

Parsottambhai Bhavanbhai Jasani ... vs State Of Gujarat - Through Secretary on 9 December, 2019

Author: J.B.Pardiwala

Bench: J.B.Pardiwala

C/LPA/1012/2013

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1012 of 2013

In R/SPECIAL CIVIL APPLICATION NO. 6066 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE VIRESHKUMAR B. MAYANI

=====

- | | | |
|---|---|----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

=====

PARSOTTAMBHAI BHAVANBHAJI JASANI THRO'POA VALLABHBHAI
GOLKIYA SINCE DECD.THR' HEIRS
Versus

STATE OF GUJARAT - THROUGH SECRETARY & 3 other(s)

=====

Appearance:

MR SI NANAVALI, SENIOR ADVOCATE with MR.D K.PUJ(3836) for the
Appellant(s) No. 1

MS JIRGA JHAVERI, AGP for the Respondent(s) No. 1

MR PG DESAI, SENIOR ADVOCATE with MR DHAVAL G NANAVALI(2578)

for the Respondent(s) No. 4

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3

NOTICE SERVED(4) for the Respondent(s) No. 3

=====

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE VIRESHKUMAR B. MAYANI

Page 1 of 25

C/LPA/1012/2013

Downloaded on : Thu Sep 03 22

JUDGMENT

Date : 09/12/2019

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. This appeal under Clause 15 of the Letters Patent is at the instance of the original writ applicant of a writ application and is directed against the judgment and order passed by the learned Single Judge of this Court dated 19/08/2013 in the Special Civil Application No.6066 of 2011, by which, the learned Single Judge rejected the writ application preferred by the appellant herein by imposing costs of Rs.1,00,000/-

2. The facts giving rise to this appeal may be summarized as under: 2.1 The appellant herein preferred the Special Civil Application No.6066 of 2011 seeking the following reliefs: 12(A) be pleased to issue the Writ of Mandamus or any other Writ, order or direction in the nature of Mandamus quashing and setting aside the modification qua Revenue Survey No.159/1/2 Original Plot No.32/B and Final Plot No.46 of Town Planning Scheme No.19 (Katagam) made by the Respondent No.1 while exercising its powers as contemplated under Section 65(1)(a) and (b) read with Section 52(2) of the Gujarat Town Planning and Urban Development Act, 1976 with all consequential and incidental effects and further be pleased to direct the Respondents to vary the Preliminary Town Planning Scheme No.19 (Katargam) accordingly.

(B) During the pendency and final disposal of this Petition, be pleased to restrain the Respondents from implementing the modified scheme as it is in violation of the powers contained in Section 65(1)

(b).

(C) be pleased to grant ad interim relief in terms of Para 13(B).

(D) Any other and further relief which this Hon'ble Court deems fit may kindly be granted."

2.2 The following list of dates and events would give more than a fair idea as regards the subject matter of this litigation.

C/LPA/1012/2013

JUDGMENT

Dates : Particulars

12/07/67 : The predecessor of the appellant, Mr. Ramanbhai Lilibhai purchased the land bearing Survey No.159/1 admeasuring around 18414 sq. meters.

26/03/1970 : Ramanbhai Lilubhai divided the land in favour of his wife, smanben admeasuring around 11635 sq. meters and his sons, Rajnikant and Sanjaykumar admeasuring around 6779 sq. meters.

: The land bearing Survey No.159/1 was bifurcated into two Survey No.159/1/1 admeasuring around 16391 sq. meters and Survey No.159/1/2 admeasuring around 2023 sq. meters.

27/02/1997 : The intention to frame the Town Planning Scheme No.19 was declared.

06/05/99 : The Draft Town Planning Scheme was sanctioned by the State Government under Section 48 of the Act.

: The Original Owners were allotted Final Plots for their Original Plots as under in view of the Draft Town Planning Scheme.

Survey Nos.	Original Plots	Final Plots
159/1+	26240 32/A	25590
164	1584	32/B

And Final Plot No.134 admeasuring around 1893 was carved out from the lands of the Original Plot Nos.32/A and 32/B and the same was reserved for Garden in view of C/LPA/1012/2013 JUDGMENT Section 40(3)(e) of the Act.

22/07/1999 : The Town Planning Officer was appointed under Section 50 of the Act.

17/01/2005 : The Original Owners had submitted an application to the Town Planning Officer to allot separate Final Plots for separate Original Plots.

18/02/2005 : The Town Planning Officer had demanded Certain Documents pursuant to the representation of the Original Owners.

28/02/2005 : The Appellant purchased the land bearing Survey No.159/1/2 from the Original Owners admeasuring around 2023 sq.meters. In the sale deed also, it was mentioned that the Appellant had purchased the land in the year 1991 and had paid the entire sale consideration.

: The name of the Appellant was mutated in the revenue records vide Entry No.9535.

01/06/05 : The Original Owners again made an Application for allotment of two different Final Plots.

16/07/2005 : Pursuant to the representation of the Original Owners, the Town Planning Officer passed the Award allotting the Final Plot No.46 admeasuring around 1602 sq. meters from Survey No.159/1/2 and Original Plot No.32/B. : The Map prepared by the Town Planning Officer.

: The Redistribution Statement prepared by the Town Planning Officer.

23/11/2005 : After purchasing the land, the Appellant had made representation to the Town Planning Officer.

09/01/06 : Since the Award was passed allotting the Final Plot No.46

C/LPA/1012/2013

JUDGMENT

admeasuring 1602 sq. meter and reservation for the Garden was cancelled, the respondent Corporation raised an objection before the Town Planning Officer.

03/01/07 : Since the Award was passed allotting the Final Plot No.46 admeasuring 1602 sq. meter, the Appellant moved an application for grant of NA and the same was granted by the Ld. Collector, Surat after taking into consideration of opinions of different authorities.

18/09/2007 : Since the Preliminary Town Planning Scheme was forwarded by the Town Planning Officer for its sanction by the State Government, the Respondent Corporation filed an objection before the Principal Secretary, Urban Housing and Urban Development Department.

22/12/2009 : Since the Appellant was desirous to develop the land, the Appellant moved an application for Development Permission from the Surat Municipal Corporation and the Corporation in turned sought Opinion of the Town Planning Officer and Town Planning Officer gave opinion in favour of the Appellant.

01/07/10 : The State Government sanctioned the Preliminary Town Planning Scheme and modified the same and Final Plot No.46 was allotted to the Corporation and the Original Plot Nos.32/A and 32/B were amalgamated and combined Final Plot No.45 was allotted to the owners of Original Plot Nos.32/A and 32/B without giving any opportunity of hearing to the Appellant and only considering the objection of the Corporation.

: The Appellant was allotted land in the Final Plot No.45 wherein the Society was constructed and there is no open C/LPA/1012/2013 JUDGMENT land for the Appellant.

07/04/11 : Since the Preliminary Scheme was sanctioned by the State Government, modifying the Scheme prepared by the Town Planning Officer without giving an opportunity of hearing to the Appellant and against the decision rendered by this Court in the Special Civil Application No.26785 of 2008, the Appellant preferred the Special Civil Application No.6066 of 2011.

2.3 The learned Single Judge thought fit to reject the writ application substantially on the following grounds: "1. Since in the Draft Town Planning Scheme, the land was reserved for the purpose of Garden and the Draft Town Planning Scheme was sanctioned by the State Government, the land stood vested in the Corporation/ State Government in view of Section 48A and therefore, the Town Planning Officer had no power to vary the same.

2. The Town Planning Officer cancelled the reservation and such a substantial change could not have been made without the prior sanction of the State Government.

3. The Town Planning Officer has no power to de-reserve the land meant for public purpose and the same is not permissible."

3. Being dissatisfied with the judgment and order passed by the learned Single Judge, original writ applicant is here before this Court with the present appeal.

C/LPA/1012/2013 JUDGMENT

4. Mr. S.I. Nanavati , the learned senior counsel assisted by Mr. D.K. Puj appearing for the appellant vehemently submitted that the findings recorded by the learned Single Judge that the Town Planning Officer had no power to vary the scheme is contrary to the provisions of Sections 40, 48A and 52 respectively of the Gujarat Town Planning and Urban Development Act, 1976 [for short 'The Act']. Mr. Nanavati further submitted that the findings recorded by the learned Single Judge that the Town Planning Officer could not have effected such a substantial change by cancelling the reservation without the prior sanction of the Government is contrary to the provisions of Sections 52(3)(ii) read with the proviso and the explanation below Section 52(3)(xi). According to the learned senior counsel, the findings recorded by the learned Single Judge that the Town Planning Officer has no power to de-reserve the land meant for any public purpose is also quite contrary to the provisions of the Section 52(3)(ii) of the Act.

5. Mr. Nanavati would submit that the Preliminary Town Planning Scheme was sanctioned by the State Government under Section 65(1) of the Act. The State Government modified the scheme forwarded by the Town Planning Officer. According to Mr. Nanavati, the State Government has to form an opinion that there is an error, irregularity or infirmity in the scheme prepared by the Town Planning Officer and the said error, irregularity or infirmity warrants modification. According to Mr. Nanavati, the formation of opinion could have been justified provided an opportunity of hearing to the appellant being an affected party had been given at the relevant point of time.

6. Mr. Nanavati invited our attention to a Redistribution Statement prepared by the Junior Town Planner, Scheme Unit 3, Surat, Annexure C/LPA/1012/2013 JUDGMENT RIV. The same reads thus: Case Name of the Owner Ten R.S. Original Plot Final Plot Remarks No. ure No. C.T.S. No. Area No. Area No. Sq. Mt. Sq.

Mt 32/1+ 1. Rajnikant Ramanbhai 159/.1/1 32/A 26002 45 25445 (1) Rights of Owners in

2. Sanjaykumar Final Plot. Shall be as Ramanlal. per their shares in

3. Sumanben W/o. Original Plot.

Ramanlal Lilubhai

4. Ramanbhai Lilubhai (2) Original plot area as measured on site and as per scheme boundary.

32/2	1. Rajnikant Ramanbhai	159/.1/2	32/B	1602	46	1602	(1) Rig
	&						Final P
	2. Sanjaykumar Ramanlal			27604.0			per the
							Original
							(2) Ori
							as meas
							and as
							boundar
							Modific
							Governm
							Notific
							No.GH/V
							2010/TP
							L(Part-
							No.2.

7. Mr. Nanavati submitted that the appellant had preferred an application seeking non-agricultural use permission. The same also came to be granted by the Collector, Surat. In short, the submission of Mr. Nanavati is that his client has a direct interest so far as the Final Plot No.45 is concerned. According to Mr. Nanavati, the F.P. No.45 is an allotment in lieu of the original F.P. No.32/A and 32/B. Mr. Nanavati has a very serious grievance to redress. According to him, although the F.P.

No.45 has been allotted, yet the entire final plot has been encroached upon. According to Mr. Nanavati, his client is only concerned with 1602 meters of the subject land C/LPA/1012/2013 JUDGMENT

8. According to Mr. Nanavati at the time of allotting the final plot the State Government is obliged to ensure that the same is free of all encumbrances and there is no encroachment of any nature on the same. Mr. Nanavati would submit that in the Final Plot No.45 his client's interest would be to the extent of 1600 Sq.Mtrs. However, as on date not an inch of land upon which there is no illegal construction. In such circumstances, the State Government is obliged to look into the matter and take an appropriate action in this regard. According to Mr. Nanavati the State Government before issuing the notification dated 2.7.2010 Annexure F to the main petition should have given an opportunity of hearing to the appellant being an interested person. In such circumstances referred to above Mr. Nanavati prays that there being merit in his appeal the same may be allowed and the impugned order passed by the learned Single Judge be quashed and set aside. Mr. Nanavati further prays that the main matter i.e. Special Civil Application No.6066 of 2011 be allowed and the reliefs prayed for therein may be granted.

9. On the other hand, this appeal has been vehemently opposed by Mr. Prashant Desai, the learned Senior Counsel appearing for Surat Municipal Corporation. Mr. Desai assisted by Mr. Dhaval G. Nanavati submitted that no error not to speak of any error of law could be said to have been committed by the learned Single Judge in passing the impugned order. According to Mr. Desai the learned Single Judge is absolutely justified in taking the view that the appellant herein not being the original owner could not have raised any grievances. Mr. Desai laid much emphasis on the fact that the preliminary scheme came to be finalized in 2010. Section 67 of the Act provides about the effect of the preliminary scheme whereby all the rights in the original plots get extinguished of the original owner and it vests absolutely in the C/LPA/1012/2013 JUDGMENT appropriate authority free from all encumbrances. Mr. Desai would submit that the State Government is not obliged in any manner to give any opportunity of hearing to the appellant while correcting the error committed by the Town Planning Officer. Mr. Desai invited the attention of this Court to the reply filed by the Surat Municipal Corporation in the main matter. Mr. Desai seeks to rely upon the following averments made in the said reply;

"5. I submit that by way of present petition petitioner has challenged the notification dated 01/07/2010 where by the respondent 1301 has sanctioned the Preliminary Town Planning Scheme No.19 (Katar Gam)(herein after referred as "T.P.S.No.19"), Surat by exercising power u/s. 65 of The Gujarat Town Planning And Urban Development Act.1976 (herein after mention as " the, act, 1976").

6. I submit that the land in question is covered under the T.P.S.No.19. It is further submitted that for the purpose of framing the T.P.S.No.19 the intention has been declared on 27/02/1997 by the appropriate authority.

7. I submit that a copy of the plan of the area proposed to be included in the said Scheme and the surrounding land kept open for inspection of the public at the head

office of the Surat Municipal Corporation during office hours. It is further submitted that for the purpose of making the said Scheme (Draft) under section 42 the Surat Municipal Corporation had called a public meeting of the owners of the lands included in the said Scheme and explained the tentative draft town planning scheme proposals of the no.19(KatarGam) and taken in to consideration all such suggestions as made and objections raised on the proposals for making the draft C/LPA/1012/2013 JUDGMENT scheme under: section 42 of the Act, 1976.

8. I submit that the. draft. town planning scheme no.19(KatarGam) has been published in prescribed manner by means of an advertisement as required under section 42(1) of the Act, 1976 r/w Rule 18 of The Gujarat Town Planning And Urban Development Rules, 1979. I submit that after completing all the procedure the draft town planning scheme no. 19 (KatarGam) has been submitted along with objections received by it to the State Government on 24/09/1998 for its sanction under section 48 of the Act, 1976. It is further submitted in exercise of powers conferred by sub-section 2 of section 48 of the Act, 1976 the State Government have sanctioned the said draft scheme vide notification dated 06/05/1999. Annexed herewith the copy of the notification dated 06/05/1999 as Annexure :

A.

9. I submit that under Section 50 of the Act, 1976 the State Government have appointed Town Planning Officer on 22/07/1999 for the purpose of Preliminary Town Planning Scheme no.19 (KatarGam). It is further submitted that the Town planning Officer had declared award of preliminary Town Planning Scheme no.19 (KatarGam) on 07/07/2005 and thereafter on 16/12/2005 the preliminary T.P.S.No.19(KatarGam) has been submitted before the respondent no.1 for its sanction. as required u/s. 65 of the act, 1976. It is also submitted that the respondent no.1 has accorded its sanction vide notification dated 01/07/2010 to the Preliminary T.P.S.No.19(KatarGam). The copy of the, notification dated 01/07/2010 annexed herewith as annexure : B. It is further submitted that by virtue of section 65 of the act,1976 the Town Planning Scheme NO.19(KatarGam) has become part of the Act.

C/LPA/1012/2013 JUDGMENT

10. I submit that as per the record of sanctioned Draft Town Planning scheme No.19(KatarGam) one Sumanben wf/o Ramanlal Lilubhai along with Rajnikant Ramanbhai, Sanjay Ramanlal, Ramanbhai Lilubhai holding the land bearing R.S.No.159/1/2 &

164. It is pertinent to point out that as the Canal passes through the said survey nos. the land divided into two parts therefore, at the time of preparation of draft scheme the two parcel of land has been renamed as two different original Plot as Original Plot No.32/A admeasuring 26240 sq.mtrs. And Original Plot No.32/13 admeasuring 1584

sq. mtrs.

11. I submit that under the sanctioned Draft Town Planning Scheme against the O.P.NO. 32/A & 32/B one Final Plot No.32 admeasuring 25590 sq.mtrs., has been allotted to the owners of the original plots and Final plot no.134 admeasuring 1893 sq.mtrs after deducting the land needed for road purpose, reserved for Public Purpose i.e. Garden. The copy of the part plan along with Redistribution Form of draft scheme Annexed herewith as annexure :

C.(Colly.).

12. I Submit that in the year 2004 one Shri Savjibhai Rambhai Kakadiya POA of Owners & president of Vaikunthdham co-hou. service soc.1td. has handed over the possession of the land in question to Respondent corporation and also issued consent letter for the same. The copy of the consent letter annexed herewith as annexure: D.

13. I submit that as per the averments made in the petition the land in question has been purchased by the petitioner on 28/02/2005 C/LPA/1012/2013 JUDGMENT from Power of Attorney Holder of the original owners. It is pertinent to point out that the petitioner has purchased the land which has been kept under reservation not only that but, the possession has been handed over by the POA of Owners to Respondent corporation.

14. I submit that on 02/06/2001 the Town Planning Officer had sent the Tentative proposed scheme to respondent corporation wherein the reservation has been continued for public purpose i.e. Garden (R□1) by making some alteration in measurement upon the final plot no. 134.

15. I submit that on 07/07/2005 the town planning officer has declared its award /decision of Preliminary Town Planning Scheme no.19 (Katar Gam) as required under the provisions of the act, 1976, where by respondent corporation came to know that the Town Planning Officer has allotted the land of o.P.No.32/B F.P.No.48 to the owners by removing the reservation for public purpose i.e. Garden.

16. I submit that on 16/12/2005 the town Planning Officer had submitted the preliminary. Town Planning Scheme No.19 (Katar Gam) before the Respondent No.1 for its sanction as) required u/s.65 of the act, 1976.

17. I submit that against the change made by the town planning officer the respondent corporation has raised the objections before the respondent no.1 as the scheme has been sent to the respondent no.1, by letter dated 09/01/2006, 13/01/2006 & 18/09/2007 with a request to maintain the reservation as per the draft town planning scheme in preliminary town planning scheme. The Copy of the C/LPA/1012/2013 JUDGMENT Communications annexed herewith as annexure :

E(Colly.).

18. I submits that the respondent no.1 has restored the reservation upon the land in question as per the sanctioned draft town planning scheme and sanctioned the preliminary T.P.S.No.19 (KatarGam) vide Notification dated 01/07/2010. The copy of the part plan along with redistribution statement annexed herewith as annexure : F. (Colly.).

19. I submit that the town planning officer had committed mistake and allotted the final plot no.46 to its owner which has been reserved for public purpose (Final Plot no.134) in draft scheme without following the procedure as required under the act, 1976.

20. I submit that in view of the judgments and order passed by this Hon'ble court as well as Hon'ble apex court the town planning scheme cannot be challenged as the same has become part of act as per section 65 of the act.1976."

10 Mr. Desai also invited the attention of this Court to the affidavit□in□reply filed by the Town Planning Officer Unit□3, Surat. Mr. Desai seeks to rely on the following averments made in the said affidavit;

"5. I respectfully say that the Surat Municipal Corporation after following the necessary procedure and formalities as prescribed under the Gujarat Town Planning and Urban Development Act, 1976 and the Rules made their under, the Draft Town Planning Scheme No. 19 (Katargam) was prepared and submitted to State Government which was sanctioned under section. 48(2) of the said Act, 1976 by Government Notification dated '05th May, 1999.

C/LPA/1012/2013 JUDGMENT

6. I say that as per the proposal of the sanctioned Draft Town Planning Scheme No. 19 (Katargam), land bearing RS. No.159/1+164 was given Final Plot NO. 32 admeasuring 25,590 sq.mtrs against the Original Plot No 32/A and 32/8 admeasuring 26,240 and 1584 sq.mtrs respectively. I further say that in the sanctioned Draft Scheme, separate Final Plot has not been allotted against the Original Plot No. 32/B. Copies of Part Plan and "F' form" annexed herewith and marked as Annexure RI Colly.

7. I further say that the Government of Gujarat by their Notification dated 22.07.1999 appointed Deputy Town Planner (Jr.) Town Planning Officer, Town Planning Scheme, Udhna to finalize the said scheme.

8. I respectfully say that Parshottambhai Bhavanhha' Jesani had made written application on 23.11.2005 to Town Planning Officer for allotting separate Original

Plot and separate final plot against R.S NO.159/ 1/2 alongwith 7/12. I further say that Rajnikant Ramanbhai had also made written application on 17.01.2005 to 81101 separate original Plot and separate Final Plot against R.S No.159/ 1 paiki hissa no.2. I say that pursuant to aforesaid application. Town Planning Officer had demanded documents with respect to owner's representation, by letter dated 18.02.2005 to. Which Shri. Rajnikant Ramanbhai had submitted the D.I.L.R Mapani sheet, Village Form No. 7/12, Hissa Form No.A vide letter dated 01.06.2005. Copies of letter dated 18.2.2005 and 1.6.2005 are annexed hereto and marked as Annexure RII Cally.

C/LPA/1012/2013 JUDGMENT

9. I further say that pursuant to the aforesaid information provided by the parties, Town Planning Officer had allotted separate Original Plot No.23/8 to R.S.No.159/1/2 and allotted Final Plot No. 46 against the Original Plot No.23/B.

10. I respectfully say that after following due procedure laid in the said Act, 1976 and Rules 1979, decided the matter arising out clauses (i) to (iv) of sub section (1) of section 52 of said Act and declared the decision of preliminary scheme in respect of the Town Planning Scheme No.19 (Katargam) on 07.07.2005 and the individual owners/persons interested are communicated the decision of Town Planning Officer as required under rule 26(9) of the said Rules, 1979. I further say that the notification of declaration of decision of the Preliminary Scheme was published in daily news papers "Sandesh" dated 12.07.2005 as well as in Government Gazette on 15.07.2005.

11. I say that the Town Planning Officer has declared the decision of the Preliminary Scheme and also submitted to the Government for sanction. In this preliminary scheme, the land under reference, R.S.No.159/1/2 included in the preliminary Scheme No. 19 (Katargam) was given Final Plot No. 46 admeasuring 1602 sq.mtrs against Original Plot No. 32/B admeasuring 1602 sq.mtrs. Copies of Part Plan and "Redistribution Statement" annexed herewith and marked as Annexure RIII Cally. I say that that right and share of owners in the Final Plots shall be as per their right and share in Original Plot.

12. I respectfully say that Town Planning Officer has given its opinion for the Final Plot No. 46 on 22.12 2009 as per the proposal C/LPA/1012/2013 JUDGMENT of Preliminary Scheme submitted to State Government for their sanction.

13. I respectfully say that the, Preliminary Town Planning Scheme No. 19 (Katargam) was submitted to the State Government for, their sanction under section 52(2) and 64 on 16.12.2005, Which was by Notification dated 01.07.2010 sanctioned, the Preliminary Scheme under section 65 of the said Act with modification and the said Preliminary Scheme had come into force with effect from dated 01.07.2010.

14. I say that as per the proposal of the sanctioned Preliminary scheme, the allotment of the Final Plot No. 46 in lieu of Original Plot No. 32/B was cancelled and Original Plot no. 32/B is modified and merged With Original Plot No. 32/A and is allotted Final Plot No.

45. I further say that Final Plot No.46 has been allotted to the Surat Municipal Corporation for public purpose Copies of Part Plan and "Redistribution Statement" annexed hereto and marked as Annexure RIV Cally. I say that that right and share of owners in the Final Plots shall be as per their right. and share in Original Plot.

15. I respectfully say that aforesaid preliminary scheme has been sanctioned under section 65 of the Act by Government Notification dated 01.07.2010 and it has come into force from 01.07.2010 and has become part of Act."

11. In such circumstances referred above Mr. Desai prays that there being no merit in this appeal, the same may be dismissed.

12. Ms. Jirga Jhaveri, the learned AGP appearing for the State respondents has also opposed this appeal vehemently. According to the C/LPA/1012/2013 JUDGMENT learned AGP, no error not to speak of any error of law could be said to have been committed by the learned Single Judge in rejecting the writ application filed by the appellant herein. According to the learned AGP this litigation initiated by the appellant is nothing but gross abuse of process of law and for such reason the learned Single Judge rightly imposed costs of Rs.1 lakh. In such circumstances referred to above the learned AGP prays that there being no merit in the appeal the same may be dismissed.

13. Before advertng to the rival submissions canvassed on either side, we should look into the findings recorded by the learned Single Judge in the impugned judgment.

"6 Upon hearing of learned counsels for the parties and on perusal of the record, it is clear that land bearing Survey No.159/1/2 and original plot No.32B was for all purposes reserved for 'public purpose' as garden even in the draft town planning scheme, which came to be sanctioned on 6.5.1999 and the land has vested into the State Government by virtue of operation of the above Section which took into consideration provisions of Section 67 of the Act. For ready reference, Section 48A is reproduced hereinbelow:

"48A: Vesting of land in appropriate authority. (1) Where a draft scheme has been sanctioned by the State Government under sub-section (2) of Section 48, (hereinafter in this Section, referred to as 'the sanctioned draft scheme') all lands required by the appropriate authority for the purposes specified in clause [c], (f), (g) or (h) of sub-section (3) of Section 40 shall vest absolutely in the appropriate authority free from all encumbrances.

(2) Nothing in sub-section (1) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section.

C/LPA/1012/2013 JUDGMENT (3) The provisions of Section 68 and 69 shall mutatis mutandis apply to the sanctioned draft scheme as if, □

(i) sanctioned draft scheme were a preliminary scheme, and

(ii) in sub-section (1), for the words 'comes into force' the words, brackets and figures 'the date on which the draft scheme is sanctioned under sub-section (2) of section 48' were substituted."

No doubt, Section 52(1) and (2) empowers the Town Planning Officer for issuing notice to the persons affected by the scheme defined, earmarked, allotted, reserved for any public purpose or for a purpose under Section 81 of the Act. Such preliminary scheme prepared by the Town Planning Officer was sent to the State Government for sanction and the final scheme as provided in sub-section (3) of Section 52. It is to be noted that variation if any to be made in the draft scheme if it is of a substantial nature, the proviso would come into play and if variation is not of a substantial nature than of a draft scheme, proviso below clause (xi) permits the Town Planning Officer to make variation from the draft scheme, but, such variation is to be of a substantial nature, and it is to be made only after previous sanction of the State Government and after hearing the appropriate authority. In the facts of the case, variation made by the Town Planning Officer qua original plot No.32B of releasing the land reserved for public purpose namely garden and that would be given to the occupier, was noticed by the State Government and when it was found that the land reserved for public purpose was to be given final plot to the original occupiers, another final plot is given restoring possession as prevalent at the stage of sanction of draft scheme in exercise of power under section 48A. Even, as recorded earlier, preliminary C/LPA/1012/2013 JUDGMENT scheme has also been finalized in 2010. Section 67 provides in detail about the effect of preliminary scheme whereby, all the rights in the original plots get extinguished of the original owner and it vests absolutely in the appropriate authority free from all encumbrance. In the above circumstances, the petitioner has purchased land in 2005 upon illusory consideration of Rs.1.20 lakhs for 2023 sq.meters in the city of Surat, when the land was reserved for the public purpose, namely, garden, in sanctioned draft plan under Section 48A and the variation suggested by the Town Planning Officer amounting to de-reserving the land meant for public purpose was not permissible and within his jurisdiction, since the change was of substantial in nature and, therefore, correction of such error committed by Town Planning Officer by the State Government does not envisage any observance of principles of natural justice and, to that extent, the contention of the learned counsel for the petitioner that no opportunity of hearing is afforded to the petitioner has no substance and is rejected. Further, the petitioner is not the original owner and in addition to the above, the authorities earmarked alternative final plot to be given to the owner for which the petitioner cannot make any grievances. This petition is nothing, but an abuse of process of law undertaken by the petitioner purchasing a land originally reserved for public purpose, consuming substantial time of the Court and the authorities. In the facts and circumstances of the present case, the decision relied upon by the learned counsel for the petitioner dated 10.2.2010 rendered in Special Civil Application No.26785 of

2007, is not applicable, since, in the present case, the State Government has rightly exercised power in accordance with law for the reasons stated hereinabove.

C/LPA/1012/2013 JUDGMENT

7. As a result of foregoing reasons, this petition is rejected with costs of Rs.1 lakhs to be paid by the petitioner within four weeks from today in favour of the Gujarat State Legal Services Authority , failing which, the Collector shall recover the same as recovery of dues of revenue under the Bombay Land Revenue Code."

14. We also take notice of the notification issued by the State Government in its Urban Development and Urban Housing Department, Gandhinagar dated 2.7.2010 Annexure F to the petition. The same reads as under : "GOVERNMENT OF GUJARAT URBAN DEVELOPMENT AND URBAN HOUSING DEPARTMENT SACHIVALAYA, GANDHINAGAR.

NOTIFICATION Dt.02.07.2012 THE GUJARAT TOWN PLANNING AND URBAN DEVELOPMENT ACT, 1976.

No.GH/V/91 of 2010/TPS 1405 55024(Part I): WHEREAS, under Government Notification, Urban Development and Urban Housing Department No.GH/V/57 of 1999/TPP 1498 4569 I, dtd 06.05.99 the Government of Gujarat, in exercise of the powers conferred by, section 48(2) of the Gujarat Town Planning and Urban Development Act, 1976 (President's Act No.27 of 1976) {hereinafter referred to as "the said Act") sanctioned the Draft Town Planning Scheme No.19 (Katargam) SMC (hereinafter referred to as "the said Draft Scheme") submitted by the Surat Municipal Corporation (hereinafter referred to as "the said Authority") AND WHEREAS, in exercise of the powers conferred by section 50 of the said Act, the Government of Gujarat appointed the Town Planning Officer for the finalizing the said Draft Scheme;

C/LPA/1012/2013 JUDGMENT AND'WHEREAS, the Town Planning Officer has submitted, to the Government of Gujarat, the Preliminary Town Planning Scheme No.19 (Katargam) SMC (hereinafter referred to as "the sand Preliminary Scheme") as required under section 52(2) and section 641 of the said Act. ~ NOW THEREFORE, in exercise of the powers conferred by section 65 of the said Act, the Government of Gujarat hereby: I

(a) Sanction the said Preliminary Scheme with modifications enumerated in schedule appended here to;

(b) State that the said preliminary scheme shall be kept open for the inspection of the public at the office of the said Authority, during office hours on working days;

(c) Fix the date of this notification as the date for the purpose of clause (b) of sub-section (2) of the section 65.

SCHEDULE

1. Allotment of final plot no.46 in lieu of original plot no.32/B is modified and is allotted to Surat Municipal Corporation for public purpose.
2. Ownership of original plot no.32/A & 32/B shall be modified and considered as joint ownership and final plot no.45 shall be considered as allotment in lieu of original plot no.32/A + 32/B.
3. Boundary of final plots no.93, 119, 176, 195 are modified as shown in accompanying plan and the modifications thereof in the redistribution statement at case no.57, 76+121, 122, 125 of the scheme document shall be shown as per annexure.
4. Final Plot no.116 allotted in lieu of original plot no.75 shall be reconstituted as shown in accompanying plan and the modification thereof in the redistribution statement at case no.75 of the scheme document shall be shown as per annexure 2.
5. The land released on reconstitution of final plot no.118 shall be merged with land of final plot no.203 and the modified boundary thereof in shown in accompanying plan and the modification thereof C/LPA/1012/2013 JUDGMENT at case no.125 in the scheme document shall be shown as per annexure 3. Purpose of final plot no.203 is modified to public purpose.
6. In the redistribution statement of scheme book the following shall be added at remarks column in case no.74.

"Final plot no.116, allotted separately to Naranbhai Jivanbhai Patel admeasuring 1149 sq.mtr., Harjivanbhai Jivanbhai Patel admeasuring 1245 sq.mt and Naranbhai Jivanbhai and others admeasuring 1738 sq.mt."

Thereoff at Surat Municipal Corporation shall make necessary change.

Preliminary Scheme document, maps, redistribution statement shall be modified accordingly.

By order and in the name of the Government of Gujarat Sd/□(P L. Sharma) Officer on Special Duty & Ex□Officio Joint Secretary to the Govt. of Gujarat Urban Development and Urban Housing Department"

15. Thus, it appears that in lieu of the Original Plot No.32/B the Final Plot No.46 was allotted. The Corporation wanted this Final Plot No.46 for public purpose. In such circumstances it filed its objections with the State Government. The State Government modified the allotment to the extent of the Original Plots No.32/A and 32/B. The Final Plot No.45 came to be allotted in lieu of the Original Plot No.32/A + 32/B.

16. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the State Government was not obliged to afford any opportunity of hearing to the appellant at the time of

passing the notification referred to above. However, at the same time, it is difficult for us take the view that the appellant is no way concerned with the land in question. It is not in C/LPA/1012/2013 JUDGMENT dispute that way back in the year 2005 the appellant had purchased the land bearing Survey No.159/1/2 from the original owners admeasuring 2023 Sq.Mtrs. The revenue entry in this regard also came to be mutated in the revenue records. The original owners had preferred an application for allotment of two different final plots. Pursuant to the representation of the original owners the Town Planning Officer passed an award allotting the Final Plot No.46 admeasuring around 1602 Sq.Mtrs., from Survey No.159/1/2 and Original Plot No.32/B.

17. The Final Plot No.46 no longer remains a subject matter of any debate. The Final Plot No.46 is to be handed over to the Surat Municipal Corporation for the purpose of garden i.e. public purpose. The only dispute now remains is one relating to the Final Plot No.45. According to Mr. Nanavati the original owners are ready and willing to part with the possession of 1600 Sq.Mtrs., of land from the Final Plot No.45 but the entire plot has been encroached upon. In such circumstances, the appellant is not getting even an inch of land from the Final Plot No.45. We are of the view that as the State Government thought fit to issue the notification dated 2.7.2010 sanctioning the preliminary scheme under Section 65 of the Act with few modifications it should look into the grievance voiced as regards the entire Final Plot No.45 being encroached upon. The State Government is obliged to see or rather ensure that the illegal shops which have been constructed upon the said final plot are removed at the earliest. At this stage, Mr. Dhaval Nanavati, the learned counsel appearing for the Surat Corporation pointed out that in fact all those persons who have put up illegal construction on the Final Plot No.45 are here before this Court by filing the Special Civil Application No.9602 of 2016 and this Court has granted interim relief in favour of the shop owners. The only interim relief granted is that no coercive steps shall be taken against them. Be that as it may, if such a petition has been C/LPA/1012/2013 JUDGMENT filed before this Court then the Government should pursue the same and see to it that the same is taken up for hearing and is disposed of at the earliest. Such matters should not be kept pending for indefinite period of time. The Corporation is obliged to request the Court concerned to take up the matter for hearing.

18. We close this appeal with liberty to the appellant to approach the State Government in its Urban Development and Urban Housing Department and point out that the Final Plot No.45 is not vacant as there are illegal constructions which have been put up. The appellant alongwith the original owners can take up this issue with the State Government in accordance with law. If this issue is taken up by the appellant alongwith the original owners then the concerned authority may look into the same at the earliest and take an appropriate decision in accordance with law.

19. At the same time, we are of the view that the Final Plot No.46 now meant for public purpose should be handed over to the Surat Municipal Corporation. The appellant should not come in the way of any public purpose.

20. In view of the aforesaid discussion, we dispose of this appeal. The interim order earlier granted dated 30.8.2013 stands vacated forthwith.

(J. B. PARDIWALA, J) (VIRESHKUMAR B. MAYANI, J) K.K. SAIYED