

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15420 of 2023**

=====

DHOBI NATHIBEN NARANBHAI CHAUHAN

Versus

STATE OF GUJARAT

=====

Appearance:

DEV D PATEL(8264) for the Petitioner(s) No. 1

PRIYA K BHARADIA(8224) for the Petitioner(s) No. 2

for the Respondent(s) No. 2,3

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

=====

CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

Date : 08/09/2023

ORAL ORDER

Mr Dev D. Patel, learned advocate for the petitioners submitted that the issue, revolves around the revenue survey no.117 of village Veraval which, was running in the name of Turak Gani Hasan and others which subsequently, came to be converted into non-agricultural land vide order dated 16.07.1981. The land in question, was included in the draft town planning scheme no.1 (Veraval) and thereafter, assigned original plot nos.142 and 144/2. Survey no.1172 admeasuring 3237 sq. mtrs. was divided into two final plot nos.144/1 admeasuring 1500 sq. mtrs. and 144/2 admeasuring 900 sq. mtrs. The petitioners, purchased 900 sq. mtrs. vide registered sale deed dated 31.08.1981 and the effect of the said transaction, was given in the village form no.2 vide entry no.5884 dated 31.08.1981. Since then, the name of the petitioners, is running in the revenue record. It is submitted that the said fact, was known to the authorities.

2. During the preparation of the preliminary scheme, the whole of the revenue survey no.1172 admeasuring 3237 sq. mtrs. was given original plot no.142 and final plot no.248 admeasuring 2707

sq. mtrs. The rights of the owners in the final plot, were as per their share in the original plot. It is submitted that disregarding the revenue record, so also the rights of the petitioners, that the names of the original owners continued and is continued till date.

3. It is submitted that the suit was filed, which came to be decreed in favour of the petitioners; however, the owner of final plot no.248, so also the State Government, had preferred appeal and both the appeals, came to be partly allowed. While partly allowing the appeals, the petitioners, were given liberty to make a representation to the Town Planning Officer regarding their rights over the land in question. Accordingly, in the year 2017, a representation was made to the Town Planner, Junagadh, which came to be rejected vide communication dated 11.04.2018 on the ground that if at all the petitioners, are desirous of seeking variation, the proposal, has to come through the concerned Nagarpalika. The petitioners, therefore, submitted a proposal to the Chief Officer, Nagarpalika and the Nagarpalika, returned it, citing the ground that it is only an implementing authority and therefore, nothing can be done at its end.

4. It is next submitted that a legal notice was issued to the Town Planner, Junagadh, which was responded to vide communication dated 11.04.2019, instructing that if the petitioners, are desirous of having any variation, it has to be done in tune with the provisions of Section 70 of the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as the 'Act of 1976').

5. After exchanging communications, the petitioners, since were left with no option, preferred a writ petition before this Court being Special Civil Application no.10012 of 2022, which came to be

disposed of with a direction to the petitioners, to make an appropriate application before the Nagarpalika and Nagarapalika, was further directed to send a proposal to the State Government under the provisions of Section 70 of the Act of 1976. Accordingly, the petitioners, once again addressed a communication dated 12.09.2022 to the Chief Officer, Nagarpalika, indicating in detail, each and every aspect and the Nagarpalika, in turn, addressed a communication dated 25.11.2022 to the Chief Town Planner, Gandhinagar, requesting it to vary the scheme under the provisions of the Act of 1976; however, for the reasons best known to the Chief Town Planner, the same, has been returned citing the ground that the proposal, is not in proper format.

6. It is submitted that the petitioners, undisputedly, are the owners of the land in question, and purchased it from the original owner. Even the original owner has addressed a communication to the Administrator of the Nagarpalika, *inter alia*, pointing out that the lands have been sold and survey no.1172 final plot no.144/2 admeasuring 900 sq. mtrs., has been purchased by the petitioners and the authorities, may accordingly, recover the betterment charges from the respective owners.

7. It is submitted that owing to the inaction on the part of the respondent authorities that the petitioners and another, are struggling to get the scheme varied. It is submitted that the petitioner for all these years, have been shunting from pillar to post; however, there is no decision by the authorities either way.

8. Considered the submissions. Issue notice to the respondents, returnable on 22.09.2023.

9. Clearly, the application of the petitioner dated 12.09.2022,

running into four pages, contains all the details since inception, including the aspect of the preparing of the draft town planning scheme, preliminary town planning scheme, the transactions in favour of the petitioners, so also the proceedings before the Court below and this Court. On the basis of the said application, the Nagarpalika, has prepared a detailed proposal dated 25.11.2022, indicating each and every aspect; however, this Court, fails to understand as to what further details are required by the respondent no.1 for the purpose of seeking variation under Section 70 of the Act of 1976. Let the said aspect be explained by way of an affidavit.

10. Mr Meet M. Thakkar, learned Assistant Government Pleader to take instructions in the matter.

11. Direct service is permitted.

BINOY B PILLAI

(SANGEETA K. VISHEN,J)