

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 17721 of 2023**

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JAYESHBHAI CHINUBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR PRASHANT DESAI, LD. SR. COUNSEL WITH MR RUTUL P

DESAI(6498) for the Petitioner(s) No. 1

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

MS KRUSHITA D. DAVE, ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 10/10/2023****ORAL ORDER**

1. Mr Prashant Desai, learned senior counsel appearing with Mr Rutul P. Desai, learned advocate for the petitioner submitted that the petitioner was the owner of old survey no.12 and new survey no.26/1 and 26/2 admeasuring 39659 sq. mtrs.; however, during the draft town planning scheme, the petitioner was assigned original plot no.29 which was further bifurcated into original plot nos.29/1 and 29/2 admeasuring 21090 sq. mtrs and 2706 sq. mtrs. respectively. It is submitted that the petitioner was happy with the said allotment. The draft town planning scheme came to be sanctioned by the State Government as it is; however, at the time of preparation of preliminary town planning scheme, the Town Planning Officer, without adhering to the provisions of Rule 26 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as "the Rules of 1979"), has changed the location and what the petitioner has been allotted is final plot no.29. It is submitted that in final plot no.29, there exists a well in the area

of 10900 sq. mtrs. and petitioner would be unable to utilize the said plot leaving 90 meters radius. It is submitted that before allotting the final plot no.29, the Town Planning Officer ought to have heard the petitioner, since the proviso to sub-section (3) of Section 52 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act of 1976") gives power to Town Planning Officer to make variation from the draft scheme; however, if it is of a substantial nature, it is coupled with the previous sanction of the State Government and after hearing, who may raise the objection. It is submitted that no opportunity was granted to the petitioner to raise an objection. In the year 2017, the petitioner has made representation to the Town Planning Officer, Additional Chief Secretary of the State Government and Chief Town Planning Officer; however, the concern of the petitioner has not been dealt with and preliminary town planning scheme has been sanctioned in the year 2022. Reliance is placed on the judgment in the case of *Jaswantsingh Mathurasingh v. Ahmedabad Municipal Corporation* reported in 1992 (1) GLR 253 to contend that in the event of non-compliance, the validity of the scheme, stands vitiated.

2. Considered the submissions. Issue notice to the respondents, returnable on 08.11.2023. Direct service is permitted

RAVI P. PATEL

(SANGEETA K. VISHEN,J)