

HIGH COURT OF GUJARAT

AMRAVAN CO-OPERATIVE HOUSING SOCIETIES LTD

Versus

AHMEDABAD URBAN DEVELOPMENT AUTH & OTHERS

Date of Decision: 08 May 2009

Citation: 2009 LawSuit(Guj) 862

Hon'ble Judges: [D A Mehta](#)

Eq. Citations: **2009 3 GCD 1774**

Case Type: Special Civil Application

Case No: 1332 of 1994

Acts Referred:

[Gujarat Town Planning And Urban Development Act, 1976 Sec 70\(1\), Sec 68, Sec 71, Sec 65\(3\), Sec 65](#)

Advocates: [Maithili Mehta](#), [R C Jani](#), [R K Mishra](#)

Cases Cited in (+): 1

Cases Referred in (+): 1

D.A. Mehta, J

[1] This petition was originally preferred with the following prayers:

"(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the order dated 8th December, 1993 at Annexure-A to the petition;

(B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the preliminary scheme vis-a-vis the land of the petitioner -society bearing Survey No. 72/1/A of Vejalpur which is given Final Plot No. 116 in Vejalpur Town Planning Scheme No. 3 and that the State Government be directed not to approve the Vejalpur Town Planning Scheme No. 3;

(C) Pending admission, hearing and final disposal of this petition, an interim injunction restraining the State Government from giving approval to Vejalpur Town Planning Scheme No. 3 and more particularly with regard to the proposal of land bearing Survey No. 72/1/A of Vejalpur which is given Final Plot No. 116 in Vejalpur Town Planning Scheme No. 3, which belongs to the petitioner Society, may kindly be granted;

(D) Any other appropriate relief as the nature and circumstances of the case requires, may kindly be granted;

(E) The costs of this petition may kindly be awarded."

[2] Thereafter, with the permission of the Court, the following prayers came to be added by the petitioner :

"(AA) A writ of mandamus or a writ in the nature or any other appropriate writ, order or direction may kindly be granted quashing and setting aside the order passed by the State Government in purported exercise of powers under Section 65 of the Gujarat Town Planning and Urban Development Act, 1976 which is published in the Gujarat Government Gazette dated 08-12-1993 finalising Vejalpur Town Planning Scheme No. 3 and directing the respondents to suitably modify the said scheme vis-a-vis land of the petitioner society bearing Survey No. 72/1/A situated in Vejalpur which is given final Plot No. 116, in accordance with the representations made by the petitioner in that regard.

(BB) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction may kindly be granted quashing and setting aside the impugned notice dated 16th July, 1994 issued under Section 68 and Rule 33 of the Act and the Rules respectively.

(CC) Pending admission and final hearing of this petition, an interim stay staying the operation, implementation and execution of the notice dated 16th July, 1994 issued under Section 68 of the Act and Rule 33 of the Rules may kindly be granted.

(CC) Pending the admission, hearing and final disposal of this petition, an interim injunction may kindly be granted restraining the respondents, their officers, subordinates, agents and servants from implementing the Vejalpur Town Planning Scheme No. 3 vis-a-vis the land of the petitioner society bearing Survey No. 72/1/A of Vejalpur which is given final plot No. 116 and be pleased to further restrain them from dealing with the constructed and other properties belonging to the members of the petitioner society situated over the said land in any manner whatsoever."

[3] The petitioner - Cooperative Housing Society being aggrieved by Vejalpur Town Planning Scheme No. .3 approached this Court by way of Special Civil Application No. 5708 of 1991. The following order came to be made by the Court:

"Preliminary Scheme is pending for approval before the State government. It will, therefore, be open to the petitioner to make a representation to the State Government. The State Government shall have to consider the said representation before granting approval to the Preliminary Scheme. In order to avoid any delay, we direct the petitioner to make a representation within two weeks from today. If such a representation is made, the State Government is directed to consider the same before giving approval to the Preliminary Scheme. It will be open to the newly added respondent also to make a representation to the State Government. The State Government is directed to consider that representation also along with the representation of the petitioner.

Subject to these directions, this petition is rejected summarily. Notice is discharged with no order as to costs."

[4] Subsequent thereto, a preliminary scheme came to be finalized by virtue of sanction accorded under Notification dated 8th December, 1993 and the scheme has been in force from 10th January, 1994.

[5] It is also an accepted fact that immediately thereafter, the final scheme which was forwarded to the Government on 16th May, 1992 came to be sanctioned vide Notification dated 9th December, 1993 and has been in force on and from 11th January, 1994.

[6] Learned Advocate for the petitioner has assailed the communication dated 8th December, 1993 whereunder a representation made by the petitioner, pursuant to the earlier order of this Court, came to be rejected. It was submitted that while rejecting representation dated 20th January, 1992 (Annexure - E), the State Government has failed to consider various facts, documents and evidences. Learned advocate for the petitioner read, extensively, from representation dated 19th September, 1988 addressed to the Town Planning Officer made at the point of time when the preliminary scheme was yet to be framed, representation dated 20th January, 1992 addressed to the Chief Secretary, Government of Gujarat as well as representation dated 25th July, 1994 addressed to the Chairman of Ahmedabad Urban Development Authority. The common thread running through all the aforesaid communications is that the society had been registered in past, had put up construction in accordance with sanctioned plans, the society was in existence since 1976 and hence, the Town Planning Scheme which deducted a portion of the land belonging to the society was not warranted as the

same was affecting certain portion of premises constructed on some of the plots of the society. In nutshell, the argument was that the society and its members were suffering due to implementation of the scheme.

[7] Learned Advocate for the petitioner submitted that the communication dated 8th December, 1993 was a non-speaking bureaucratic order and thus, the preliminary and final scheme which had been sanctioned suffers from error and/ or infirmity so as to warrant interference. Alternatively, it was submitted that in terms of provisions of Section 70(1) of the Gujarat Town Planning and Urban Development Act, 1976 (the Act), respondent - authority be directed to vary the scheme on account of the errors committed.

[8] It was submitted that despite the provisions of Section 65(3) of the Act, as held by this Court, it was always open to the High Court to issue directions to the State Government to vary scheme. In support of the submission reliance was placed on the decision in the case of [Mukundlal Trikamlal Patwa vs. State of Gujarat & Others](#), 2007 1 GLR 761.

[9] There can be no dispute with the proposition that if either the preliminary scheme or final scheme is defective on account of an error, irregularity or infirmity under the provisions of Section 70(1) of the Act, an appropriate authority is entitled to make a written application to the State Government for variation of the scheme. At the same time, Section 71 of the Act also provides that a Town Planning Scheme can be varied only by a subsequent scheme which is made, published and sanctioned in accordance with the provisions of the Act. It is also a settled position in law that the variation cannot be claimed as of right.

[10] In the facts of the present case, the petitioner had made representation to the authority in 1988, approached this Court in 1991 and the petition came to be disposed of leaving it open to the petitioner to make representation in accordance with law as the preliminary scheme had not attained finality. Admittedly, on 20th January, 1992, the petitioner made such representation. It is not the case of the petitioner that the said representation made pursuant to the order made by this Court, has not been considered by respondent - authority. The representation was duly considered and this becomes apparent when one reads the communication dated 8th December, 1993, which is under challenge. The petitioner has sought to distinguish the factual averments made therein, for example, the say of respondent - authority is that only 9.63% of the total land of the society, as constituting the original plot, has been deducted while preparing the scheme and allotting the final plot, but the petitioner seeks to dispute the same by referring to certain figures as narrated in Paragraph No. 4(D) of the petition. Thus, at the best, it can be stated that there are disputed

questions of fact. The Court is not required to enter into that arena and determine as to which set of facts are correct. In this context, it is necessary to take note of the fact that the petitioner - society had already filed Civil Suit No. 505 of 1987 before the Court of Civil Judge, Ahmedabad (Rural), Ahmedabad and withdrawn the same unconditionally on 3rd July, 2004. The prayers made in the said suit are, except for minor difference in the language, similar to the submissions made in the present petition. Therefore, on this limited count, the petition is required to be rejected.

[11] Under the provisions of Section 65(3) of the Act, once a scheme is sanctioned, either preliminary or final, such scheme acquires status of statute and any variation, thereafter, is permissible only in accordance with the provisions of Section 71 of the Act and the other relevant provisions of the Act, including Section 70(1) of the Act, by following the procedure provided for such variation. Therefore, there is no question of the petition being entertained in the facts of the present case.

[12] The judgment in case of Mukundlal Trikamlal Patwa (Supra) on which reliance has been placed, cannot assist the case of the petitioner for the simple reason that as noted in Paragraph No. 5 of the said judgment, the Town Planning Officer had proceeded on the basis that the land in question therein was declared as surplus land and was held by the Government, whereas in fact, the very land was allotted to the original holder of the land, namely, Sakina Abbas Karimi and others. In the said set of circumstances and facts of the case, the Court came to the conclusion that there was an error apparent on the face of the record prima facie, and hence, the scheme was required to be varied. In the facts of the present case, there is no such error which can be termed to be apparent on the face of it.

[13] In the result, for the reasons stated hereinbefore, the petition does not merit acceptance and is accordingly rejected. Rule discharged. Interim relief granted earlier stands vacated. There shall be no order as to costs.