Bhikhubhai Vithlabhai Patel & Ors vs State Of Gujarat & Anr on 14 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1771, 2008 AIR SCW 2446, (2008) 3 ALLMR 816 (SC), 2008 (4) SRJ 233, 2008 (3) ALL MR 816, 2008 (4) SCC 144, 2008 (4) SCALE 278, (2008) 2 GUJ LR 1531, (2008) 4 SCALE 278

Author: B.Sudershan Reddy

Bench: S.H. Kapadia, B. Sudershan Reddy

CASE NO.:
Appeal (civil) 2000 of 2008

PETITIONER:
Bhikhubhai Vithlabhai Patel & Ors

RESPONDENT:
State of Gujarat & Anr

DATE OF JUDGMENT: 14/03/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 2000 OF 2008 (Arising out of SLP(C) No. 9905 of 2007) B.SUDERSHAN REDDY,J.

1. Leave granted.

2. This appeal by special leave is directed against the common judgment and order dated 10-15th November, 2006 of the Gujarat High Court at Ahmedabad in LPA No. 1453 of 2005 and Miscellaneous Civil application for Review No. 3165 of 2006 dated 14th February, 2007; whereby the High Court dismissed the cross-objections filed by the appellants in LPA No. 1453 of 2005. Essentially grievance in this appeal pertains to the dismissal of cross objections preferred by the appellants.

3. The Gujarat Town Planning and Urban Development Act, 1976 (for short the said Act) came into force with effect from February 1st, 1978. The State Government in exercise of its power conferred under the provisions of the Act constituted Surat Urban Development Authority (SUDA) which prepared a draft development plan whereby the lands belonging to the appellants were proposed for designating the use of the lands for residential purposes. The State Government having considered the draft development plan submitted by SUDA sanctioned the plan in the modified

form on January 31, 1986 whereby the appellants lands in question were reserved for education complex of South Gujarat University . The final development plan was accordingly brought into force with effect from March 31, 1986. Neither the Area Development Authority nor the Authority for whose purpose land has been designated in the final Development Plan initiated any steps to acquire the lands of the appellants. The appellants having waited for a period of 10 years from the date of coming into force of the final development plan got served a notice on the Authority concerned requiring it to acquire the land within six months from the date of the service of such notice. However, no steps were taken by any of the authorities proposing to acquire the lands. Instead SUDA in purported exercise of its power under Section 21 of the Act sought to revise the development plan by reserving the lands in question once again for education complex of South Gujarat University.

4. The appellants challenged re-reservation of the lands for South Gujarat University on various grounds which ultimately culminated in the judgment of this court in Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others . This court in clear and categorical terms laid down that Section 21 of the Act may impose statutory obligations on the part of the State and the appropriate authority to revise the development plan but under the grab of exercising the power to revise the development plan the substantial right conferred upon the owner of the land or the person interested therein cannot be taken away. It is observed :

> Para 38. 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 a 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 landowner under Section 22 of getting the land defreezed

5. The revised development plan submitted by SUDA was awaiting the sanction of the State Government. The State Government in exercise of powers conferred by the proviso to sub-clause (ii) of clause (a) of Section 17(1) of the Act proposed modifications in the draft revised development plan submitted by SUDA and proposed to designate the land under Section 12(2)(o) for educational use . The appellants challenged the action on the part of State Government in issuing notification dated July 22, 2004 on various grounds. During the pendency of the Writ Petition the State Government came out with final notification dated September 28, 2004 designating the land in question for educational use under Section 12(2)(o) of the Act. The appellants sought the leave of the court to challenge the said notification also. The final notification was set aside on the ground that there was no material before the Government on the basis of which the decision to designate the lands for educational purposes could have been arrived at. The matter was remitted for fresh consideration in the light of the observations and the directions issued by the High Court.

6. We have heard Shri Ashok H. Desai and Shri T.R. Andhyarujina, learned senior counsel appearing for the appellants, Shri R. P. Bhatt, learned senior counsel for the State Government and Shri Prashant G. Desai, learned counsel for SUDA. The contention of the learned counsel for the appellants was that on a true interpretation of the provisions of the said Act it was not open to the Government to designate the land in question as education zone and secondly assuming that there is

such a power, the exercise of the said power by the preliminary Notification dated 22nd July, 2004 and final Notification dated 28th September, 2004 is not legal and bona fide particularly in the light of the fact that the earlier reservation for a similar though not identical purpose, namely, education complex of South Gujarat University was struck down by the Supreme Court in Bhavnagar University (supra).

7. The submission on behalf of the State Government was that the preliminary notification issued by the Government with a proposal to use the land for educational purpose under section 12(2)(o) of the Act is in conformity with the powers and the objects sought to be served. The power of the State Government under Section 17(1)(a) is very wide. It is entitled either to sanction the draft development plan as submitted by the Authority or return the draft development plan for modification or make substantial modifications in the draft development plan by itself after inviting suggestions and objections. The Notification dated 22nd July, 2004 merely invited suggestions and objections on the proposed use of the land for educational purposes. It was further submitted that under Section 12(2)(o) of the Act the State Government can make proposals for public or other purposes which have not been mentioned in sub-clause (a) to (n) of Section 12(2). Therefore the State Government can propose reservations for public purpose or can make designation of land for any purposes not mentioned in sub-clause (a) to (n). It was submitted that the provisions of Section 17(2), 20(1) and 20(2) are not applicable in the appellants case since these provisions relate to the lands kept for reservation for the purpose of Area Development authority or any other Authority for whose purpose the land is reserved. This is not a case of reservation affecting the rights of the appellants in any manner who are still entitled to develop the land in accordance with the earmarked use/proposals.

8. Learned counsel for Surat Urban Development Authority while adopting the submissions made by the counsel for the State Government contended that the State Government and Urban Development Authority has power to create separate zone under section 12(2)(o) of the Act.

9. We shall deal with the second contention, namely, whether the exercise of power by the State Government is legal and bona fide? This issue is required to be considered in the background of the relevant facts which are evident from the record.

10. The Urban Development Authority designated the present lands as part of the residential zone in the development plan and submitted the same on 30th April, 1981 for sanction to the State Government. The State Government by issuing notification under the proviso to sub- clause (ii) of clause (a) of sub-section (1) of Section 17 deleted the same from residential zone and the lands were sought to be reserved for education complex of South Gujarat University . The said plan was sanctioned under Section 17 of the Act on 3rd March, 1986. The appellants after expiry of period of 10 years gave notice under sub- section (1) of Section 20 calling upon the authority to acquire the land. Nothing happened in the matter.

11. In the meanwhile, SUDA prepared and published the draft revised development plan in respect of the lands under Section 13 of the Act once again reserving the land for education complex of South Gujarat University. Notice regarding publication of the draft revised development plan calling

suggestions on the proposed draft revised development plan was published in the Gazette on 29.2.1996. This was done in purported exercise of the power under Section 21 of the Act whereunder the development authority is under statutory obligation to revise the development plan at least once in 10 years from the date on which the final development plan comes into force.

12. The appellants filed writ petitions in the High Court of Gujarat challenging the action re-reserving the land in the draft revised development plan for the same purpose namely education complex of South Gujarat University. The lis ultimately culminated in the judgment of this Court in Bhavnagar University (supra). This court held that :

> (i) Section 21 of the Act does not and cannot mean that 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.
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> (ii) It is further held that the statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.
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> (iii) It is further held that inspite of statutory lapse of designation of the land, the State is not denuded of its power of eminent domain under the general law, namely, the Land Acquisition Act in the event an exigency arises therefore.

13. The State Government unmindful of and undaunted by the judgment of this court proposed to modify the draft revised development plan already submitted by the authority in purported exercise of the power conferred by the proviso to sub-clause (ii) of clause (a) of sub-section (1) of Section 17 of the Act by designating the land for educational use under Section 12(2)(o) of the Act. The Government having considered the objections issued final notification dated 28th September, 2004 confirming modifications proposed in the preliminary notification.

14. The appellants filed a writ petition in the High Court of Gujarat challenging the preliminary notification as well as the final notification on various grounds.

15. The High Court upon perusal of the records found that there is absolutely no material on record except the noting of the Minister concerned suggesting change of use of the land to education zone. The suggestion of the Chief Town Planner to place the entire area in residential zone has been ignored. The Area Development Authority in the first instance has suggested that the land in question be placed in residential zone. In the note prepared and placed before the Minister concerned on 23 April, 2004 it was suggested that the land should no more be reserved for the purpose of South Gujarat University and should be placed in appropriate zone. The note further suggested that after releasing the lands from reservation, the same should be placed under residential zone. On 21.7.2004 the Minister concerned passed the order which reads as under:

..Reservation may be cancelled as suggested. However, (for the lands which are being de- reserved) educational zone in terms of Section 12(2)(o) of the Gujarat Town Planning and Urban Development Act be provided and notice be issued accordingly..

16. It was pursuant to this direction, the preliminary notification dated 22nd July, 2004 came to be issued by the Government calling for objections and suggestions against the proposed substantial modifications of the development plan.

Point for consideration :

17. Whether the action of the State Government in issuing preliminary notification and the final notification designating the said lands for educational use is valid? Whether the action is ultra vires?

18. Before we address ourselves to the questions for their determination it would be appropriate to notice Sections 17 and 21 which are as under :

Section 17 (1) (a) : On receipt of the draft development plan under Section 16, the State Government may, by notification, -

(i) sanction the draft development plan and the regulation so received , within the prescribed period, for the whole of the area covered by the plan or separately for any part thereof, either without modification, or subject to such modification, as it may consider proper; or

(ii) return the draft development plan and the regulations to the area development authority or, as the case may be, to the authorized officer, for modifying the plan and the regulations in such manner as it may direct:

Provided that, where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary, the State Government may, instead of returning them to the area development authority, as the case may be, the authorised officer under this sub-clause, publish the modifications so considered necessary in the Official Gazette alongwith a notice in the prescribed manner inviting suggestions or objections from any person with respect to the proposed modifications within a period of two months from the date of publication of such notice; or

(iii) refuse to accord sanction to the draft development plan and the regulations and direct the area development authority or the authorized officer to prepare a fresh development plan under the provisions of this Act.

(b) Where a development plan and regulations are returned to an area development authority, or, as the case may be, the authorized officer under sub-clause (ii) of clause

(a), the area development authority, or, as the case may be, the authorized officer, shall carry out the modifications therein as directed by the State Government and then submit them as so modified to the State Government for sanction;

and the State Government shall thereupon sanction them after satisfying itself that the modification suggested have been duly carried out therein.

(c) Where the State Government has published the modification considered necessary in a draft development plan as required under the proviso to sub-clause (ii) of clause (a), the State Government shall, before according sanction to the draft development plan and the regulations, take into consideration the suggestions or objections that may have been received thereto, and thereafter accord sanction to the drafts development plan and the regulations in such modified form as it may consider fit.

(d) The sanction accorded under ? [clause (a), clause (b)] or clause (c) shall be notified by the State Government in the Official Gazette and the draft development plan together with the regulations so sanctioned shall be called the final development plan.

(e) The final development plan shall come into force on such date as the State Government may specify in the notification issued under clause (d):

Provided that the date so specified shall not be earlier than one month from the date of publication of such notification.

(2) Where the draft development plan submitted by an area development authority, as the case may be, the authorized officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or ?[clause (n) or clause (o)] of sub-section (2) of section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.

(3) A final development plan which has come into force shall, subject to the provisions of this Act, be binding on the area development authority concerned and on all other authorities situated in the area of the development plan.

(4) After the final development plan comes into force, the area development authority concerned may execute any work for developing, re-developing or improving any area within the area covered by the plan in accordance with the proposals contained in the development plan.

Section 21. Atleast once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if

necessary, a fresh survey and the provisions of sections 9 to 20, shall, so far as may be, apply to such revision.

19. A plain reading of Section 17 suggests that on receipt of draft development plan the State Government may sanction the draft development plan, for the whole of the area covered by the plan or separately for any part thereof; return the draft development plan for modifying the plan in such a manner as may direct; but in cases where the State Government is of opinion that the substantial modifications in the draft development plan are necessary, it may, instead of returning them to the authority or the authorised officer, publish the modifications so considered necessary along with the notice in the prescribed manner inviting suggestions or objections with respect to the proposed modifications. It may even refuse to accord sanction to the draft development plan and direct to prepare a fresh development plan under the provisions of the Act. Indeed a very wide power is conferred upon the State Government in the matter of sanctioning of the draft development plan. In the instant case we are concerned with the action of the State Government in making substantial modifications in the revised draft development plan. Section 21 of the Act mandates that the same procedure as provided for preparation and sanction of draft development plan including the one under section 17 would be applicable even in respect of revision of development plan.

20. The State Government is entitled to publish the modifications provided it is of opinion that substantial modifications in the draft development plan are necessary. The expression is of opinion that substantial modifications in the draft development plan are necessary is of crucial importance. Is there any material available on record which enabled the State Government to form its opinion that substantial modifications in the draft development plan were necessary? The State Government s jurisdiction to make substantial modifications in the draft development plan is inter-twined with the formation of its opinion that such substantial modifications are necessary in the draft development plan. The State Government without forming any such opinion cannot publish the modifications considered necessary along with notice inviting suggestions or objections. We have already noticed that as on the day when the Minister concerned took the decision proposing to designate the land for educational use the material available on record were :

> (a) the opinion of the Chief Town Planner;
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> (b) Note dated 23rd April, 2004 prepared on the basis of the record providing the entire background of the previous litigation together with the suggestion that the land should no more be reserved for the purpose of South Gujarat University and after releasing the lands from reservation, the same should be placed under the residential zone.

21. It is true the State Government is not bound by such opinion and entitled to take its own decision in the matter provided there is material available on record to form opinion that substantial modifications in the draft development plan were necessary. Formation of opinion is a condition precedent for setting the law in motion proposing substantial modifications in the draft development plan.

22. Any opinion of the Government to be formed is not subject to objective test. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming its opinion. But there must be material based on which alone the State Government could form its opinion that it has become necessary to make substantial modification in the draft development plan.

23. The power conferred by Section 17(1)(a) (ii) read with proviso is a conditional power. It is not an absolute power to be exercised in the discretion of the State Government. The condition is formation of opinion subjective, no doubt that it had become necessary to make substantial modifications in the draft development plan. This opinion may be formed on the basis of material sent along with the draft development plan or on the basis of relevant information that may be available with the State Government. The existence of relevant material is a pre-condition to the formation of opinion. The use of word may indicates not only a discretion but an obligation to consider that a necessity has arisen to make substantial modifications in the draft development plan. It also involves an obligation to consider which are of the several steps specified in sub-clauses (i), (ii) and (iii) should be taken.

24. Proviso opens with the words where the State Government is of opinion that substantial modifications in the draft development plan and regulations are necessary .. These words are indicative of the satisfaction being subjective one but there must exist circumstances stated in the proviso which are conditions precedent for the formation of the opinion. Opinion to be formed by the State Government cannot be on imaginary grounds, wishful thinking, however, laudable that may be. Such a course is impermissible in law. The formation of the opinion, though subjective, must be based on the material disclosing that a necessity had arisen to make substantial modifications in the draft development plan.

25. The formation of the opinion by the State Government is with reference to the necessity that may have had arisen to make substantial modifications in the draft development plan. The expression: so considered necessary is again of crucial importance. The term consider means to think over; it connotes that there should be active application of the mind. In other words the term consider postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word necessary means indispensable, requisite; indispensably requisite, useful, incidental or conducive; essential; unavoidable; impossible to be otherwise; not to be avoided; inevitable. The word necessary must be construed in the connection in which it is used. (See-Advanced Law Lexicon, 3rd Edition, 2005; P. Ramanatha Aiyar)

26. The formation of the opinion by the State Government should reflect intense application of mind with reference to the material available on record that it had become necessary to propose substantial modifications to the draft development plan.

27. In J. Jayalalitha Vs. U.O.I this Court while construing the expression as may be necessary employed in Section 3 (1) of the Prevention of Corruption Act, 1988 which conferred the discretion

upon the State Government to appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases to try the offences punishable under the Act, observed:

> The legislature had to leave it to the discretion of the Government as it would be in a better position to know the requirement. Further, the discretion conferred upon the Government is not absolute. It is in The nature of a statutory obligation or duty. It is the requirement which would necessitate exercise of power by the Government. When a necessity would arise and of what type being uncertain the legislature could not have laid down any other guideline except the guidance of necessity . It is really for that reason that the legislature while conferring discretion upon the Government has provided that the Government shall appoint as many Special Judges as may be necessary. The words as may be necessary in our opinion is the guideline according to which the Government has to exercise its discretion to achieve the object of speedy trial. The term necessary means what is indispensable, needful or essential.

28. In the case in hand, was there any material before the State Government for its consideration that it had become necessary to make substantial modifications to the draft development plan? The emphatic answer is, none. The record does not reveal that there has been any consideration by the State Government that necessity had arisen to make substantial modifications to the draft development plan. We are of the view that there has been no formation of the opinion by the State Government which is a condition precedent for exercising the power under the proviso to Section 17 (1) (a) (ii) of the Act.

29. In Barium Chemicals Ltd. Vs. Company Law Board this Court pointed out, on consideration of several English and Indian authorities that the expressions is satisfied , is of the opinion and has reason to believe are indicative of subjective satisfaction, though it is true that the nature of the power has to be determined on a totality of consideration of all the relevant provisions. This Court while construing Section 237 of the Companies Act, 1956 held:

> 4. The object of s. 237 is to safeguard the interests of those dealing with a company by providing for an investigation where the management is so conducted as to jeopardize those interests or where a company is floated for a fraudulent or an unlawful object. Clause (a) does not create any difficulty as investigation is instituted either at the wishes of the company itself expressed through a special resolution or through an order of the court where a judicial process intervenes. Clause (b), on the other hand, leaves directing an investigation to the subjective opinion of the government or the Board. Since the legislature enacted s. 637 (i)
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> (a) it knew that government would entrust to the Board its power under s. 237 (b). Could the legislature have left without any restraints or limitations the entire power of ordering an investigation to the subjective decision of the Government or the Board ? There is no doubt that the formation of opinion by the Central Government is a purely subjective process.

There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist ? The legislature no doubt has used the expression "circumstances suggesting". But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation.

But the expression "circumstances suggesting"

> cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process. These analysis finds support in Gower's Modern Company Law (2nd Ed.) p. 547 where the learned author, while dealing with s. 165(b) of the English Act observes that "the Board of Trade will always exercise its discretionary power in the light of specified grounds for an appointment on their own motion" and that "they may be trusted not to appoint unless the circumstances warrant it but they will test the need on the basis of public and commercial morality." There must therefore exist circumstances which in the opinion of the Authority suggest what has been set out in sub- clauses (i), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

30. This Court while expressly referring to the expressions such as reason to believe , in the opinion of observed: Therefore, the words, reason to believe or in the opinion of do not always lead to the construction that the process of entertaining reason to believe or the opinion is an altogether subjective to process not lending itself even to a limited scrutiny by the court that such a reason to believe or opinion was not formed on relevant facts or within the limits or as

Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative .

31. In the Income-tax Officer, Calcutta & Ors. Vs. Lakhmani Mewal Das this court construed the expressions reason to believe employed in Section 147 of the Income-tax Act, 1961 and observed:

> the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully or truly all material facts. It is not any or every material, howsoever vague and indefinite or distant which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

32. We are of the view that the construction placed on the expression reason to believe will equally be applicable to the expression is of opinion employed in the proviso to Section 17 (1)

(a) (ii) of the Act. The expression is of opinion , that substantial modifications in the draft development plan and regulations, are necessary , in our considered opinion, does not confer any unlimited discretion on the Government. The discretion, if any, conferred upon the State Government to make substantial modifications in the draft development plan is not unfettered. There is nothing like absolute or unfettered discretion and at any rate in the case of statutory powers. The basic principles in this regard are clearly expressed and explained by Prof. Sir William Wade in Administrative law (Ninth Edn.) in the chapter entitled abuse of discretion and under the general heading the principle of reasonableness which read as under:

> The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown s lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.
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> The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependents, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a

> private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed.

33. The Court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The Court is entitled particularly, in the event, when the formation of the opinion is challenged to determine whether the formation of opinion is arbitrary, capricious or whimsical. It is always open to the court to examine the question whether reasons for formation of opinion have rational connection or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute.

34. In the affidavit in reply filed on behalf of the State Government in the High Court, it was averred what weighed with the State Government to exercise its power under Section 17 (1) (a) (ii) of the Act was public interest at large. The State government thought it fit to classify the lands in question for educational use so that there is a specific pocket of educational institutional area in the fast developing city of Surat where its population in the last decade, has almost doubled. If such educational institutional pockets in the adjoining land, where there already exists the complex of South Gujarat University, are not ensured in the development plan of the city like Surat, then, in that case, land would not be available in future. This would resultantly make people to travel long distance from the city area for educational purpose. Public interest parameter is undoubtedly a valid consideration that could have been taken into account by the State Government. But this aspect of the matter is stated for the first time in the affidavit in reply and is not born out by the record. There is nothing on record suggesting as to what public interest parameter weighed with the State Government. The question is: was there any material available on record in support of what has been pleaded in the reply affidavit ?

35. Be that as it may, the impugned preliminary notification itself does not reflect formation of any opinion by the State Government that it had become necessary to make substantial modifications in the draft development plan and, for that reason, instead of returning in the plan, decided to publish the modifications so considered necessary in the Official Gazette along with the notice inviting suggestions or objections with respect to the proposed modifications. It is very well settled, public orders publicly made, in exercise of a statutory authority, cannot be construed in the light of explanations subsequently given by the decision making authority. Public orders made by authorities are meant to have public effect and must be construed objectively with reference to the language used in the order itself. (See Gordhandas Bhanji and Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi).

36. Neither the preliminary notification itself nor the records disclose the formation of any opinion by the State Government much less any consideration that any necessity as such had arisen to make substantial modifications in the draft development plan.

37. On consideration of the facts and the material available on record, it is established that the State Government took the action proposing to make substantial modifications to the plan without forming of any opinion, which is a condition precedent for the use of power under proviso to Section 17(1)(a)(ii). The power, to restrict the use of land by the owners thereof, is a drastic power. The designation or reservation of the land and its use results in severe abridgment of the right to property. Statutory provisions enabling the State or its authorities to impose restrictions on the right to use one s own land are required to be construed strictly. The legislature has, it seems to us, prescribed certain conditions to prevent the abuse of power and to ensure just exercise of power. Section 17 and more particularly the proviso to Section 17 (1) (a) (ii) prescribes some of the conditions precedent for the exercise of power. The order proposing to make substantial modifications, in breach of any one of those conditions, will undoubtedly be void. On a successful showing the order proposing substantial modifications and designating the land of the appellants for educational use under Section 12 (2) (o) of the Act has been made without the Statement Government applying its mind to the aspect of necessity or without forming an honest opinion on that aspect, it will, we have no doubt, be void.

38. For the view we have taken to strike down both the notifications and declare them ultra vires it is unnecessary to go into various other contentions urged before us.

39. The appellants are deprived of their right to use the land for residential purposes for over a period of more than a quarter century. The Authority included the land in the residential zone but the State Government reserved the land for the purposes of South Gujarat University but the authority for whose benefit it was required failed to acquire the land leading to re-reservation of the land for the very same purpose which was ultimately struck down by this Court in Bhavnagar University (supra).

40. The present move of the State Government to designate the land for the educational use under Section 12 (2) (o) of the Act is declared ultra vires and void and this shall put an end to the controversy enabling the appellants to utilize the land for residential purposes. The authorities including the State Government shall accordingly do the needful, without creating any further hurdle in the matter.

41. The appeal is, accordingly, allowed with costs.