

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15420 of 2023

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DHOBI NATHIBEN NARANBHAI CHAUHAN & ANR.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

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

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

MS SHRUTI DHRUVE ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 3

MR DEEPAK P SANCHELA(2696) for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 20/08/2026

ORAL ORDER

1. Heard learned Advocate Mr. Dev D. Patel on behalf of the petitioners, learned Assistant Government Pleader Ms. Shruti Dhruve on behalf of respondent – State and learned Advocate Mr. Deepak Sanchela on behalf of respondent no.2.

2. By way of this petition, the petitioners have sought for following prayers:

“8 (A) to issue a writ of Mandamus or any other appropriate writ, order or direction, directing the Respondent No.2 Nagarpalika to send the proposal for variation so as to include the name of

Petitioners in Final Plot No. 248 as regards 900 sq. meters of land of Town Planning Scheme No.1 of Veraval and further be pleased to direct the Respondent No.1 to grant the said variation proposal in the interest of justice;

(B) to issue a writ of Mandamus or any other appropriate writ, order or direction, directing Respondents to hand over the peaceful and vacant possession of the Final Plot No. 248 as regards 900 sq. meters of land of Town Planning Scheme No.1 of Veraval in favour of the Petitioners;

(C) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the Respondents not to transfer and/or hand over the possession of Final Plot no. 248 of Town Planning Scheme No. 1 of Veraval to anyone other than Petitioners;

(D) to pass such other and further order/s as may be just and necessary in the circumstances of the case.”

3. The petition has a quite checkered history and though this Court is not deciding on the merits of the issue, yet for the final order to be passed the history will have to be recounted.

4. It is the case of the petitioners that the land bearing survey no. 1172 of village Veraval admeasuring 3237 square meters was in the name of five

persons namely (i) Turak Gani Hasan, (ii) Turak Mohammad Hasan, (iii) Turak Bai Amma Hasan, (iv) Turak Bai Moti Hasan, (v) Turak Bai Havaji Hasan (together referred as 'Original Owners'. It appears that the said plot, came be to converted for non agricultural purpose vide an order dated 16.07.1981 and whereas it appears lay out plan had also been sanctioned. It is the case of the petitioners that during the interregnum, Draft Town Planning Scheme No. 1 Veraval, came to be promulgated and whereas the land in question that is revenue no. 1172 was divided into Original Plot No. 142 and 144/2. It is the case of the petitioners that as things stood such, they had purchased proposed original plot no. 144/2 from original land owners vide registered sale-deed dated 31.08.1981. It is also stated that the registered sale deed was mutated in village form no. 2 vide entry 5884 on 31.08. 1981. It appears that during the interregnum, the notices under the Town Planning Act had been sent to the original land owners, and whereas it appears that the original land owners had never informed the authorities as regards the transaction in question. It would also appear that final Town Planning Scheme, resulted in the whole of Revenue Survey No. 1172 admeasuring 3237 square meters, being allotted final plot no. 248 which was admeasuring 2707 square meters, after deduction of 16.37 % of the land.

4.1 It appears that since there was a confusion with regard to the land

which was purchased by the petitioner, the petitioners had approached the learned Civil Court, inter alia with a grievance that the respondents, i.e the State respondents, had not given an appropriate land to the present petitioners, after the rigors of the Town Planning Scheme, more particularly it was the case of the petitioners that since the petitioners had purchased the land in question, the State Authority ought to have ensured that the pro rata land is given to the petitioners.

5. It would appear that the learned Civil Court, had decreed the suit in question more particularly vide judgement and order dated 22.02.2008 and whereas the State Authorities i.e the State and the Municipality were directed to hand over possession of the plot in question to the petitioners who were the plaintiffs in the said suit. It would appear that the State Authority as well as a person claiming to be occupier of final plot no. 248 had preferred appeals before the learned District Court Veraval and whereas vide an order dated 07.11.2017, the learned District Court, had inter alia passed an order whereby the decision of the learned Civil Court in the Civil Suit was set aside and whereas liberty was reserved in favour of the plaintiffs to file an appropriate representation before the Town Planning Officer, Junagadh regarding the rights over the suit land, and the Town Planning Officer was directed to take a decision on merits of the representation. It

was also observed that if the decision of respondent no. 2 was against the interest of the plaintiffs, then the plaintiffs would be at liberty to move the learned Civil Court to take appropriate action.

5.1 It would appear that the petitioner, i.e. the plaintiff, in compliance of the order of the learned Civil Court, had submitted appropriate representations and whereas it would appear that the representation did not result in any decision except the petitioner being shunted between the State Authorities and Municipal Authorities. The petitioners, aggrieved with such an inaction, had approached this Court by preferring Special Civil Application No. 10012 of 2022 and vide an order dated 02.09.2022 learned Co-ordinate Bench of this Court, had inter alia directed the respondent authorities to consider the representation of the petitioners more particularly it was directed that the petitioners could seek for variation under Section 70 of the Gujarat Town Planning and Urban Development Act and whereas the respondents were directed to take appropriate steps. It would appear that follow up steps had led to the present petition being filed and whereas replies have been filed by both the State and the Municipality opposing the petition and whereas the State Authorities, have inter alia observed that neither the State nor the Municipality could do anything about the land of the petitioner as of now, since the person from whom the petitioner had

purchased, appears to have sold the land to some third parties.

6. While it is true that as of now, the decision of the State could not be faulted with, inasmuch as the the person from whom the petitioners had purchased the land, had sold the land to third parties and third party rights have accrued on the land in question yet, it would appear that in the entire rigmarole, the aspect which appears to be missed out is that the petitioner, who had validly purchased a substantially large parcel of land, is now left remediless. It would also appear to this Court that the substantial blame for such an action could be laid on the order passed by the learned District Court, more particularly since the learned District Court, while directing a representation to be filed, had not given any valid reason as to why the petitioner was to be relegated for filing a representation. As it is, in the prima facie opinion of this Court, the civil suit preferred by the petitioners was the correct remedy inasmuch as in the civil suit, in addition to joining the State and the Municipality, the petitioners had also joined the persons from whom the land had been purchased by the petitioners. As it is, it would prima facie appear to this Court that the responsibility as of placing the petitioners in the present unenviable position would be a joint responsibility, more particularly the municipality, the seller and the State being equally responsible. The above observation on account of the fact that

while the Town Planning Act, does not prohibit any sale, even after preliminary Town Planning Scheme is promulgated, and whereas while the Land Revenue Code does not require the purchasers to inform the appropriate authorities as regards the purchase of the parcel of land yet even after the petitioners had purchased the land in question, notices as regards the land, had been sent to the original land owners. The original owners who had sold the land to the petitioners, also being requiring to share the blame since it is on account of their dishonest action that the petitioners, though having purchased substantially large parcel of land, as of now are left with nothing.

7. It would appear to this Court that no reliefs could be granted by this Court under the present petition under Article 226.

8. At this stage learned Advocate Mr. Patel would request this Court to permit the petitioner to challenge the decision passed by the learned District Court Gir Somnath at Veraval dated 07.11.2017 by approaching the appropriate Court by filing Second Appeal and whereas it is requested by learned Advocate that this Court may observe appropriately as regards the limitation aspect since the petitioner had duly complied with the decision by filing appropriate representation and the petitioners had also approached

this Court for a direction to the respondent authorities to comply with the directions of the learned District Court. To this Court the said request being reasonable, is required to be acceded to. To this Court it would appear that the learned District Court, could have either decided as to whether the order passed by the learned Civil Court, was correct or not in accordance with the applicable parameters of law and whereas the District Court by having relegated the petitioners to the State and the Municipal Authorities, appears to have complicated the issue even further.

9. It would also appear to this Court that the petitioners, in compliance with the directions of the learned District Court, had in fact approached the appropriate authorities within the stipulated time and whereas as noticed hereinabove except for the petitioners being shunted between the State and Municipal Authorities, no positive action appears to have been taken. It also appeared that the petitioners had approached this Court in the year 2022 and whereas the petitioners had been permitted to approach the authorities for very reason. Thus it would appear that the petitioners, were required to approach wrong forum more particularly since the petitioners were complying with the order of the learned District Court and whereas to this Court it would appear that the request of the petitioners, to permit them to file Second Appeal and to take care about the limitation aspect, requires

to be appropriately considered. Hence the following directions are issued:

[1] The present petition stands disposed of as withdrawn.

[2] The petitioners are permitted to file Second Appeal against judgement and order dated 07.11.2017 passed by the learned District Court, Gir Somanath at Veraval in Regular Civil Appeal No. 9 of 2008 and 2 of 2010.

[3] It is observed that in case any appeal is filed, it would be open for the petitioners to claim exemption from the limitation period more particularly by raising contentions as regards the petitioners having followed the directions of learned District Court and having approached this Court by way of filing petition in the year 2022 and thereafter by way of filing the present petition in the year 2023.

10. With the above observations and direction, the petition stands disposed of. Needless to clarify that all the observations hereinabove are prima facie in nature for the purpose of passing the final order.

(NIKHIL S. KARIEL,J)

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