

(2002) 12 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No's. 5468 to 5478 of 1995

Vinodbhai Vallabhbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-12-2002

Acts Referred:

Arbitration Act, 1940 — Section 34

Gujarat Town Planning and Urban Development Act, 1976 — Section 10, 11, 12, 13, 14

Land Acquisition Act, 1894 — Section 20(2), 22

Parent Act — Section 12, 40, 41, 43, 82

Citation : (2002) 12 GUJ CK 0015

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : A.J. Patel, for the Appellant; A.D. Oza, G.P. for Respondent No. 1, 3, Manish Dugli, AGP for Respondent No. 1 and 3 and M.D. Pandya, for the Respondent

Judgement

H.K. Rathod, J.—Heard the learned advocate Mr. A.J. Patel on behalf of all the petitioners, learned GP Mr. A.D. Oza and learned AGP Mr. Manish Dugli appearing on behalf of respondents No.1 and 3, learned advocate Mr. M.D. Pandya appearing on behalf of respondent No.2. In this group of petitions, the challenge is made by the petitioners according to the prayer made in paragraph 6-A to direct the concerned respondents to issue a notification dereserving the lands of the petitioners under the Provisions of the Act and permitting them to develop the said lands in accordance with law, forthwith. On behalf of the respondent No.1 affidavit-in-reply has been filed. The brief facts of all the petitions are as under :-

2. The Vadodara Urban Development Authority had prepared and submitted his first development plan to the Government for sanction which was sanctioned vide Notification dtd.22.12.1983 which came into force with effect from 25.01.1984. In respect to the reservation made by the respondent No.2, the date of reservation is 25.01.1984. The statutory period of 10 years u/s 20(2) of the

Gujarat Town Planning Act has expired on 24.01.1994. Thereafter, the legal notice u/s 20(2) of the Town Planning Act has been served to the respondents on 16.10.1994 and thereafter, the period of six months, the lands in question is not acquired by the authority by agreement within a period of 10 years from the date of coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 are not commenced within such period. Therefore, the legal notice has been served by the petitioners to the respondents. Thereafter, the land in question has been put in rereservation while exercising the power u/s 21 of the Gujarat Town Planning & Urban Development Act, 1976 on 22.12.1994 which is under challenge. Thereafter, VUDA had resolved to revise its development plan in its meeting No.119, resolution No.965 dated 30.12.1992. Accordingly, VUDA published its draft development plan in its meeting No.126, resolution No.1034 dtd.28.10.1993 for inviting suggestions and objections as per provisions of Sec.13 of the Act. The same resolution was published in extraordinary Govt. Gazette part-II dtd.11.11.1993 on page No.84,85 and in local news papers namely "GUJARAT SAMACHAR" dated 11.11.1993 on page No.19, "LOKSATTA" dated 11.11.1993 on page No.13 and "SANDESH" dated 11.11.1993 on page No.19. After receiving suggestions and objections VUDA proposed some changes in development plan proposals in its meeting, resolution No.115 dated 14.07.1994, 18.07.1994, 21.07.1994, 26.07.1994, 10.08.1994 and 14.10.1994. This resolution was published in Govt. Gazette dtd.20.10.1994 and in local news papers "GUJARAT SAMACHAR" dated 20.10.1994 on page No.10, "LOKSATTA" dated 20.10.1994 on page No.11 and in "SANDESH" dated 20.10.1994 on page No.3. Finally VUDA had submitted its revised development plan under Sec.16 of the Act on 22.12.1994.

3. The real controversy between the petitioners and respondents is that u/s 20(2) of Gujarat Town Planning and Urban Development Act which provide that if the land referred to any sub-section is not acquired by an agreement within a period of 10 years from the date of coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice, the land is not acquired or no steps are commenced, nor it is acquired, the designation of the land as aforesaid shall deem to have lapsed.

4. Relying upon the said provisions, the learned advocate Mr. A.J. Patel has submitted that looking to the undisputed facts between the parties, the date of reservation is 25.01.1984 and 10 years period has been expired on 24.01.1994 and upto this 10 years period, the land in question was not acquired by the authority and ultimately, the petitioners have served the legal notice on 16.10.1994/17.10.1994 to the respondents authority and thereafter, period of six months is also passed. But, eventhough, no steps have been taken by the authority to acquire the land in question and, therefore, petitioners are entitled for the relief of dereservation of land in question because u/s 20(2) of the Town

Planning Act, that process itself becomes lapse that is being a legal fiction for which the petitioners are entitled the benefit.

5. Learned advocate Mr. A.J. Patel has submitted that there is no dispute from the other side in respect to the rereservation after completion of 10 years period and land in question was not acquired by the authority and legal notice is also received by the authaority and also the land in question is rereserved by the respondents authority. Therefore, these are the undisputed facts between the parties. He submitted that recently the Division Bench of this Court has taken the view in the case of PALITANA SUGAR MILL PVT. LTD. V/s. STATE OF GUJARAT reported in 2001 (2) G.L.H. 294. The learned advocate Mr. A.J. Patel has relied upon the observations made by the Division Bench of this Court in paragraphs 37, 64, 96, 97 which are quoted as under :-

"37. On the interpretation of Section 20(2) of the Act on behalf of the State, it is contended that expression "no steps are commenced for its acquisition after service of six months notice" has to be construed giving it a wider meaning. Steps for commencement of acquisition proceedings are not the same thing sa some commencement of acquisition proceedings. Steps for commencement of acquisition proceedings is a step little anterior to the actual commencement of acquisition proceedings. It is submitted that the Legislature intends steps to commence the acquisition proceedings within six months period and not actual commencement of acquisition. Reliance is placed on decision in the case of M/s. Sadhu Singh Ghuman Vs. Food Corporation of India and others, . Based on the interpretation of Section 34 of the Arbitration Act in which the expression "steps in the proceedings" have been construed to mean "a step in the aid of the progress of the suit", it is argued that if steps in aid of commencement of acquisition proceedings are consciously taken, the requirement of "taking steps" within the meaning of sub-section (2) of Section 20 would be deemed to have been fulfilled."

"64. Our conclusion, therefore, on the interpretation of Section 20 and 21 of the Act is that mere issuance of a draft revised final development plan u/s 21 of the Act by the Authority, shall not take away the right already accrued and vested in the land owner on expiry of 10 years period from the existing Final development plan and failure of the authority to acquire the land in six months notice period. In the case of all the land-owners before us provisions of Section 20 have been availed and would therefore operate to their benefit into resulting of the dereservation of the land from designated purposes specified in Section 12 of the Act because of the failure of the Authorities in acquiring the land."

"96. On behalf of the land-owners since we have tried to force a reasonable construction on the provisions of Sections 20 and 21 to make their working practicable and not unjust to either the citizens or the State, we have not found the provisions of Section 21 to be irrational and unconstitutional. We find great force in the contention advanced on behalf of the land-owners that if the provisions of Section 21 are interpreted in a manner as is sought to be done on

behalf of the State so as to empower the State Government that every revision of the final draft development plan to keep the same land under reservation for decade or in perpetuity, then the provision would render nugatory the right given to a citizen for obtaining dereservation of his land on expiry of ten years and six months" notice period u/s 20 of the Town Planning Act. The result of the interpretation sought to be placed by the State u/s 21 would be to perpetuate reservation with every revision of draft development plan once or more in 10 years, and a citizen irrespective of the provisions of Section 20 of the Act, would be deprived of optimum use of his land. It is true that Constitution no longer recognises right to property as a fundamental right under Article 19 of the Constitution but such indefinite or serious restraint on use of land on the property by the owner on such provision permitting perpetual reservation would suffer from the vice of being arbitrary and irrational under Article 14 of the Constitution."

"97. We have already held above that even if in the revised development plan u/s 21 the Government chooses to continue to reserve the same land in the earlier final development plan, then also in that case, the consequences which have ensued on expiry of ten years and six months notice period by the land owners u/s 20(2) of the Town Planning Act would not get nullified. For conjoint operation of Sections 20 and 21, the latter Section has to be interpreted in a manner so as to make applicable to it provisions of s 9 to 20, but subject to provisions contained in Section 20(2). If Section 21 is not so interpreted, Section 20(2) would be rendered nugatory and that cannot be held to be a legislative intent in making applicable the provisions of Section 20 to the process of fresh revision of development plan u/s 21. The provisions of Section 20(2) really express intention of the Legislature not to allow reservation of land indefinitely and in perpetuity to the serious prejudice of the land-owner, particularly, in cases where acquisition of reserved land is not feasible for want of funds or other reasons by the authorities for whom the reservation is made."

6. The learned advocate Mr.A.J. Patel has also relied upon another decision of Division Bench of this Court in case of Ahmedabad Green Belt Khedut Mandal Vs. State of Gujarat, in paragraphs 3, 4, 32 which are quoted as under :-

"3. For appreciating and weighing the worth of grounds urged for challenging the impugned legislation, a brief survey of the provisions of the Parent Act and the Amendment Act would be necessary. The broad features of the Parent Act are : Chapter II contains the provisions for creation of larger area of development defined as "development area" and for constitution of "Area Development Authorities" for the purpose of development. The main functions of the Area Development Authority under Sec.7 are amongst others to undertake preparation of development plans for the "Development Area" and for preparation and execution of "Town Planning Schemes". Section 12 of the Parent Act describe various proposals and reservations to be made in the development plan to be approved by the State Government. Sub-section (2) of Sec. 20 enables

reservation of lands for residential, industrial, commercial, agricultural and recreational purposes, land to be reserved for community facilities and services and for other public purposes. Section 20 of the Parent Act which is very material for the purposes of this group of petitions is a provision enabling acquisition of land by the Development Authority for any of the public purposes specifically mentioned in certain clauses of sub-section (2) of Sec.12. The land designated and reserved for public purposes is required to be acquired under an agreement with the land owners or under the provisions of Land Acquisition Act. Sub-section (2) of Sec. 20 provides that lands for development can be acquired within 10 years from coming into force of final development plan, or within six months of notice served by the land owner or person interested. Non-acquisition within the stipulated time has the legal effect of dereservation of the land designated for a specific purpose. Section 20 being relevant for considering the merits of the grounds urged in this petition, is required to be reproduced in full :

"Section 20. Acquisition of land : (1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-sec. (2) of Sec.12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894 (I of 1894). (2) If the land referred to in sub-sec. (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894 (I) of 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed."

"4. At this stage, it may be necessary to mention that the scope and meaning of Sec. 20 of the Act came for consideration before this Court before Division Bench (D.M. Dharmadhikari, C.J. and J.M. Panchal, J.) of which one of us, namely, D.M. Dharmadhikari, C.J. was a party in a group of petitions decided with Special Civil Application No.3537 of 1995 Palitana Sugar Mills Private Ltd. V/s. State of Gujarat. The judgment in that case is being delivered today along with this group of petitions. The Division Bench of this Court in the group petitions of Palitana Sugar Mills Private Limited interpreted the provisions of Sec. 20 of the Act in the light of the scheme and other provisions of the Act and came to the conclusion against the contention of the State that by mere issuance of a revised development plan under Sec. 21 of the Act, the legal effect of dereservation of designated land for the public purposes under the development plan on failure of acquisition within 10 years and despite service of six months notice, is not nullified."

"32. The opening part and the latter part of sub-sec.(1) of Sec. 40 make it evident that a Town Planning Scheme to be prepared under sub-sec. (2) and (3)

of Sec. 40 has to be with due regard to the final development plan and the proposals made therein. Where the land reserved or designated in the "final development plan" is dereserved due to non-acquisition of the same within the specified period such land cannot again be reserved in the Town Planning Scheme. Any other interpretation of provisions of Sec. 40 would render Sec. 20 totally ineffective and otiose. Under Sec. 20, the land reserved or designated has to be acquired either under agreement or under Land Acquisition Act on payment of compensation payable under the Land Acquisition Act. The land which was reserved in the final development plan, but within the outer limit specified in Sec. 20, could not be acquired for want of financial capacity of the Authorities cannot again be reserved indirectly and acquired under a Town Planning Scheme framed under Sec. 40 by payment of compensation only on the market value obtaining on the date of declaration of intention of preparation of a scheme under Secs. 41 and 43 read with Sec. 82 of the Parent Act. The land which could not be acquired under Sec. 40 for want of capacity to pay compensation under Land Acquisition Act, cannot be allowed to be acquired indirectly on payment of less amount of compensation based on market value of the land on the date of declaration of intention to prepare scheme under Sec. 82 read with Secs. 41 and 43. That such was not the intention of the law is apparent from the provisions of sub-sec. (1) of Sec. 40 quoted above. Any town planning scheme prepared under Chapter V, permitting allotment and acquisition of land has to be consistent with a "final development plan" prepared under Chapter II of the Parent Act. Any other interpretation would result in conflict between Sec. 20 concerning preparation of "final development plan" and Sec. 40 "Town Planning Scheme".

7. The learned advocate Mr. A.J. Patel has also submitted that recently the Apex Court has confirmed the decision of Division Bench of this Court in case of BHAVNAGAR UNIVERSITY V/s. PALITANA SUGAR MILLS PVT. LTD. & ORS. reported in 2002 (9) SCALE 102. The relevant observations made by the Apex Court in paragraphs 27, 37, 38, 39, 40 and 61 are quoted as under:-

"27. An owner of a property, subject to reasonable restrictions which may be imposed by the Legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under statute would not be presumed."

"37. The question, however, is as to whether only because the provision of Section 20 has been referred to therein; would it mean that thereby the Legislature contemplated that the time of ten years specified by the Legislature for the purpose of acquisition of the land would get automatically extended? The answer to the said question must be rendered in the negative. Following the principle of interpretation that all words must be given its full effect, we must also give full effect to the words "so far as may be" applied to such revision."

"38. The said words indicate the intention of the Legislature to the effect that by providing revision of final development plan from time to time and at least once

in ten years, only the procedure or preparation thereof as provided therein, is required to be followed. Such procedural requirements must be followed so far as it is reasonably possible. Section 21 of the Act, in our opinion, does not and cannot mean that the substantial right conferred upon the owner of the land or the person interested therein shall be taken away. It is not and cannot be the intention of the Legislature that what is given by one hand should be taken away by the other."

"39. Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because of draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a land-owner u/s 22 of getting the land defreezed. In the event the submission of the learned Solicitor General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant."

"40. Sub-section (1) of Section 20, as noticed hereinbefore, provides for an enabling provision in terms whereof the State become entitled to acquire the land either by agreement or taking recourse to the provisions of the Land Acquisition Act. If by reason of a revised plan, any other area is sought to be brought within the purview of the development plan, evidently in relation thereto the State will be entitled to exercise its jurisdiction under sub-section (1) of Section 20 but it will bear repetition to state that the same would not confer any other or further power upon the State to get the duration of designation of land, which has been lapsed, extended. What is contemplated u/s 21 is to meet the changed situation and contingencies which might not have been contemplated while preparing the first final development plan. The power of the State enumerated under sub-section (1) of Section 20 does not become ipso facto applicable in the event of issuance of a revised plan as the said provision has been specifically mentioned therein so that the State may use the same power in a changed situation."

"61. For the aforementioned reasons, we are in agreement with the findings of the High Court."

8. The learned advocate Mr. A.J. Patel has submitted that once the judgment of the Division Bench which has been confirmed by the Apex Court and it is held that the said words indicate the intention of the Legislature to the effect that by providing revision of final development plan from time to time and at least once in 10 years, only the procedure or preparation thereof as provided therein, is required to be followed. Such procedural requirements must be followed so far as it is reasonably possible. Section 21 of the Act, in my opinion, does not and cannot mean that the substantial right conferred upon the owner of the land or the person interested therein shall be taken away. It is not and cannot be the intention of the Legislature that what is given by one hand should be taken away by the other hand. Therefore, the learned advocate Mr. A.J. Patel has submitted that the controversy in the present petition is fully examined by the Division

Bench of this Court as well as confirmed by the Apex Court and in view of the observations made by the Apex Court and looking to the undisputed facts between the parties, now the rereservation which has been made by the authority is required to be set aside.

9. Learned GP Mr. A.D. Oza and learned AGP Mr. Manish Dugli appearing on behalf of the respondents No.1,3 and learned advocate Mr. M.D. Pandya appearing on behalf of respondent No.2 has submitted that the law which has been laid down by the Apex Court wherein the controversy which has been raised in the present petition is resolved by the decision of the Apex Court. Therefore, they submitted that the facts which are not much disputed between the parties. Therefore, the law is required to be applied as laid down by the Apex Court.

10. I have considered the submissions made by all the learned advocates and considering the fact that a rereservation in respect to the land in question of each petition by order dtd. 22.12.1994 while exercising the power u/s 21 of the Gujarat Town Planning Act is required to be quashed and set aside.

11. Therefore, in the result, all the Special Civil Applications nos.5468/95, 5469/95, 5470/95, 5471/95, 5472/95, 5473/95, 5474/95, 5475/95, 5476/95, 5477/95, 5478/95 filed on behalf of the land owners - present petitioners are hereby allowed. It is held that the lands reserved by the respondents authority, having not been acquired within 10 years from the date of coming into force of the existing final development plan or within six months of the notice period, shall stand released in favour of the petitioners for development by them in accordance with law. The rereservation of the lands in question by order dtd.22.12.1994 is declared to have been lapsed with all consequential effects under the Town Planning Act, 1976.

12. Rule is made absolute to the aforesaid extent.