



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 517 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 3607 of 2014
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 517 of 2024

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SHARDABEN MANGALBHAI THAKOR & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MUKESH A PATEL(636) for the Appellant(s) No. 1,2,3

for the Respondent(s) No. 3,4,5

MS HETAL PATEL AGP for the Respondent(s) No. 1

MR DEEP D VYAS(3869) for the Respondent(s) No. 2

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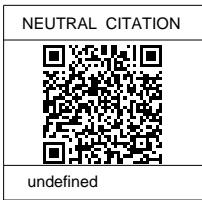
CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
 and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 06/05/2024

ORAL ORDER

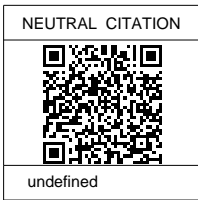
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. The instant appeal is directed against the judgment and order dated 27.03.2024 passed by the learned Single Judge in dismissing the writ petition seeking to challenge the creation of Town Planning road in T.P. Scheme No. 103 over a portion of Survey No.276 / 2 (Final Plot No. 74). It may be noted that the draft T.P. Scheme was finalized on 11.12.2003 and no objection was submitted by the petitioners at that stage. The contention in the writ petition is that the lands of the petitioners covering Plot Nos. 5, 6, 7 of Survey No. 276 / 2 and village Nikol was included in the draft T.P. Scheme No. 103 – Nikol and has been taken away for the alleged purpose under



Section 40 (3) of the Gujarat Town Planning and Urban Development Act, 1976 (for short as the Act 1976), applying extension of road towards the land of the petitioners, on account of which, the residential premises and accommodations on the spot are adversely affected.

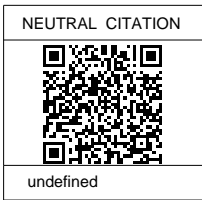
2. It is further stated that no deduction has been made from the opposite side of Survey No. 276 / 2, over which certain unauthorized and illegal constructions are existing. Further assertion in the writ petition is that the land bearing Survey No. 276 was co-owned by the grand father of the petitioners and the said lands was divided in four parts amongst the co-owners in the year 1976 executing the deed of division. By virtue thereof, the land admeasuring Survey No. 23 Gunthas 12783 sq.yards had fallen in the share of the father of the petitioners, which was later inherited by the petitioners. The petitioners had constructed three houses over some portion of the respective lands. It is submitted that the total area of the respective plots is 1987.72 sq.ft. wherein, in an area of 774.02 sq. ft., there exist residential house. Out of the aforesaid total area, an area of 1213.7 sq. ft. is sought to be taken away under the T.P. Scheme, which comes to more than 61 % of the area of each respective plots, and because of such huge deduction, no open space remains for the residential structures existing on the spot. The family members of the petitioner are residing in their respective houses over Plot Nos. 5, 6 and 7 having individual electricity connection, house number and are paying taxes individually.
3. It is, thus, contended that because of the exorbitant deductions of the land from Survey No. 276 / 2 including from Plot Nos. 5, 6 and 7, the petitioners have been discriminated from other



similarly situated tenure holders. The further contention in the writ petition is that the notices had also been issued to the occupiers / owners of Survey No 276 / 1, which shows that the initial proposal was to use the land in Survey No. 276 / 1 for construction of the road under Section 40 (3) under the draft T.P. Scheme, but later no deduction has been made from the land in Survey No. 276 / 1, wherein illegal and unauthorized constructions have been raised.

4. The submission of the learned counsel appearing for the petitioners, thus, is that the petitioners have been discriminated as against the owner of Survey No. 276 / 1, on account of the illegal exorbitant deduction from Survey No. 276 / 2, the land in the ownership of the petitioner.
5. Noticing all these contentions of the petitioners, placed by the learned counsel for the petitioners on their behalf, we may record the findings returned by the learned Single Judge from the order impugned. It is noted therein that the first writ petition filed by the petitioners at the stage of Section 41 of the Act 1976 upon issuance of notice, was disposed of vide judgment and order dated 26.12.2013 on the statement of the learned counsel for the Respondent – Corporation that opportunity of hearing will be provided to the petitioners. It was, further, directed that till decision was taken, no action shall be taken against the petitioners. The Representation dated 03.01.2014 was filed pursuant thereto, the petitioners were granted opportunity of hearing. The Competent Authority vide Order dated 21.02.2014 has held that:

“at present, most of the possessors of the properties falling under deductions have vacated the areas under deductions and the work



of widening road is under progress. As widening of the road in questioned is necessary in the public interest, i.e. resolving the problem of traffic congestion, it is resolved that the notices given by the Department be complied with."

The said Order was subject matter of challenge in one of the writ petition, out of which the instant appeal has arisen. The plea of the learned counsel for the petitioners are about the adoption of pick and choose approach, mala fide action of the respondent has been considered in detail and it was noted that:

"12.The following emerge for the adjudication of dispute in question:-

12.1(a) On 5.12.2001, intention was declared to make T.P. Scheme No. 103 (Nicol) by Ahmedabad Urban Authority (AUDA).

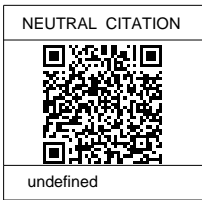
(b) On 18.4.2002, upon carrying out the requisite procedure under the Act, the owners meeting was held as per Section 42 read with Rule 17 of the Act, no objections were filed by the stake holders at the stage of making and framing of T. P. Scheme.

(c) On 28.11.2002, after publishing the Scheme under Section 42(2) of the Act, the scheme was prepared by the appropriate authority and submitted to the State Government under Section 48(1) of the Act.

(d). On 11.12.2003, the State Government sanctioned the draft T. P. Scheme No.103 (Nicol) under Section 48(2) of the Act and issued notification on 11.12.2003.

(e) On 16.8.2013, notice came to be issued to the writ- applicants herein and all the stake holders under Section 68 read with Rule 33 of the Act."

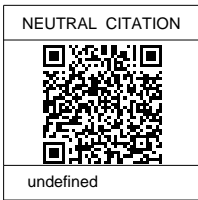
6. It was further noted by the learned Single Judge that the challenge to the Notice dated 16.08.2013 was brought to an end with



the passing of the Order dated 03.01.2014 as noted hereinbefore. From the extract of the order passed by the Competent Authority dated 21.02.2014 after grant of opportunity of hearing of the petitioner, it was further noted that the draft T.P. Scheme No. 103 (Nikol) had been finalized by the State Government vide Resolution dated 11.12.2003. As per the said Scheme, some of the lands of original Block No. 74 were to be included in the Town Planning road and the notice under Section 68 of the Act 1976 and rule 33 of the Rules made therein, was served upon the petitioners, subject to the provisions of Section 48A of the Act 1976. Pursuant thereto, the petitioners filed objection, they were granted opportunity of hearing and after considering their representations, it was explained as to how deductions were made. It is mentioned in the Order dated 21.02.2014 passed by the Competent Authority that the department has completed the entire process and considered the representation made by the petitioners about making certain changes and changing alignments of roads, which is not acceptable at that stage.

7. As noted hereinbefore, the aforesaid order of the Competent Authority records that most of the possessors of the properties falling under deduction had vacated their areas under deductions and working of widening of road was under progress. It records that widening of road in question is necessary in public interest in order to resolve the problem of traffic congestion.

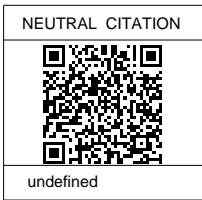
8. Noticing the said findings given by the competent authority, it was further noted by the learned Single Judge and it is an admitted fact of the matter that pending the writ petition, the Respondent – State had sanctioned preliminary scheme under Section 65 of the Act 1976 and the Notification dated 18.11.2017 had been issued,



accordingly. The final T.P. Scheme came to be sanctioned vide Notification 13.02.2020. Both the aforesaid stages were subjected to challenge by way of amendment of the writ petition. It was, thus, noted that the present is a case where due opportunity of hearing has been granted to the petitioners. The record indicated that the Respondent Authority had followed due procedure prescribed under the Town Planning Scheme. The representation made by the petitioners for making changes by changing the alignment of roads was not acceptable at the stage after preparation of draft scheme finalized on 11.12.2003.

9. It was noted that while implementing the Town Planning Scheme, it is possible that the same may cause some private losses, however, in the interest of public welfare, implementation of Town Planning Scheme is equally important. Taking note of the said facts and the intent of Town Planning Scheme, which came to be sanctioned as early as in the year 2003, it was noted that any other development after the notification of draft scheme would have no relevance.

10. We may record that the learned counsel for the petitioners could not dispute the correctness of any of the abovenoted findings returned by the learned Single Judge. Only assertion made during the course of argument was that the petitioners were discriminated and construction of road by taking a major portion of Plot No. 276 / 2, belonging to the petitioners is a mala fide action taken in colourable exercise of power. The illegal constructions existing over the Plot No. 276 / 1, on the opposite side of Plot No. 276 / 2 and another side of the proposed road, have been allowed to remain on the spot and the petitioners have been seriously prejudiced by the action of the



Respondent – Authority. By placing a T. P. Map, of Town Planning Scheme No. 103 (Nikol), it is vehemently argued by the learned counsel for the petitioner that the alignment of the proposed road has been changed just to deprive the petitioner of his valuable property, though initially, it was conceived as a straight road.

11. All these submissions of the learned counsel for the original petitioners / appellant herein do not convince us for the simple reason that after finalization of the Town Planning Scheme with the final scheme published on 13.02.2020, though during the pendency of the writ petition, no inquiry could be conducted by the High Court within the scope of judicial review. For any grievance of the petitioners against the Order of the competent authority in rejecting the representation of the petitioners holding that the change in the alignment of proposed road, no factual inquiry can be conducted. As the petitioners have availed the statutory remedy of filing objection to the Draft town planning scheme and their objections have been considered and rejected by the competent authority, no further inquiry can be directed within the scope of the power of judicial review, inasmuch as, no error in the decision making process could be demonstrated. The preparation of the Town Planning Scheme and carving of roads etc under the Town Planning Act is a policy decision, which is to be left to the best judgment of the competent authority. This Court cannot substitute its opinion from that of the opinion of the competent authority, which has sanctioned the draft scheme, after consideration of the objections filed by the petitioners.

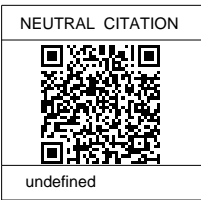
12. The learned counsel for the Respondent no. 2 – Corporation placing the judgments of the Division Benches of this Court in **2008 (3) GLH 137** in the case of **BABULAL BADRIPRASAD VARMA**



VS. SURAT MUNICIPAL CORPORATION AND ORS and **2016 (3) GLR 2695** in the case of **RAMANBHAI HARGOVINDDAS LIMBACHIA AND ORS. VS. STATE OF GUJARAT AND ORS.** has supported the decision of the learned Single Judge with the submission that the Town Planning is not a statute for acquisition of a property rather an owner of plot is asked to part therewith only for providing for better facilities of which he would also be a beneficiary. Every step taken by the State does not involve application of the Doctrine of Eminent Domain and once the appellant had chosen not to oppose the draft scheme notified in the year 2003, it would amount to the acceptance that the State had the right to do so. The Statute makes elaborate provisions as regards the formalities required to be undergone at every stage by the local authority, the State Government and the other authorities concerned in preparing and making the final Town planning scheme.

13. Considering the above, it may be noted herein that the owner, who had a right to file objection to the draft Town Planning Scheme finalized in the year 2003, had waived his right to raise any objection for utilization of the land in question for widening of the existing road. Once waived, after a period of approximately ten years, it was not permissible for the petitioners to raise any objection and any variation in Town Planning Scheme finalized in the year 2013 with the notification of the preliminary scheme is not possible.

14. The plea of the learned counsel for the petitioners that the petitioners have been discriminated or the action of the respondents is in colourable exercise of power is not supported by any cogent material. No mala fide could be alleged or demonstrated before us successfully. No interference is, therefore, called for in the decision



of the learned Single Judge. The appeal is found devoid of merits and hence, **DISMISSED**. Connected Civil Application also stands disposed of, accordingly.

(SUNITA AGARWAL, CJ)

SAHIL S. RANGER

(ANIRUDDHA P. MAYEE, J.)