

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (DIRECTION - POLICE
PROTECTION) NO. 4956 of 2022**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GIRISHBHAI NATVARLAL PATEL
Versus
STATE OF GUJARAT & ORS.

Appearance:

MR ANSIN DESAI, SENIOR ADVOCATE WITH MR.NANDISH H THACKAR(7008) for the Applicant(s) No. 1
G H VIRK(7392) for the Respondent(s) No. 11
MR. D. P. KINARIWALA(410) for the Respondent(s) No. 10,4,5,6,7,8,9
NOTICE SERVED for the Respondent(s) No. 2,3
MS CM SHAH, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/04/2024
CAV JUDGMENT

1. This writ application is filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of

Criminal Procedure, 1973 seeking a writ of mandamus directing the Police Inspector, Satellite Police Station, Ahmedabad to provide police protection to reconstruct and repair a compound wall on the portion of the land, which owned by applicant - Girish Patel and the same is the part of Town Planning Scheme No.6, Vejalpur, Ahmedabad.

2. This Court has heard learned Senior Counsel Mr.Ansin Desai, assisted by Mr.Nandish Thacker, Mr.D.P. Kinariwala and Mr.G.H. Virk, for the respective parties.

3. Brief facts giving rise to file present application are, after declaration of development area, a Draft Development Plan for the city Ahmedabad was prepared and after publication thereof, it was sanctioned by the Government as provided under Section 17 of the Gujarat Planning and Urban Development Act, 1976 and accordingly, the Ahmedabad Urban Development Authority prepared a Town Planning Scheme for the development area Vajalpur and the same was known as Town Planning Scheme No.6, Vejalpur and draft scheme was prepared and sanctioned by the State Government and TPO for the implementation of the scheme was appointed and accordingly, preliminary scheme was prepared and sanctioned by the State Government under the Town Planning Act and the same was sanctioned on 14.08.2002. and preliminary scheme was sanctioned by the State Government on 14.08.2002.

Pursuant to the said T.P. Scheme, the society having land bearing survey no.225 was given original O.P. No.29 – 8902 sq.

mtrs. and after reconstitution of it, the final plot no.29 – 6855 sq. mtrs. was allotted.

In the said scheme, the adjacent land of survey no.225 is land survey no.230 and originally the said land was belonged to Vitthalbhai Vishabhai and others. The owners of the land survey no.230 was given original plot no.30 and subsequently divided into 30/1 and 30/2 admeasuring 3536 and 3325 sq. mtrs. respectively. The applicant herein purchased the plot no.30/1 by paying huge amount of premium to the corporation and registered sale deed dated 09.08.2018 thereof executed in his favour. The possession of final plot allotted to the society and others lands already handed over by the appropriate authority under the Town Planning Act. As per the scheme, the society had to handover the possession of portion of final plot nos.30/1 and 30/2 carved out from the final plot no.29 of land bearing survey no.225 to the respective land owner i.e. present applicant and others.

In the aforesaid facts, the authority vide its notice dated 13.12.2002 and 17.02.2009, directed the society and its members respondent herein to vacate and handover the final plot no.30/1 carved out from the final plot no.29 of land admeasuring 225. The members of the society opposed the implementation of the scheme and submitted their written objections along with the supporting documents. The applicant who had purchased the plot no.30/1 also asked the appropriate authority to implement the preliminary scheme. After hearing both the parties, the authority by exercising powers under

Section 68 and 69 read with Rule 33 of the Gujarat Town Planning and Urban Development Act, vide its order dated 13.07.2021, directed the society and its members to handover the portion of land bearing no.30/1 carved out from the plot no.29, the land survey no.225.

Being aggrieved with the said order dated 13.07.2021, the society through its Secretary challenged it by filing SCA No.12320/2021 before this High Court. After hearing the parties, and considering the statutory provisions of the Gujarat Town Planning Act, this Court did not find any merits in the petition and dismissed it with cost and directed the appropriate authority to implement and execute the preliminary scheme which has become final on 25.02.2019. Letters Patent Appeal against the order of the Single Judge filed by the society came to be withdrawn on 19.01.2022.

In view of the directions issued by this Court, and to implement the scheme, the appropriate authority, in the presence of the parties, by drawing the panchnama, handed over the parcels of land to the applicant herein.

The applicant after getting the possession, has constructed a boundary wall on the land. The said boundary wall demolished by the members of the society. The criminal complaint to this effect was lodged against the members of the society. In the process to protect the rights in the property, the applicant when he reached at the place, some of the members lodged an FIR against him that he had tried to outrage the modesty of woman

members, etc.

4. In light of the aforesaid facts and circumstances, the applicant had sought police protection to carry out the repairing work of boundary wall for which twice he had requested the P.I., Satellite Police Station (03.02.2022 and 20.04.2022), but somehow he could not get the police protection.

5. Under such circumstances, the applicant by invoking extraordinary jurisdiction and inherent powers of this Court, has preferred the present application for issuance of writ of mandamus directing the police authority to provide a police protection so as to enable him to protect his right over the property and complete the construction work of boundary wall.

6. Mr.Ansin Desai, learned Senior Counsel appearing for the applicant has made the following submissions:

- (i) That the Preliminary Town Scheme no.6 of Vejalpur was sanctioned by the Government on 14.09.2002.
- (ii) Pursuant to the sanctioned Preliminary Town Planning Scheme, the final plot no.30/1 allotted to the applicant for which amount of premium Rs.3,92,49,600/- was paid by him on 05.07.2018 and on 09.08.2018, the registered sale deed of the land came to be executed.
- (iii) The TP Scheme was finalized on 25.02.2019.
- (iv) In order to implement the scheme, the appropriate authority served a notices dated 13.12.2002 and 17.02.2009 upon the society and its members herein

to handover the land as the scheme is the part of the Act and all the lands vests in the appropriate authority.

- (v) As per the TP Scheme, the society was allotted a final plot no.29 carved out from land survey nos.225 and 230 and possession thereof already been handed over to the society by the authority concerned. However, the society refused to handover the possession of portion of land carved out from O.P. No.29, Survey No.225 which is now falling in final plot no.30/1.
- (vi) The society and its members failed to get relief from this High Court as in so many litigation filed by the society challenging the action taken by the authority.
- (vii) The Civil Suit filed by the society claiming possessory title which is filed in the year 2001, wherein the Trial Court refused to grant interim injunction and appeal thereof was also dismissed by the Court concerned and while dismissing the appeal, the Court has observed that the society failed to establish his possessory title with respect to land allotted to the applicant herein.
- (viii) The appropriate authority by exercising its powers under the Gujarat Town Planning Act vide its order dated 13.07.2021 directed the society and its members to handover the portion of parcel of lands so that they could handover it to the applicant herein. The society and its members by preferring SCA, challenged the said order before this High Court and after hearing the parties, the same came

to be dismissed with cost and Letters Patent Appeal against the order filed by the society came to be withdrawn.

- (ix) The authority appointed under the Town Planning Act, in the presence of the parties by earmarking the land and drawing the panchnama taken over the possession of the land from the society and handover it to the applicant herein on 10.01.2022.
- (x) The applicant herein constructed a boundary wall on the land, handover by the authority concerned and the same was demolished and the offence of trespass committed by the respondents herein and FIR to this effect came to be filed against the members.
- (xi) The respondents herein resisted and opposed the act of repairing the boundary wall.
- (xii) In view of the settled position of law and facts and the illegal acts, causing irreparable loss to the rights of the applicant, and to protect the same, the police machinery was sought to provide a protection so that the applicant could again carry out the repairing work of the boundary wall and despite request made to the police authority, he has not been provided with the police protection, as a result, his property is at the risk as the members of the society do not want to permit the applicant herein to carry out the repairing work.

7. In view of the aforesaid submissions made herein,

Mr.Desai, learned Senior Counsel would urge that, the rights of the applicant in relation to the disputed land has become final and despite of his peaceful possession of the land, he could not in a position to construct a boundary wall as there was opposition by the members of the society respondent herein. The applicant having no any alternate as the police authority failed to perform their duty and therefore, considering the exceptional circumstances of present case, this is a fit case to direct the police authorities to provide the police protection.

8. On the other hand, vehemently opposing the contentions and prayer to extend the police protection, learned counsel Mr.D.P. Kinariwala has submitted that since 2001, the suit with respect to the disputed land is pending before the Civil Court at Ahmedabad. The society and its members have claimed their right on the basis of adverse possession as since 1986-1987, they are in the possession and occupation of the land. The possession handed over by the authority to the applicant is the symbolic possession. If the prayer is granted, then the suit filed by the society become infructuous. Relying on the Apex Court's judgment (P.R. Murlidharan& Others Vs. Swami Dharmananda Theertha Padar & Others – 2006 (4) SCC 501), it was contended that a writ petition seeking a writ of mandamus directing the police authorities to give protection to the property, cannot be made a forum for adjudicating on a civil right as the Civil Court has not finally determined the rights of the parties in relation to the disputed land and therefore, at this stage, the Court may not examine the disputed question of facts as raised herein, when the subject matter is pending before the Civil Court. Unless and

until, right is not established by the Civil Court, the writ in the nature of mandamus may not issue, directing the police authority to provide the protection and if it is granted, then the suit proceedings would become infructuous.

9. Learned counsel Mr.V.M. Virk, appearing for and on behalf of the Ahmedabad Municipal Corporation, has fairly stated that the possession of the plot in question has been handed over to the applicant herein as the corporation being implementing authority of T.P. Scheme has performed its statutory obligation.

10. Heard at length learned counsels appearing for the respective parties and perused the material placed on record.

11. Before advertiring the issue, the following admitted facts required to be considered.

(A) In exercise of powers conferred under Section 50 of the Gujarat Town Planning and Urban Development Act, 1976, the State Government appointed a Town Planner Officer for preparing Preliminary Town Planning Scheme No.6, Vejalpur, Ahmedabad as required under Section 52(2) of the Act. The said scheme was sanctioned by the Government under Section 65 and as per the statutory provisions, the scheme with modification if any would part of the Act. The authority was implementing the scheme as provided under Section 67 of the Act. As per the scheme, respective plots of City Survey Nos.225 and

230 were reconstituted. So far as present facts are concerned, the respondent society and its members were served with notice dated 13.12.2002 and 17.02.2009, to handover the possession of the portion of the land carved from City Survey No.225 – original plot no.29 which is not merging with final plot nos.26, 28, 31 and 32. As per the scheme, the society was allotted final plot no.29 and other lands carved out from City Survey no.230 and it has been implemented and presently, society is occupying and it is in their possession. The society was supposed to handover the possession of final plot no.30/1 carved out from City Survey No.225. After hearing the parties and considering their written submissions and/or objections the Deputy Estate Officer, vide its order dated 13.07.2021 directed the society viz. Prabhukrupa and its members to handover the physical possession to the authority so that in turn, they can handover it to the applicant and others for which, they are legally entitled as per the sanctioned TP Scheme.

- (B) The society instead of handing over the possession as directed challenged the said order of the Deputy Estate Officer by filing SCA and the same came to be dismissed on 24.12.2021 and LPA was also withdrawn on 19.01.2022.
- (C) The respondent authority, as directed by this High Court, in the presence of the parties, earmarked the land, and by drawing panchnama, the possession of

the portion of the land handover to Natvarlal Patel, who has purchased the plot no.30/1 by paying huge amount of premium and the sale deed in his favour was executed on 09.08.2018.

(D) The reference of the civil suit is made, which has been filed by the society and its members in relation to the plot in question, the Civil Court twice rejected the interim relief as the society failed to established the title to show their possessory title. The appeal against the order of injunction was also dismissed by the District Court.

12. In view of the aforesaid admitted facts, and considering the peculiar facts and circumstances of present case, the issue falls for my consideration as to whether the case is made out directing the concerned police authorities to extend the police protection to carry out the repairing work of compound wall as sought by the applicant herein in his application dated 03.02.2022 and 20.04.2022.

13. The preliminary objection raised by the members of the society that the right of the society in relation to the disputed land is pending for its adjudication before the Civil Court and the disputed question of facts cannot be examined by the High Court in exercise of its extraordinary jurisdiction. Unless and until the said rights determined and established by an order and/or decree of Civil Court, the High Court cannot issue a writ of mandamus directing police protection.

14. Having regard to the facts and circumstances of present

case, and statutory provisions of the Gujarat Town Planning Act, 1976, this Court does not find any merits in the submissions made by the respondent society and finds merits in the contentions raised by the applicant to direct the police authority to provide police protection. The reasons for such conclusion are as follows:

- (a) Since from the publication of draft development plan, the society was having a knowledge that the land in question was under development plan under the provisions of the Gujarat Town Planning and Urban Development Act, 1976.
- (b) The State Government had invited the objections before sanctioning the draft development plan, and thereafter, draft scheme was prepared and published with respect to area falls under the development plan. The authority concerned had considered the objections of draft scheme and after appointing the Town Planner Officer by the State Government under Section 50 of the Act, to subdivide the town planning scheme into a preliminary scheme and final scheme.
- (c) In the facts of present case, lands bearing Survey Nos.225 and 230 and others were fallen under the Development Plan as well as Draft Scheme, and therefore, the Preliminary Town Planning Scheme prepared and sanctioned on 14.08.2002. The TPO had followed the procedure and also afforded an opportunity of being heard to the affected parties. On reconstitution of plots from original plots to final plot, the authority has issued a notice to handover the

possession as per the final plots to the concerned land owners for implementation of the scheme.

- (d) As per the provisions of the Gujarat Town Planning Act, 1976, the scheme would become a part of the Act and once the scheme is sanctioned, all the lands vest in the appropriate authority as per the plan and therefore, the person, who claims the ownership prior to the sanctioning of the scheme cannot take any action since he has no right, title and interest over the said property. If the person who is in the possession does not obey the directions of the authority, then the authority empowers under Section 68 of the Act to summarily evict any person, continuing to occupy any land which he/she is not entitled to occupy under the preliminary scheme and the authority is under obligation to perform his duties in accordance with the provisions of the Town Planning Act and it is their responsibilities to remove the encroachment and handover the possession to the concerned person
- (e) In view of the settled position of law, the possession and statutory right to occupy the final plot no.30/1 carved out from the lands survey no.225 is settled and finally determined by the TPO in favour of Girish Patel and allotted the said land to him. In order to implement the scheme, the possession of the same was handed over by the authority to Girish Patel, however, society by one or other pretext willfully obstructed in the implementation of the scheme and

did not handover the possession to the authority and flouted the provisions of the Gujarat Town Planning and Urban Development Act, 1976 and after getting the possession by the authority from the members of the society, the same was handed over to the applicant herein and the boundary wall upon the land thereafter, was constructed by the applicant herein and the same was demolished by the respondents herein and caused damage to the property of the applicant. The respondents herein has admitted the illegal action of demolishing the wall before the Civil Court in their injunction application no.85 which is produced at Exh.106 of writ application.

- (f) In view of the aforesaid reasons (a) to (e), this Court is of the *prima facie* view that the after sanctioning of the TP Scheme, the lands vest in the appropriate authority and as per the reconstitution of plots, and after getting the possession by the authority concerned, the society and its members cannot take any action in relation to the plot in question as they having no right, title and interest over the said plot allotted to the applicant herein. The society and its members have taken the law in their hands and demolished the compound wall without any right, title and interest over the land. The police authorities failed to provide police protection to the applicant. The respondents herein do not want to implement the T.P. Scheme in its latter and spirit and after getting

the benefit of scheme, now they raised unnecessary opposition in relation to the plots allotted to the applicant herein and this attitude and conduct cannot be tolerated.

15. For the reasons recorded, the plea regarding the pendency of civil suit, and the dictum of the Apex Court in the case of (P.R. Murlidharan & Others Vs. Swami Dharmananda Theertha Padar & Others – 2006 (4) SCC 501) relied by the respondent members would not rescue to the case of the society as in the facts of present case, the statutory right in relation to the plots in question has been determined under the provisions of the Gujarat Town Planning and Urban Development Act, 1976, and therefore, the contention that unless and until the final rights is not determined by the Civil Court, the Court may not issue the direction to provide the police protection having no any merits.

16. Having regard to the facts and circumstances of present case, and the position of law as discussed hereinabove, the applicant being aggrieved party has a legal right to protect his property as referred above and the said right has been infringed by the respondent members. In such circumstances, the only remedy available to the applicant is asked this Court to exercise its powers for issuance of necessary writs to protect the right over the property in question and in order to protect the said right, the police authorities failed in performing their duty as they refused to police protection without justifiable reasons and therefore, the case is made out to provide a police protection as

prayed by the applicant herein.

17. Resultly, the application is **allowed**. P.I., Satellite Police Station is directed to consider the application dated 03.02.2022 and 20.04.2022 seeking police protection to carry out the work of compound wall on the disputed land and they are directed to provide a police protection henceforth till completion of the entire work and see to it that no untoward incident will arise and maintain the law and order. If any attempt be made by the respondents or any other person on their behalf and raise any hindrance in erecting the compound wall, the same shall be dealt with seriously and strict action be taken including the registration of the offence. The City Police Commissioner shall deploy sufficient police staff to carry out the work and depute one officer in the rank of Dy.S.P. for proper supervision. The State as well as the applicant shall submit its compliance report within **a month** of this order. Any attempt deviating from the directions of this Court will be viewed seriously.

18. The Authority concerned shall act upon the downloaded copy of this order. The observations made hereinabove are prima facie in nature and confined to the adjudication of present application.

Direct Service is permitted.

(ILESH J. VORA,J)

After pronouncement of the order, learned counsel Mr.Kinariwala made a request to stay the order, so that party can challenge it before the Higher Forum. Considering the reasons as made in the order and issue of maintaining Rule of law, the request is not acceded to.

(ILESH J. VORA,J)

Rakesh/