverted for the purpose of allotment to the institutions like the respondents nos.3 to 6 and the allotment of lands to these bodies do not constitute or involve public purpose and it was not at all open for the Surat Municipal Corporation to have allotted the land reserved for public purposes to the bodies like the respondents nos. 3 to 6 in accordance with law, the Municipal Corporation was obliged to use these reserved lands for the public purposes within the parameters of the Act itself. With the grievances as aforesaid, this Special Civil Application had been filed in this Court on 9th November 1992 and it appears that, initially, Bank of Baroda was not a party respondent, but the same was impleaded as party respondent no. 6 subsequently. The prayers made in the petition are as under:

"15. In the aforesaid premises the petitioner prays that:

(a) Be pleased to admit this petition.

(b) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India against the respondents directing the respondent no. 2 to withdraw or quash and set aside the decision contained in the resolution no. 86 dated 9.4.1992 passed by the Standing Committee of the respondent no. 2 at annexure."B" and further forbearing the respondent no. 2, its agents and servants from utilising the Final Plot No. M/4 for any purpose except for sub-

centre or in the alternative directing the respondent nos.1 and 2 to dereserve the said Final Plot No. M-4 from the reservation made under the T.P. Scheme no. 9 (Majura) and restore the same to the petitioner.

(c) Be pleased to grant an interim injunction restraining the respondent no. 3 from proceeding further with the formalities in pursuance of the impugned resolution and further restraining the respondent no. 2 from handing over the possession of the said plots to the respondent nos.3 to 5 and further restraining respondents nos. 3 to 5, their agents and servants from carrying out any development activities in or using or dealing with the respective subplots allotted to them out of final plot no. M/4 in any manner whatsoever during the pendency of this petition.

(d) Be pleased to pass other and further orders and grant other and further reliefs that may be deemed just and proper in the facts and circumstances of the case.

(e) be pleased to allow this petition with costs.

(f) The petitioner craves leave to add, to alter, or amend any of the paragraphs if necessary to do so."

When the matter came up before the Court on 30th December 1992, the notice was issued and by way of ad-interim order, a direction was issued against the respondents nos.3 to 5 not to carry out any development activities on the land in question till that date. On 15th January 1993, Rule was issued in the matter. Subsequently, on 28th April 1993, an amendment was also carried out. The amended prayer is as under:

"Para 15(bb) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India against the respondents directing the respondent no. 2 to withdraw or quash and set aside the decision contained in the resolution no. 519 dated 18.8.1992 passed by the Standing Committee of the respondent no. 2 at Annexure.C and further forbearing the respondent no. 2, its agents and servants from utilizing the final plot no. M/4 for any purpose except for sub-centre or in the alternative directing the respondent nos.1 and 2 to dereserve the said final plot no. M/4 from the reservation made under the T.P. Scheme No. 9 (Majura) and restore the same to the petitioner."

3. The respondents have traversed the petitioner's claim by filing replies such as, affidavit-in-reply dated 15th February 1993 filed on behalf of respondent no. 5, i.e. Indian Oil Corporation Ltd.; affidavit-in-reply dated 16th August 1993 filed on behalf of the Surat Municipal Corporation, (respondent no. 2); affidavit in-reply purporting to be of June 1994 filed on behalf of the State Bank of India (respondent no. 4); affidavit-in-reply purporting to be of 28th April 1995 filed on behalf of respondent no. 3 (Bank of India) and at this stage, an affidavit-in-reply purporting to be dated 11th January 1995 is filed on behalf of the respondent no.

6. It may be pointed out at this stage itself that the original affidavits-in-reply filed on behalf of respondents nos.3, 4 and 6 were not found to be in the record of this case and, therefore, copies of these replies have been taken on record from the respective Counsel with the consent of other Counsel appearing in this case including the learned Counsel for the petitioner who has candidly said that whereas she has duly received the copies of these affidavits even if the originals are not there, for the purpose of this case the copies as furnished by the respective Counsel may be considered.

4. The case of the respondent no. 2 in its reply dated 16th August 1993 is that the scheme in question under the Gujarat Town Planning and Urban Development Act, 1976 was sanctioned on 24th February 1984 and it came into force on 23rd April 1984. It has been stated that this scheme has already become a part of the Act in terms of Section 65(2) of the Act. It has been admitted in the reply that in the said scheme certain lands of the petitioner were placed under reservation and that the lands were reserved for public purpose as they vested in the Corporation free from all encumbrances. The Surat Municipal Corporation has taken the stand that there is no illegality in the Resolution passed by the Standing Committee in allotting the lands to the respondents and that even after the T.P. Scheme was framed, the petitioner was re-allotted 1,24,667 sq.mtrs. of land and the remaining portion of the land was put under reservation for public purposes like roads, site for sub-centres, site for shopping centres etc. It has also been stated that the value of the under-developed original plots of the land of the petitioner was Rs. 23,82,014/- inclusive of structures, while the valuation of the under developed plots which were allotted to the petitioner was Rs. 17,55,217/- inclusive of structures and therefore, the petitioner was ultimately paid Rs. 3,59,193/- after deducting the incremental contribution. The allegation of unjust enrichment has been denied and it has been stated that the final scheme in question had also been sanctioned by the State Government and only thereafter the Notification dated 24th February 1984 Annexure.III with this reply was issued. It has been stated that the land allotted to the respondent shall be used as per the Building Bye-laws and the action of the Municipal Corporation does not amount to contravention of any provision of the Act and the land is being utilised for public purposes only and that the land already stands vested with the respondents and the said plots cannot be restored back to the petitioner.

1st February 1999.

5. On behalf of the respondent no. 3, Bank of India, it has been stated in the reply that, at present the respondent no. 3 has got one Regional Office and 9 branches in Surat City and it has also got one Branch known as Service Branch which is looking after the clearing of Cheques and payment of Demand Drafts. The Regional Office is controlling 31 Branches of the Surat District including the Branches operating in Surat City. There are 94 Officers attached to the Regional Office and Branches, out of which only 14 officers could be so far provided with residential accommodation. The Regional Office is presently situated in a

congested area of Surat City which was acquired several years ago. Dearth of space corresponding to the requirements have been pleaded and it has been stated that on making inquiry about the purpose for which the final Plot M-4 could be used, it was informed by the Surat Municipal Corporation that the land in question was specified for the purpose of sub-centre wherein the building could be constructed for the Regional Office or Branch Office for this respondent and/or for providing the residential accommodation for its officers. It has been further stated that guided by the clarification as aforesaid made by the Surat Municipal Corporation, this respondent gave an offer for the purpose of sub-plot No. P-5 out of final plot No. M-4 admeasuring 2383 sq.mtrs. at the rate of Rs. 7,800/- per sq.mtr.in all offering a sum of Rs. 1,86,18,600/-. While making reference to the Municipality's Standing Committee Resolution dated 9th April 1992, it has been stated that the Surat Municipal Corporation had authorised its Municipal Commissioner to grant development rights in respect of sub-plots Nos.P-1, P-3, P-4 and P-5 of final plot No. M-4 of the Town Planning Scheme of Majura (Surat), to respondents nos. 4, 5 (sub-plot Nos.P-3 and P-4) and respondent no. 3 respectively on the terms and conditions enumerated in Resolution No. 252 of the General Body of the Municipal Corporation. It has been further stated that this respondent has already made payment of 75%, i.e. Rs. 1,39,63,956/- towards the premium for the development rights as well as lease consideration and it has been put in possession of the sub-plot No. P-5. It has been further stated that the respondent no. 3 would have paid the balance amount of 25% consideration as well, but for the present petition filed by the petitioner. It has also been stated that the respondent Bank of India intended to construct a building complex in sub-plot No. P-5 of final Plot No. M-4 for its Regional Office and a Branch as also for providing residential accommodation to the officers working in the Regional Office and the Branches situated at Surat City. The sub-plot No. P-5 is thus, going to be used for the purpose of sub-centre for which it is reserved. According to this respondent, in the context of the changed needs of the society, it is always open to the authorities to alter the purpose of reservation and use the land reserved for one public purpose for another public purpose and that the purpose for which the land is going to be used by the respondent no. 3 is obviously a public purpose.

6. The respondent no. 4, i.e. the State Bank of India has come out with a case that the petitioner's complaint is without any merit and it is only after the sanctioning of the scheme by the respondent no. 1-State of Gujarat that the final plots were reserved for the public purposes and the land became vested in the Municipal Corporation, the Corporation is entitled to all benefits flowing from the ownership of the lands vested in it. It has been stated that the expression "sub-centre" is well known in the field of Town Planning, it derives its colour from the expression "civil centre". These centres are earmarked for locating administrative offices, post offices, banks, clubs, building for recreational and cultural purposes etc. which are in the nature of public amenities provided for the residents of the area. That Banking services apart from being a nerve centre for business,

commerce and industry, are absolutely essential even for the common man. Surat is in the vicinity of Bombay and is a very fast growing commercial city. There is acute shortage of accommodation required for office, commercial, industrial and residential purposes and it is imperative for the local authorities like the Municipal Corporation to make available lands for providing and maintaining essential services such as banking. It has also been stated that the respondent no. 4 has 16 Branches in Surat City. The total number of the officers in the Branches in the year 1987 was 75 which has progressively increased to 106 in the year 1993. On an average in any year about 90 officers are posted in the said Branches of the Surat City. Respondent no. 4 has no residential quarter which could be offered to its officers. It has also been stated that after ascertaining from the Municipal Corporation that the said land could be utilised for construction of dwelling houses/flats/ tenements etc., this respondent gave an offer for the purchase of sub-plot No. P-1 out of final plot No. M-4 admeasuring 2250 sq. mtrs. at the rate of Rs. 6250/- per sq.mtr. in all offering a sum of Rs. 1,40,62,500/-. The Municipal Commissioner was authorised under the Standing Committee's Resolution dated 9th April 1992 to grant development rights in respect of sub-plot Nos.P-1, P-3, P-4 and P-5 of final Plot No. M-4 of the Town Planning Scheme, Majura (Surat), to the respondent nos.4 and 5 (sub-plot Nos.P-4 and P-4) and No. 3 respectively on the terms enumerated in Resolution No. 252 of the General Body of the Municipal Corporation and only thereupon the Municipal Corporation agreed to lease for a period of 99 years in respect of sub-plot No. P-1 of final plot No. M-4 of the T.P. Scheme, Majura (Surat) to this respondent at consideration towards the premium for development rights of Rs. 1,40,62,500/- plus the payment of annual rent of Re.1/- per sq.mtr. The respondent no. 4 has already made a payment of 75%, i.e. Rs. 1,05,46,875/- towards the premium for the development rights as well as lease consideration and it has been put in possession of the sub plot No. P-1 since 21.11.1992. It has been further stated that the respondent no. 4 would have paid the balance amount of 25% of consideration as well, but for this writ petition filed by the petitioner. The respondent no. 4 intends to construct a housing complex in sub-plot No. P-1 with a view to provide accommodation to its officers and staff members posted at Surat as well as for opening a branch/personal investment cell/extension counter. It has also been pointed out that the State Bank of India is established under the State Bank of India Act, 1955 and about 68% of the shares of this respondent are held by Govt. of India and the balance by the public including the institutions. That the land is going to be used for the public purposes by this respondent.

7. Respondent no. 5, i.e. the Indian Oil Corporation Ltd., has submitted in its reply that the Surat Municipal Corporation had executed a lease Deed on 26th November 1992 in its favour in respect of sub-plot Nos.P-3 and P-4 admeasuring 5424 sq.mtrs. in aggregate for consideration of Rs. 3,60,49,330/- paid by this respondent. The Surat Municipal Corporation and this respondent had further incurred stamp charges worth Rs. 50,51,150/- and also the registration charges.

It has been stated this respondent is a public sector Corporation and it has incurred huge expenses for the said land. It was also given out by this respondent that the construction work which was in progress on the land in question remained stopped for some time in view of the order passed by this Court on 30th December 1992, but the interim order was vacated on 15th February 1993 subject to the result of this petition and now, the construction work upto the plinth level has already been completed. The respondent no. 6, Bank of Baroda, has also filed an affidavit-in-reply dated 11th January 1995 on the same lines and it has been stated that this respondent has got zonal office, Regional Office, District Regional Office and Zonal Inspection Centre and 28 branches in Surat City. The Surat District controls 62 branches operating in different towns of Surat District. The details about the depositors whose deposits range over 421 crores have been given and it has been stated that about 16,450 customers have been given the credit facilities aggregating to a sum of Rs. 124 crores. It has also been stated that this respondent Bank of Baroda has already made a payment of Rs. 1,98,98,771/- towards the premium for the development rights as well as lease consideration and it has been put in possession of sub-plot No. P-6. It has been further stated that the respondent no. 6 would have paid the balance amount of Rs. 26,32,917/- as well, but for the writ petition filed by the petitioner and that the land is going to be utilised obviously for public purpose.

8. The learned Counsel has submitted that in the T.P.scheme under the Gujarat Town Planning and Urban Development Act, 1976, the land which was reserved for sub-centre could not be made use of for any other public purpose. According to her, once the reservation is made for a specific public purpose, such public purpose cannot be altered and the land which is reserved for one specific purpose cannot be diverted and put to use for another public purpose and that the Town Planning scheme could not be varied nor the same could be made use of for the residential purpose or for the purposes of the Banks or a body like the Indian Oil Corporation and whereas the Surat Municipal Corporation has failed to make use of the land of which the petitioner was deprived of, for the purpose for which it was taken by the Corporation, the land in question must be restored back to the petitioner. She has submitted that it is a clear case of unjust enrichment on the part of the Municipal Corporation at the cost of the petitioner's land and, therefore, the decision contained in the Resolution No. 86 dated 9th April 1992 passed by the Standing Committee of the respondent Municipal Corporation be quashed and set aside and that the Corporation be restrained from utilising the land of final plot No. M-4 for any purpose except for sub-centre. Similar prayer has also been made by adding para 15(bb) with regard to the Resolution No. 519 dated 18th June 1992 and the restoration of the land has been sought. She has placed strong reliance on the decisions of the Supreme Court in the case of Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, and in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, . Mr. Prashant Desai for the Surat Municipal

Corporation has argued that there is no question of violation of any of the provisions of the Gujarat Town Planning and Urban Development Act. He has submitted that the scheme was notified on 24th February 1984, the same came into force on 23rd April 1984 and in view of the provisions of sub-section (3) of Section 65 of the Act, the scheme has to be treated as if it is enacted through the Act and there is no question of challenge to this scheme because, the Resolution for the purpose of sub-centre includes the purposes for which the land has been given to the respondents nos.3 to 6 and there is no scope for any exception being taken to the allotment of the lands to the respondents nos.3 to 6. Mr. Prashant Desai while placing reliance on the case of *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, has submitted that in this case, the plot had been allotted to the Corporation for construction of a bus depot in the commercial zone and the Supreme Court has taken the view that the commercial accommodation in addition to the bus depot cannot be said to be outside the Act. In this case, the development plan for Bombay was sanctioned by the State Government on 8th August 1966 and the varying Andheri Town Planning Scheme was framed under the Maharashtra Regional Town Planning Act which came into force after the repeal of the Bombay Town Planning Act with effect from 7th January 1967 and the scheme was finally sanctioned on 11th July 1970 and under the development plan, final plot No. 14 was reserved for a bus depot of the Bombay Electric Supply and Transport Undertaking owned and run by the Bombay Municipal Corporation. Mr. S.S. Shah, appearing for the respondent no. 3, i.e. Bank of India, while defending the action of the Corporation has referred to the provisions of the Act in detail and has submitted that the purpose for which the land is to be used is attached to the land and not with any person or party. He has made reference to Sections 12, 40(3) and its clauses (e), (jj) and (m). He has also made reference to the provisions of Surat Urban Development Act and the Final Development Plan with General Development Control Regulations, as sanctioned by the Government u/s 17(1)(c) of the Gujarat Town Planning and Urban Development Act, 1976 published vide Notification dated 31st January 1976. He has contended that though the word "sub-centre" has not been defined under the Gujarat Town Planning and Urban Development Act, 1976 or the Rules and Regulations made thereunder, the "sub-centre" means and includes the various utilities and services which are required for the purpose of those for whose benefits the development plan is conceived, notified and acted upon and he has pointedly argued that the facility of banking is clearly included in the concept of "sub-centre" which has acquired a set meaning in the concept of Town Planning and Development and such "sub-centre" may even include shopping centre. It has been submitted that according to Section 40(3), a Town Planning scheme may provide for the use of the land for residential, commercial and industrial use and in sub-clause (e), public purposes of all kinds have been included. He has, therefore, submitted that, the land in fact, has not been put to use for any purpose contrary to the public purpose and the allotment of the land as well as the use of the same is in conformity with the matters provided u/s 40(3) of the

Act and the grievance raised by the petitioner is wholly misconceived, rather ill-conceived.

9. Mr. S.N. Shelat with Mr. Pranav Desai appearing for respondents nos.4 and 6, i.e. State Bank of India and Bank of Baroda respectively, has submitted that there is no change of purpose whatsoever and the use for which the land has been allotted to respondents nos.4 and 6 by the Surat Municipal Corporation does not involve any change of purpose merely because at the time of reservation the word used is "sub-centre" and in such cases, there is no question of restitution of the land to the petitioner merely because the petitioner thinks that the use of the land allotted to the respondent involved a change of purpose because the word used at the time of reservation was "sub-centre" and merely because the word, "sub-centre" has not been defined and the petitioner thinks that the use of the land for the purpose of Banking or the limited use of the land for the residential purpose or matters of prescribed purposes. Mr. Shelat has placed reliance on the following decisions : (1) JT 1996 (IX) 258 [Shri C.R. Patel and anr. v. State of Maharashtra and ors.], (2) Rudradhar R. Trivedi Vs. State of Maharashtra and another, , and (3) C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, .

10. Mr. G.N. Shah appearing for respondent no. 5-Indian Oil Corporation Ltd. has adopted the arguments made by the learned Counsel for all the respondents.

11. I have considered the submissions made on behalf of both the sides. Before I proceed to deal with the submissions as have been made by the learned Counsel on behalf of the petitioner on the one hand and by the learned Counsel for the respondents on the other, it would be useful to refer to the scheme of the Gujarat Town Planning and Urban Development Act, 1976 and certain other relevant provisions in this regard to which the reference is made herein. Section 12 provides for the contents of the draft development plan. Sub-section (1) of Section 12 provides that the draft development plan shall indicate the manner in which the use of the land in the area covered by it shall be requiring and also indicate the manner in which the development thereon shall be carried out. Sub-section (2) of Section 12 provides the matters to be provided for in the development plan. Sections 12(2)(b) (e) (f) and (k) are reproduced as under:

"40. Making and contents of a town planning scheme.- (1) Subject to the provision of this Act or any other law for the time being in force, the appropriate authority may make one or more town planning schemes for the development area or any part thereof, regard being had to the proposals in the final development plan, if any.

(3) A town planning scheme may make provision for any of the following matters namely:-

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts, dairies, transport facilities, public purposes of all kinds;

(jj) the allotment of land to the extent of ten per cent, or such percentage as near thereto as possible of the total area covered under the scheme, for the purpose of sale for residential, commercial or industrial use;

(m) such other matters not inconsistent with the objects of this Act as may be prescribed."

12. The word, "prescribed" has been defined in Section 2(xxi) which reads under:

"prescribed" means prescribed by rules made under this Act."

The word, "scheme" has been defined in Section 2(xxvi) which reads as under:

"scheme" means a town planning scheme prepared under this Act, and includes a plan or plans, together with the descriptive matter, if any, relating to such scheme."

Section 65 provides for the powers of the State Government to sanction or to refuse to sanction the scheme and effect of sanction and sub-section (3) thereof is reproduced hereunder:

"(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."

Section 17 provides for the State Government to sanction draft development plan. The words, "amenity" and "area development authority" have been defined in Section 2(ii) and 2(iv) and Section 13(1) provides that the area development authority has to publish the development plan in the official Gazette and in such other manner, as may be prescribed. The particulars to be published along with the draft development plan have been enumerated in Section 13(2). The Surat Urban Development Authority, being the concerned area development authority, in terms of Section 2(iv) has made the Regulations known as, "General Development Control Regulations, 1986 and the final development Plan has been published.

13. Now, the moot question which has to be adjudicated in the facts and circumstances of the case by this Court is as to whether the allotment of the land to the respondents nos. 3 to 6 by the Surat Municipal Corporation and the use thereof as is being put, as is disclosed, from the hearing of the parties, violates any provisions of the relevant law and as to whether it was competent for the Surat Municipal Corporation to allot the reserved land to any of these respondents for any purpose other than the public purpose of "sub-centre" and as to whether such use is not a use for public purpose and as to whether the petitioner is entitled to restitution of the land in question on the ground that the land has not been used by the Surat Municipal Corporation itself and it has allotted the same to the respondents nos. 3 to 6 for the purpose other than the purpose for which it was reserved.

14. The plain reading of Section 40(3) would go to show that in terms of clause

(e) of sub-section (3), the town planning scheme may provide for the allotment or reservation of land for public purposes of all kinds. Now, the very use of the words "public purposes of all kinds" would show that it cannot be confined to any particular purpose and "public purposes" may be more than one which may be provided in the scheme. In this view of the matter, merely because the word "sub-centre" was used cannot be conclusive for the purpose of confining the scope of "public purposes" because, "public purposes" can be of more than one kind and the legislature has taken care and has provided that the matters may be for "public purposes of all kinds". May be that the word "sub-centre" as such, has not been defined, but in the realm of the concept of the "Town Planning", there are certain words which have acquired a definite meaning and when it is said that the particular land is reserved for "sub-centre" in a development plan, it will be a centre to serve the various purposes which are essential for the public living in that area. Appendix.H to the General Development Control Regulations, 1986, provides for the zoning regulation. Table u/s 12(2)(a) of the Gujarat Town Planning and Urban Development Act, 1976 provides "residential" as one of the characteristic zones and in column no. 4 against it which provides the type of residential zone primarily includes, public assistance institutions (residential) and banks. In this very Table in column no. 5 even those types of developments have been mentioned which may be permissible, of course, with the special consent of C.E.A. and such types of development have been made to include the places of public assembly, places of public utility service building, Civic building, light home workshops, place of public entertainments, cottage industries, business buildings, service establishments, newspaper and printing presses, renovations and/or reconstruction of existing cinema houses. This Table which is available, which has been published, at page 106 of the General Development Control Regulations, published by the Surat Urban Development Authority in January 1986 as sanctioned by the Government u/s 17(1)(c) of the Gujarat Town Planning and Urban Development Act, 1976 also provides in column no. 6 thereof the types of developments which are not permissible, meaning thereby, that there is positive legal restraint or ban as to what types of developments are forbidden and such forbidden developments include general industries, light industries, obnoxious and hazardous industries, wholesale markets, Cinema Houses, etc. Thus, no ban has been provided against the use of the land in a development plan for the purposes of the office of the banks or the bodies like the Indian Oil Corporation Ltd. It is, therefore, obvious that the permissible types of developments and types of developments which are not permissible have been clearly provided for and the care has been taken while giving effect to the provisions of the Act that the development plans are prepared in accordance with the provisions of the Act and the Rules made thereunder. No ban or any forbidden item as such has been provided for against the offices of the banks or the Companies like Indian Oil Corporation and for the permissible and limited use of such land for residential area. Regulation No. 2.24 provides that the land use shall be deemed to include subsidiary land uses which are contingent upon it and Regulation No. 2.40 provides for the shopping centre, to mean a group of shops.

It is, therefore, clear that the ancillary and subsidiary uses which are contingent and essential for the effective use of the land for the purpose are permissible. Section 40(3)(jj) mentions not only the allotment of land, but also the sale of the land for residential, commercial or industrial use. It is, therefore, open for the Municipal Corporation to allot or sell the land for residential, commercial or industrial use. In the facts of the present case, the allotment or sale of the land to the banks is certainly an allotment for commercial purpose and the banking facility is also a necessary facility to be provided for. There is no doubt that the banks are commercial establishments and they are also industrial establishments under the relevant law and, therefore, if the land is allotted or sold out by the Municipal Corporation to the banks, it cannot be said that it is beyond the scope of the public purpose and such establishments if they use a part of the land or the residential complex is constructed vertically in such complexes, it cannot be said that they did not intend for public purpose besides the ground of ancillary or subsidiary use for the officers who may be working in such establishments. Therefore, the residential, commercial or industrial use is permissible under law. Similar is the case with the allotment or selling of the land in favour of the Indian Oil Corporation which is also a public Limited Company. The respondents nos.3 to 6 are all bodies either created by law or functioning under the law and they are functioning as agencies and instrumentalities of the State, whether it is Bank of India or Bank of Baroda or State Bank of India, for that purpose. All these banks are nationalised banks and State Bank of India is created under the State Bank of India Act. Similarly, the Indian Oil Corporation Ltd., is also a Corporation which is a public Limited Company and the land which is used for the purpose of these bodies is certainly a use for a public purpose and "sub-centre" even if it is not defined, such sub-centre would include the types of services which are rendered by such bodies which are essential to the general public and common man. The very fact that even the sale of the reserved land has been made permissible u/s 40(3)(jj) goes to show that it is not necessary that the Municipal Corporation should put the land to use by itself and it cannot let or sell the land to any other body for public purposes. The use of the word "sale" in Section 40(3)(jj) is a complete answer to the arguments raised by the learned Counsel for the petitioner that the Municipal Corporation has no right to part with the land to any other body and that it must confine the use of the land by itself or to put it to use by itself. The only condition is that in such matters the purpose should not be inconsistent with the objects of this Act as may be prescribed. It has also been pointed out that the word "prescribed" itself has been defined in Section 2(xxi) and that means, prescribed by the Rules made under this Act. The learned Counsel for the petitioner failed to point out any such Rule under which it could be said that the use of such reserved land by the Municipality for public purposes through any other body is not permissible. The word "scheme" as it has been defined in Section 2(xxvi) includes a plan or plans together with the descriptive matter. The description as has been given in the scheme is "sub-centre" and therefore, such sub-centre may provide the amenities which are necessary for the people living/working in that area. The word "amenity" as has been defined

in Section 2(ii) includes other utility services and conveniences. It cannot be said that the services rendered by a bank or a Company like the Indian Oil Corporation are not utility services and so far as the final development plan itself is concerned, the reference has already been made to the Table at page 106 of the General Development Control Regulations, 1986, which provides for types of developments for which zone is primarily intended and such types of developments include public assistance institutions (residential) as also the banks. In this view of the matter, there is no scope to hold that the services which are rendered by the bodies like the respondents nos. 3 to 6 are not for a public purpose and that the land which was reserved is not being used for a public purpose merely because, the "sub-centre" has not been defined or that these facilities cannot form part of such sub-centre. In such matters when the terms which are used in the common parlance like the Town Planning sub-centre, we have to go to the substance and not the form and the matter of substance is that the land is being utilised for public purpose and "sub-centre" means a centre where such amenities and facilities which are essential and which have become a part of the public life are provided. It is immaterial whether such facilities are provided by the Municipal Corporation itself or through other agencies or instrumentalities of the State or the public bodies. Moreover, I find considerable substance in the arguments which have been raised by Mr. S.S. Shah on behalf of the respondent no. 3 that, what is germane is the purpose which is attached with the use of the land. It is immaterial as to through what person/party/agency such purpose is served. Even if there is a private individual who, in the opinion of the State or the Corporation, seeks to provide a centre which may serve a great public purpose not inconsistent with the provisions of the Act or the Rules, such purposes may be served even through him and it cannot be said that the same is not permissible under the scheme of the Act or the Rules. It is also of great importance to note from the provisions of Section 40(3)(e) that it speaks of public purposes of all kinds. The term of "public purposes of all kinds" is a term of wide amplitude and it takes within its sweep the public purposes of various types and there is no scope in a judicial review to confine the broad based legislative intent expressed through the provisions of the Act and which is also otherwise manifest from the scheme of the Act. No particular provision of the Act can be considered or examined in isolation. The whole scheme of the Act is to be seen and it is to be given effect to for the purpose of giving the meaning and life to the laudable object for which the Act has been created and for which the development plans are prepared under the statutory schemes which become part of the Act under the provisions of the Act itself and there is a very limited scope of judicial review and this Court cannot sit in judgment over the decisions which are taken to give effect to such schemes which become the part of the Act. The only limited scope is to see that the purpose which is sought to be served is not inconsistent with the provisions of the Act or the Rules. The learned Counsel for the petitioner has failed to show as to what is inconsistent in the allotment or the selling out of the reserved land to any of the bodies, i.e. respondents nos. 3 to 6. Dr.G.N.Khajuria's case (supra) on which the reliance has been placed by the

learned Counsel is of no avail to the petitioner. It was a case under the Delhi Development Act and the argument was raised that the Development Authority was under an obligation to specify in the zonal development plan, locations and existence of land uses, inter alia, for parks and schools. The allotment of the land to school which was a part of the park was found to be liable to be cancelled by the Supreme Court. Now, so far as the allotment of the land for park is concerned, it is well known that in thickly populated cities like Delhi, the parks in the respective areas are of utmost importance to the public health and, therefore, if any part of the land which is required to be made use of for a park is allotted for the purpose of a nursery school as was done in that case, it would be violating the scheme as such and according to Section 17 of the Delhi Development Act, the master plan and zonal development plans made, it becomes clear that the Delhi Development Authority was under an obligation to prepare a master plan which shall define the various zones into which Delhi may be divided for the purposes of development. Section 8 enjoins that a zonal development plan may contain a site plan and use land for the development of the zone and show the approximate locations and existence of land uses proposed in the zone inter alia for such public works and utilities as schools, public and private spaces; the zonal development plan to be prepared by the authority was to show the allotment or reservation of land for open spaces, gardens etc. The Supreme Court also took note of Rule 4 of Delhi Development (Master plan and Zonal Development Plan) Rules, 1959 and the Supreme Court found that in the zonal development plan visualised by Section 8 of the Act, land used for nursery school could not be indicated, as a distinction is permissible to be made between a high school and primary school on one hand and nursery school on the other. But in layout for residential colony had too, in fact, a space reserved, not only for nursery school but also for park. It was also noticed that at the site at which the school was allowed to be opened, there was a park and in the original lay out, there was no provision for nursery school in this park in question. It was in these circumstances that the Supreme Court found that the land which was allotted to respondent no. 2 was a part of park and the same was not permissible and therefore, the allotment for nursery school was cancelled. Another case of Bangalore Medical Trust (supra) on which reliance has been placed by the learned Counsel for the petitioner, was a case in which, place for public park was converted for the use of private nursing home. It is noted in paragraph 22 of this judgment that the original scheme duly sanctioned under the Act included a public park and the land in question had been reserved exclusively for that purpose. The Supreme Court found that the private nursing home could neither be considered to be an amenity nor it could be considered improvement or necessity like a public park. The exercise of the power of alteration of the scheme was, therefore, held to be contrary to the purpose for which it was conferred under the statute. As has been mentioned in end of paragraph 46 and in paragraph 48 of this judgment, the Supreme Court has dealt with the question of discretion in converting a site reserved for amenity, a civil amenity and has observed that discretion is an effective tool in

administration, but wrong notions about its results leads to ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or Rules or Regulations are framed for exercise of discretion, then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the authorities cannot act whimsically or arbitrarily. It should be guided by reasonableness and firmness. The legislature never intends its authorities to abuse the law or use it unfairly. On this basis, the authority was to consider the question of conversion of public park into a private nursing home in the light of the object with which the power of alteration has been conferred and the Supreme Court found that neither the authority nor the State Government undertook any such exercise and the power of conversion or alteration in the scheme was taken for granted. Ultimately, it was held that in any case, a private nursing home could not be considered to be an improvement in the scheme and, therefore, the power of alteration u/s 19(4) could not be exercised for the purpose of converting the use of the land for a private nursing home instead of the park. This is again a case which has been decided on its own facts and it nowhere lays down that when a public purpose is mentioned in a scheme, the authorities while giving effect to such scheme, has to follow the use of that word literally or that when a word like "sub-centre" is used, such sub-centre cannot include such facilities or amenities which may be provided and which are not at all inconsistent with the provisions of the Act or the Rules. This decision also, therefore, is of no help to the petitioner. It is, therefore, clearly found that the scheme had become a part of the Act under sub-section (3) of Section 65 as was argued by Mr. Prashant Desai on behalf of the Surat Municipality and it is not a case in which it can be said that the land has been put to use for any purpose other than the public purpose merely because of the use of the word "sub-centre" and the provisions of the Act and Regulations clearly indicate that in the respective zones, the essential amendments can be provided for and the use of the land for public purpose may include the use for residential purpose as also for commercial and industrial purposes and what is relevant is the actual purpose which is attached with the use of the land and it has no concern with the nature of the party which is going to use the said land for such public purpose. Once it is held that there is no violation of the Act or the Rules and Regulations and once it is held that the land is being used for a public purpose and it could be used for public purposes of all kinds, the arguments of the learned Counsel for the petitioner that the land could be put to use by the Municipal Corporation itself only stand negated and in the facts of this case, there is no question of restoration of the land in question to the petitioner. In the case of C.R.Patil and anr. (supra), which was relied upon by Mr. S.N. Shelat appearing on behalf of the respondents nos. 4 and 6, it has been categorically held that even if the land remains unutilised, the restitution cannot be claimed and any land not utilised for public purposes is not intended to be

restituted to the erstwhile owner to whom adequate compensation had already been paid according to the market value as on the date of the Notification. In the instant case, the land has not at all remained unutilised, on the contrary, its utilisation has been intercepted on account of these proceedings at the instance of the petitioner. It is not the grievance of the petitioner that the land has remained unutilised but that it should have been utilised by the Municipal Corporation itself and secondly that it could not be utilised for any purpose other than "sub-centre". It is the notion of the petitioner that the use of the land for the purpose of banks or Companies like the Indian Oil Corporation Ltd., is not a part of the sub-centre. That notion has no legal basis and no material has been placed on record to show that sub-centre does not include the amenities like banking or that the services which are rendered by the banks or the Companies like the Indian Oil Corporation or that it is beyond the scope of the terms, "public purposes of all kinds" and that such facilities cannot form part of the sub-centre. It appears that the petitioner has failed to comprehend the correct import of the word "sub-centre" and has built up a case merely by saying that the use of the land by the banks or Companies like the Indian Oil Corporation so as to render the services to the public at large by way of banking and at the instance of the Companies like the Indian Oil Corporation Ltd. are not the services which could be provided for in a sub-centre and it has already been held in the earlier part of this order that as and when the land is used for a public purpose and for that purpose an establishment is created, use of this land for ancillary or subsidiary purpose is permissible and, therefore, if the banks or the Companies like the Indian Oil Corporation Ltd. are using part of the land for residential purpose, the same also cannot be said to be beyond the purposes permissible under the Act and the Rules made thereunder and it is not at all made out that there is anything inconsistent with the provisions of the Act. In this view of the matter, there is no question of restitution of the land to the petitioner and it also cannot be said that the Resolutions which are passed by the Municipal Corporation and its Standing Committee suffer from any infirmity of law. Rudradhan R.Trivedi's case (supra) was a case under the Land Acquisition Act and an argument was raised that the land was acquired for a public purpose and the transfer of a part of the land to NITIE by a Government Resolution was a fraud on public purpose and, therefore, the acquisition was not valid in law. The contention was negated by the Supreme Court by saying that it was settled that the land acquired for a public purpose can be transferred to any public purpose and the Paramount consideration will be the service of public purpose. This proposition of law laid down by the Supreme Court squarely covers the view which has been taken hereinabove that the land in question can be put to use for the public purpose to extend the facilities and the mere use of the word "sub-centre" was not enough to confine the scope of using it to such purposes literally and not for the public purpose which was inherently included in providing the sub-centre. Yet another case on which reliance was placed by Mr. S.N. Shelat is the case of C. Padma (supra). This was also a case under the Land Acquisition Act and it was held by the Supreme Court that acquired land having vested in the State and

compensation paid to the claimant, the claimants are not entitled to restitution of possession on the ground that either original public purpose had been ceased to be in operation or that the land could not be used for any other purpose. The learned Counsel for the petitioner has tried to distinguish all these cases cited by Mr. Shelat by saying that they are the cases under the Land Acquisition Act, whereas the present case is under the Town Planning Act. In the opinion of this Court, this is hardly a distinction because, the principle for the purpose of restitution of the land which is reserved for a public purpose will be the same whether the land was acquired under the Land Acquisition Act or for the purpose of the development plan under the Town Planning Act. The fact remains that in both the cases, the original owner is paid the due compensation in respect of the land of which he is deprived of and, thereafter, he is not concerned, whether the land is utilised or unutilised, whether it is used for the original purpose or for other public purpose and even when the original public purpose has ceased to be in operation or that the land could not be used for any other purpose. There is no force in the argument of the learned Counsel for the petitioner which was raised at the fag end of the arguments with reference to Section 62 of the Bombay Provincial Municipal Corporation Act by saying that this Section does not include banking facilities and it only speaks of utility services. Besides the fact that the banking facilities could be provided, the very use of the utility services takes within its sweep the banking services and also the services which are rendered by Companies like the Indian Oil Corporation and, therefore, there is no scope to say that the respondents nos. 3 to 6 do not render any utility services.

15. The net result of the adjudication as aforesaid is that all the contentions raised on behalf of the petitioner fail and consequently this Special Civil Application also fails and the same is hereby dismissed. The Rule is hereby discharged. The interim order automatically comes to an end. No order as to costs.