

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11746 of 2023**

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KAUSHIKBHAI BABUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR PRASHANT DESAI, LD. SR. COUNSEL WITH MR MRUGEN K

PUROHIT(1224) for the Petitioner(s) No. 1,2,3,4

for the Respondent(s) No. 2,3,4,5,6,7

MS DHWANI R. TRIPATHI, ASSISTANT GOVERNMENT PLEADER/PP for
the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 14/07/2023****ORAL ORDER**

1. Mr Prashant Desai, learned senior counsel appearing with Mr Mrugen K. Purohit, learned advocate appearing for the petitioners, submitted that the petitioner, is aggrieved by the relocation of Final Plot no.75/2, without offering any opportunity of hearing to the petitioner. It is submitted that as per the position prevailing in the year 2013, the land of the petitioner and three brothers were Revenue Survey no.233 which, was divided into four parts namely, Revenue Survey nos.233/A, 233/B 233/C and 233/D. It is submitted that so far as petitioner is concerned, the petitioner, was allotted Final Plot nos.75/2 and 75/3 respectively, on both sides of the 12 meters T.P. road. It is submitted that same position prevailed at the time of finalization of the Preliminary Scheme in the year 2017; however, in the year 2019, while sending the Scheme to the State Government, Final Plot no.75/2, was shifted and was brought near the garden and adjacent to Final Plot no.75/3. It is submitted that the notices, were issued by the petitioner, in terms of the provisions

of sub-rule (4) of Rule 26 of Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as “the Rules of 1979”) read with Section 52 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as “the Act of 1976”); however, at the time of finalizing the Scheme and sending it to the State Government, changes were effected without offering any opportunity of hearing to the petitioner. It is submitted that sub-rule (3) of Rule 26 of the Rules of 1979, clearly provides for issuance of notice in Form ‘H’. It is submitted that earlier, the notices were issued; however, at the time of effecting the change, no notice was issued. Therefore, the only interpretation, which can be culled out from sub-rule (3) of Rule 26 of Rules of 1979 is that, once the change is effected there cannot be further change. Assuming that said interpretation is not plausible then every time the change is effected, at least, there has to be a notice issued by the Town Planning Officer, since it affects the rights of the owner over the land in question. It is submitted that now, there is a notice issued by the Ahmedabad Municipal Corporation dated 04.05.2023 under the provisions of Section 67 read with Section 68 of the Act of 1976 read with Rule 33 of Rules of 1979.

2. Considered the submissions. Issue notice to the respondents, returnable on 04.08.2023. Direct service is permitted.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)