

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 929 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 9466 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/LETTERS PATENT APPEAL NO. 929 of 2021

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE A.J.DESAI**

Sd/-

and**HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SUKESHI VIJAYBHAI BHATT

Versus

STATE OF GUJARAT

Appearance:

MR AB MUNSHI(1238) for the Appellant(s) No. 1,2,3

for the Respondent(s) No. 1,3,4,5,6

MR MAULIN RAVAL, SR. ADVOCATE with MR GAURANG A

VAGHELA(8340) for the Respondent(s) No. 2

RAVAL& TRIVEDI ASSOCIATES(9262) for the Respondent(s) No. 2

CORAM:**HONOURABLE MR. JUSTICE A.J.DESAI**

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**Date : 03/03/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.J.DESAI)**

[1.0] By way of present appeal under Clause 15 of the Letters

Patent, the appellants herein – original petitioners (hereinafter referred to as “petitioners”) have challenged the CAV judgment dated 07.05.2021 passed by the learned Single Judge in Special Civil Application No.9466/2019 by which the learned Single Judge has dismissed the petition by a reasoned judgment.

[2.0] That, the respondent No.2 – Ahmedabad Municipal Corporation has filed caveat and has been represented by learned Senior Advocate Mr. Maulin Raval with learned advocate Mr. Gaurang Vaghela and therefore, we have learned advocate Mr. A.B. Munshi appearing for the original petitioners and learned Counsel Mr. Maulin Raval assisted by learned advocate Mr. Gaurang Vaghela appearing for the respondent No.2 – Ahmedabad Municipal Corporation.

[3.0] The short facts emerging from the record of the case are as follows:

[3.1] The petitioners and the family members are the owners of land bearing Final Plot No. 64/4 admeasuring 7289 sq. mtrs. allotted in T.P. Scheme Ahmedabad-24(Maninagar Extension-Varied) situated in Maninagar area of Ahmedabad city. According to the petitioners, the land in question is mutated in the name of the petitioners and the family members in the revenue record in village Form no. 7/12 of village Rajpur Hirpur, Taluka Maninagar, District Ahmedabad.

[3.2] That, the land admeasuring 18870 sq mtrs. situated in Survey no. 217 and land admeasuring 1720 sq mtrs. situated in survey no. 448, total land admeasuring 20590 sq mtrs. situated in Sim of village Rajpur-Hirpur, Taluka Maninagar, District

Ahmedabad belonged to one Chunilal Chhaganlal Bhatt who was predecessor in title of the petitioners and after his demise, the said lands were inherited by his legal heirs.

[3.3] That, the aforesaid land of survey nos.217 and 448 was acquired by respondent No.2 Ahmedabad Municipal Corporation (For short "AMC") by passing resolution no.63 of 1957 dated 20.11.1957. Notification under section 4 of the Land Acquisition Act, 1894 was issued on 19.12.1957 and notification under section 6 of the Land Acquisition Act, 1894 was issued on 05.08.1958. The three sons of the original owner-predecessor in title of the petitioners challenged the acquisition proceedings by filing writ petition being Special Civil Application No.1014/1964 before this Court.

[3.4] It appears that during the pendency of the aforesaid petition, the AMC declared its intention to frame the Town Planning Scheme Ahmedabad-24 (Maninagar Extension) on 17.08.1964. Vide notification dated 15.04.1966, the State Government sanctioned the Draft Town Planning Scheme under section 28 of the Bombay Town Planning Act, 1954. Under the sanctioned Draft Town Planning Scheme, the land admeasuring 18870 sq. mtrs. of Survey No.217 was allotted Original Plot No.20 admeasuring 16507 sq mtrs. for which Final Plot No.62 admeasuring 1140 sq. mtrs and Final Plot No.64 admeasuring 14591 sq mtrs. were allotted deducting 776 sq. mtrs and out of another plot of 2363 sq. mtrs. was allotted Original Plot No.20/1 against which Final Plot No.63 admeasuring 1974 sq mtrs. was allotted deducting 393 sq. mtrs; whereas for land admeasuring 1720 sq. mtrs of Survey no. 448, Original plot no. 35 was allotted against which Final Plot No.71 admeasuring 1359 sq. mtrs was

allotted by deducting 363 sq. mtrs. Thus the position of land of survey no. 217 and 448 was as under:

S.No.	O.P.No.	Sq.Mtrs.	F.P.No.	Sq.Mtrs.	TP Deduction	%age of the TP Deduction
217	20	16507	62 64	1140 14591 ----- -	776	4.70%
	20/1	2363 ----- -	63	15731 1974	393	16.6%
		18870				
448	35	1720	71	1359	363	21.10%
Total		20590		19062	1528	7.42%

[3.5] However, there was a remark with regard to reservation for slum clearance in respect of Final Plot Nos.62, 64 and 71.

[3.6] This Court allowed Special Civil Application No.1014/1964 vide judgment and order dated 06.10.1969 and set aside the land acquisition proceedings declaring notification dated 05.08.1958 issued under Section 6 of the Land Acquisition Act, 1894 as invalid.

[3.7] That, the AMC on 19.01.1973 declared its intention for variation of TP Scheme Ahmedabad-24. The State Government vide notification dated 31.03.1975 sanctioned the varied Draft Town Planning Scheme and Town Planning Officer (For short "TPO") was appointed vide notification dated 05.06.1975.

[3.8] That, as per the varied TP Scheme, following variation in Final Plot Nos.64 and 71 was made:

O.P.No.	Sq. Mtrs.	F.P. No.	Sq. Mtr.	T.P. Deduction Sq. Mtrs.	% of TP Deduction
64	14591	64/1 64/2 64/3	2663 2625 1987	7316 (F.P. No.64/4 for P and T and slum clearance)	50
71	1357	71	1228	129	9.5

[3.9] It appears that in addition to original deduction, further deduction of 7316 Sq. Mtrs. of land was made from Final Plot No.64 and New Final Plot No. 64/4 admeasuring 7289 sq. mtrs is allotted to appropriate authority for Post and Telegraph and Slum Clearance. The TPO issued notice on 01.09.1975 under Rules 3 and 4 of the Bombay Town Planning Rules and on 16.09.1975, objections/suggestions of the landowners were heard. The Town Planning Committee of AMC passed a resolution dated 30.08.1977 to change the purpose of use of 4000 sq. yards of Final Plot No. 64/4 for telephone exchange and staff quarters with a condition to develop the same in three years. Entry No.17993 dated 10.11.1979 was mutated in respect of change in Final Plot Nos. 62, 63 and 64.

[3.10] That, the respondent No.2 passed resolution dated 29.01.1980 to authorise Municipal Commissioner to prepare proposal for variation of TP Scheme to deduct more than 25% land. Thereafter, AMC passed resolution dated 24.11.1980 to return the land deducted in excess of 25% to the landowners. TPO vide letter dated 19.01.1982 proposed to allot final plot no. 71 of 1228 sq. mtrs in lieu of 1357 sq mtrs by deducting further

129 sq mtrs. in addition to original deduction effected in the sanctioned Draft Town Planning Scheme. On 16.09.1983, Revised Development Plan came into force in which Final Plot No. 64 was shown in residential zone.

[3.11] That, the predecessor in title of the petitioners made a representation dated 26.09.1986 with a request to release the land of survey no. 64/1 64/2 and 64/3 from reservation, however, TPO by letter dated 07.02.1987 informed that since final TP Scheme is not sanctioned by the Government, no modification would be proper.

[3.12] That, the TPO issued notice dated 27.02.1992 to the landowner under Rule 26(9) of the Gujarat Town Planning Rules, 1976 and thereafter, forwarded TP Scheme for sanction by the State Government. The State Government by notification dated 12.01.1993 sanctioned the varied TP Scheme.

[3.13] That, according to the petitioners by varying TP Scheme, F.P. No.64/4, 7289 sq. mtrs is carved out and allotted to appropriate authority for public purpose of Post and Telegraph and Slum Clearance housing. It also appears that the Chief Post Master General, Gujarat by communication dated 28.07.1994 informed the authority that it was not possible for the department to purchase the lands for construction of departmental buildings due to limited funds. It appears that the Gujarat Slum Clearance Board by communication dated 05.07.1976 has made it clear that it was not possible to implement any project for construction of houses.

[3.14] It appears that notice dated 29.01.2005 under section

20(2) of the Gujarat Town Planning and Urban Development Act, 1976 (For short "the Act 1976") was served by the landowners to all the authorities with regard to their stand on non use of land of plot no. 64/4. BSNL as well as postal department also intimated to the father of the petitioners that there is no proposal to use the said land.

[3.15] It appears that thereafter one of the sons of the original owner Chunnilal filed Special Civil Application No.6603/2008 with a prayer to declare that reservation of 3300 sq mtrs. of FP No.64/4 has lapsed as per the provisions of section 20(2) of the Act, 1976. The said petition was disposed of vide order dated 27.08.2008 with a direction to the authority to consider the representation of the petitioners. It appears that father of the petitioner along with the petitioners preferred representation from time to time. Petitioner no.1 and 2 filed Special Civil Application No.6537/2012 with a prayer to restrain AMC from disturbing the possession and for declaration about the reservation having lapsed of the said land for Final Plot No.64/4 and to restore the possession. During the pendency of the petition, vide order dated 06.05.2014, this Court observed that it would be open for the petitioners to approach the Corporation with a representation for de-reserving the land.

[3.16] Accordingly, the petitioners approached AMC and Town Planning Officer with a representation dated 22.05.2014 and thereafter petition was withdrawn as the representation was pending. AMC rejected the representation on 14.08.2014 on the

ground that subject land being Final Plot No. 64/4 is vested in the appropriate authority in pursuance to the variation of the TP Scheme which has been sanctioned by the State Government vide notification dated 12.01.1993.

[3.17] It also appears that after rejection of the representation filed at the instance of the father of the petitioner Nos.1 and 2 preferred the aforesaid petition in the year 2019 with the following prayers.

"(A) Your Lordships may be pleased to admit and allow this petition.

(B) Your Lordships may be pleased to issue writ of mandamus or writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned T.P Scheme being Town Planning Scheme, Ahmedabad24 (Maninagar Extension) varied so far as it relates to Final Plot No.64/4 admeasuring 7289 sq.mtrs.and be pleased to hold and declare that entry of reservation made in "F" form in the land of original F.P.No 64 and 71 is also illegal and be pleased to delete the same and be pleased to delete the name of appropriate authority and reference of post and telegraph department and slum clearance board from the "F" form of F.P.No.64/4 and be pleased to direct the authority to enter the name of the petitioners in "F" form and all other relevant record of F.P.No.64/4.

(C) Your Lordships may be pleased to further hold and declare that if the subject land being F.P No.64/4 admeasuring 7289 sq.mtr.is required for any public purpose then in that case, the authorities may be directed to initiate the proceedings for acquisition of the same as per the provisions of the Right to Fair compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act,2013 and be pleased to direct the authorities not to disturb the possession and enjoyment of the petitioners and their family members over the subject land unless and until the petitioner are paid compensation determine as per the Land Acquisition Act, 2013 as per the prevalent market rate.

(D) During the pendency and till final disposal of the petition, by way of interim relief, Your Lordships may be pleased to direct service the respondent not to interfere with actual physical possession of the petitioners over the subject land being F.P.No.64/4 admeasuring 7289 sq.mtr. Of T.P.Scheme, Ahmedabad-24 (Maninagar Extension) Varied and not to deal with the subject land in any manner whatsoever and pleased to direct the authorities to maintain the status quo in respect of the subject land."

[3.18] The respondent No.2 – Ahmedabad Municipal Corporation also filed affidavit in reply opposing the grant of reliefs as prayed for by the petitioners. The learned Single Judge after considering the facts of the case and various decisions, rejected the petition.

Hence, the present Letters Patent Appeal.

[4.0] Learned advocate Mr. A.B. Munshi appearing for the petitioners would submit that the learned Single Judge has committed an error in rejecting the petition since the Authority before which the land was reserved in T.P. Scheme viz. Post Master General and Slum Clearance Board had no intention to use the land for which necessary documents were produced, the authority should have directed to dereserve the plot/land. He would submit that the Authority is acting contrary to various notifications which has been issued by the State Government in the year 1999 onwards keeping more than 50% of the land. He, therefore, would submit that the appeal be admitted and appropriate orders may be passed.

[5.0] On the other hand, learned Counsel Mr. Maulin Raval assisted by learned advocate Mr. Gaurang Vaghela appearing for

the respondent No.2 has taken us through various communications and decisions passed by the respondent No.2 pursuant to the orders passed by this Court. He would submit that father of the petitioner Nos.1 and 2 had made representation as regards the same land which was considered as per the orders passed by this Court way back in the year 2014. The decision of the representation which was decided in the year 2014 was never challenged by the father of the petitioner Nos.1 and 2, however made representations one after another which were also rejected. He would submit that the aforesaid petition was filed mainly on the ground that the Authorities for which plots were reserved and the T.P. Scheme which was sanctioned on 12.01.1993 did not use the plots for the purpose for which it was reserved. He would submit that as laid down by catena of decisions, once a land becomes part of the T.P. Scheme and it vests with the Authority free from all encumbrances. He would further submit that even the Authority for which it was reserved does not want to utilize the same and therefore, such land can be used for any other public purposes. He would submit that after rejection of the representation in the year 2014, the possession of the property / plot has already been taken over by the respondent No.2 in the year 2017. He has also taken us through the reasoning part of the impugned CAV judgment. He would submit that the learned Single Judge has relied upon several decisions in detail and even reproduced in the impugned judgment. He, therefore, would submit that the present appeal be dismissed.

[6.0] We have heard learned Counsel appearing for respective

parties at length.

The land might have been reserved for Postal Department as well as Slum Clearance Board but that was reserved in the year 1993. But, subsequently, the same was not utilized for the said purpose, however the scheme has been sanctioned in the year 1993 and therefore, vested in the State Government free from all encumbrances. It is also pertinent to note that the possession of the property was taken over by the respondent No.2 – Corporation in the year 2017. The representation which was made at the instance of the father of the petitioner Nos.1 and 2 was considered way back in the year 2014 and was rejected, however the father of the petitioner Nos.1 and 2 survived for four years and expired in the year 2018, still however the petitioners did not challenge the said dismissal of representation. However, in the year 2019, the petitioners came before the learned Single Judge with similar type of prayers by way of filing Special Civil Application No.9466/2019.

[6.1] The learned Single Judge has relied upon the following decisions.

1. Chandragauda Ramgonda Patil v. State of Maharashtra
1996(6) SCC 405
2. Mohanlal Nanabhai Choksy v. State of Gujarat
2011 (3) GLR 1890
3. Vasudev Kanchanlal Pandya v. State of Gujarat
2017 JX (Guj) 563

4. Surat Panjarapole v. State of Gujarat
AIR 2001 Guj 316
5. Kanjibhai Dahyabhai Malsattar v. State of Gujarat
2005(2) GLR 1649.
6. Babulal Badriprasad Varma v. Surat Municipal Corporation
2008(12) SCC 401.
7. Jiviben Hansrajbhai Patel Wd/o Hansrajbhai Devjibhai Patel
v. State of Gujarat through Secretary
2011(2) GCD 1460.
8. Satyadev Parasnath Pandey v. State of Gujarat
2015 (2) GLR 1475.
9. Ramanbhai Hargovinddas Limbachia v. State of Gujarat
2016(3) GLR 2695.
10. Bal Shikshan Samiti Trust v. State of Gujarat
2011(3) GLR 2681.
11. Gopalbhai Devabhai Patel v. State of Gujarat
2017 JX (Guj) 725

[6.2] That, the learned Judge after considering the rival submissions, in paragraphs 29 to 33 of the impugned judgment has observed as under:

"29. Having heard the learned advocates for the respective parties and having gone through the materials on record, it emerges that the land in question belonging to the father of the petitioners was sought to be acquired in the year 1957 under the land acquisition Act by initiating land acquisition proceedings for the purpose of slum clearance housing board

and road. However, thereafter, TP Scheme was proposed by the AMC in the year 1966. At that point of time when the State Government sanctioned the Draft Town Planning Scheme in the year 1966, there was no question of any reservation of the land for the purpose of slum clearance and housing board and road as the land acquisition proceedings were already initiated which were under challenge before this Court. When this Court quashed and set aside the land acquisition proceedings in the year 1969 by allowing Special Civil Application N.1014/1964, AMC thought it fit to vary the Town Planning Scheme so as to include the land which was proposed to be acquired under reservation for public purpose and accordingly Final Plot no. 64 was divided into four parts being F.P. Nos. 64/1, 64/2 and 64/3 which were allotted to the joint land owners and Final Plot No. 64/4 was carved out admeasuring 7316 sq. mtrs as reserved plot for public purpose.

30. It also emerges from the record that the State Government sanctioned the varied Draft TP scheme by notification dated 31.3.1975 published in the gazette on 10.4.1975. Thus the varied Draft TP Scheme was sanctioned prior to coming into force of the Act, 1976. In such circumstances, the contention raised on behalf of the petitioners that there is a deduction of more than 50% of the land is not tenable, as such land was reserved for public purpose for post and telegraph department and slum clearance housing at the relevant time. It is well settled legal position and it is a trite law with regard to the legality and effect of sanctioned Town Planning Scheme under the Bombay Town Planning Act as well as Gujarat Town Planning Act and this Court as well as Supreme Court has time and again held that once the Draft Scheme is sanctioned by the State Government it partakes the character of statute. Following decisions of this Court as well as Supreme Court are referred to for such settled legal position :

1) This Court in case of Kanjibhai Dahyabhai Malsattar v. State of Gujarat(supra) held that TP Scheme would become final under section 65 read with section 67 of the Act, 1976 and once the Scheme has become final, all the lands would vest in Area Development Authority free from all encumbrances and as such, the petitioners are required to vacate the land.

2) In case of Babulal Badriprasad Varma v. Surat Municipal Corporation (supra), the Apex Court held

that, in facts of the said case, the appellant through his conduct has waived his right to equitable remedy as it would operate as estoppel against him with respect to asserting a right over a portion of the acquired land in a situation where the Scheme in question has attained finality as a result of the appellant's inaction.

3) This Court in case of Jiviben Hansrajbhai Patel Wd/o Hansrajbhai Devjibhai Patel v. State of Gujarat through Secretary (supra) held that once Final Plot is reserved for public purpose, the contention of the petitioner in the said case for allotment of lesser area of Final Plot was rejected on the ground that the Scheme has attained finality and the matter to be considered only with respect to enforcement of the Scheme.

4) In case of Satyadev Parasnath Pandey v. State of Gujarat (supra), this Court held that provisions of section 48A of the Act, 1976 clinches the issue that the land in question would vest in the authority after the draft scheme has been approved by the State Government. It was held that doctrine of proportionality requires that the balance has to be struck between the individual claim and the right of the society and accordingly when the land is reserved for public purpose, the petitioner cannot claim any compensation from the respondent authority.

5) In case of Ramanbhai Hargovinddas Limbachia v. State of Gujarat (supra), it was held by this Court that the petitioners have no locus to raise the objection to purchase the land after sanctioning of the Town Planning Scheme. Admittedly, in facts of the case, father of the petitioners purchased the land after the sanctioning of the Town Planning Scheme in the year 1975.

31. In facts of the present case, two earlier Special Civil Applications being Special Civil Application No.6603/2008 and Special Civil Application No.6537/2012 were filed for the same issues which have been raised by the petitioners with ultimate purpose of not restraining the respondent authorities from taking over the possession of the land of Final Plot No. 64/4. Final Plot No. 64/4 is part of the Final Town Planning Scheme which has been sanctioned and has achieved finality as per Form-F under Rules 17 and 29 of the

Rules, 1976 showing redistribution and valuation statement available on record produced along with the affidavit in reply filed on behalf of the respondent corporation and it is clear that the petitioners have been allotted land in the varied final town planning scheme no.24(Manipur-Distribution-varied) and land admeasuring 7289 sq. mtrs of Final Plot No. 64/4 is provided for post and telegraph and slum clearance housing. The scheme has thus become final and therefore, no interference can be made as the same has become part of the statute. More particularly, when in the earlier round of litigation, this Court has not entertained the petition on merits by directing the petitioners to approach the respondent authorities to make representations which ultimately were rejected in view of the sanctioned Final TP scheme by the State Government. The prayers made by the petitioners for quashing and setting aside the TP Scheme so far as it relates to Plot No. 64/4, cannot be accepted in view of the fact emerging from the was sanctioned by the State Government in the year 1993 and thereafter, the predecessor of the petitioners have already been allotted Final Plot No. 64/1, 64/2 and 64/3 which have never been objected by them. In such circumstances, the petitioners cannot continue to possess the land of Final Plot No. 64/4 which is earmarked as reserved plot for public purpose in the varied TP Scheme which is already sanctioned. In such circumstances, as held by this Court as well as Supreme Court in the following decisions, no relief can be granted to the petitioners by setting aside the sanctioned Final Scheme only qua final plot No. 64/4 :

1) The Supreme Court in case of Chandragauda Ramgonda Patil v. State of Maharashtra (supra) held that restoration of unutilised land acquired for public purpose cannot be granted as it is axiomatic that the land acquired for a public purpose would be utilised for any other public purpose though use of it was intended for the original public purpose and it is not intended that any land which remained unutilised, should be restituted to the original owner.

2) In case of Mohanlal Nanabhai Choksy v. State of Gujarat (supra), Division Bench of this Court held that land in the said case was reserved and has continued to be reserved for public purpose of constructing vegetable market by Surat Municipal Corporation even under the final development plan

which is binding to all authorities situated in the area of development plan in terms of section 17 of the Act, 1976. It was further held that land needed for the purpose of Town Planning Scheme or Development Plan has to be deemed to be land needed for public purpose within the meaning of Land Acquisition Act in terms of section 107 of the Transfer of Property Act. While interpreting sections 77 and 78 of the Bombay Provincial Municipal Corporation Act, 1949, scope and extent of term "property vested in corporation", it was held that the said provision intended to empower the Commissioner to initiate acquisition of any immovable property or any easement affecting any immovable property vested in the Corporation and as such taking acquisition of land is not in any way barred or excluded by provisions of section 78 of the Act. In facts of the case when the varied Town Planning Scheme as sanctioned by the State Government, clearly provides that the land admeasuring 7356 sq. mtrs of Final Plot No. 64/4 is reserved for post and telegraph and slum clearance housing, then it cannot be said that land in question is not utilised for the said purpose and can be restored or for that purpose any compensation is required to be paid to the petitioners.

3) Division Bench of this Court in case of Vasudev Kanchanlal Pandya v. State of Gujarat (supra) held that there was no mala fide or colorable exercise of powers by the authority as the lands in the said case was part of the Town Planning Scheme. It was held that once the land is acquired for a public purpose and the compensation is paid and the possession is taken over, the acquired land absolutely vest in the acquiring body and thereafter the original landowners have no right, title and interest in the lands acquired. Division Bench relied upon the decision of supreme Court in case of C. Padma & ors. v, Dy. Secretary to the Govt. of T.N. & Ors reported in (1997) 2 SCC 627, wherein the Apex Court held that once the acquired land having vested in the State Government after paying compensation to the claimants, the claimants are not entitled to restitution of the possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for any

other purpose. In case of Chandragauda Ramgonda Patil & anr. v. State of Maharashtra & ors. reported in (1996) 6 SCC 405, the Supreme Court held that the land acquired for a public purpose can be utilised for any other public purpose and once the possession of the land is taken and land is vested in Municipality free from all encumbrances, restitution of surplus land to the erstwhile owner cannot be ordered.

32. With regard to the contention raised by the petitioners of deduction of land more than 50% is concerned, in the facts of the case, the petitioners and the predecessor in title were admeasuring 14591 sq. mtrs which was sought to vary by the Varied Town Planning Scheme which is already sanctioned and out of that plot no. 64, four plots were partitioned and plot no. 64/4 admeasuring 7316 sq. mtrs was reserved for post and telegraph and slum clearance. The entire exercise was completed and the varied town planning scheme was sanctioned way back on 31.3.1975 by the State Government and now the petitioners after more than 40 years pray to quash and set aside the Town Planning Scheme qua the Plot no. 64/4. Such a prayer of the petitioners cannot be granted more particularly, when the provisions of the Act, 1976 were not in force when varied Draft Town Planning Scheme was sanctioned in the year 1975. The petitioners or their predecessors have not raised any objection at the relevant point of time and only when possession of the land in question was sought to be taken, it was resisted by the original owners in the year 2008 and thereafter by the father of the petitioners in the year 2012 but inspite of rejection of the representation made by them, the petitioners continued to be in possession of the land in question which was ultimately taken over by the Municipal Corporation in the year 2017 as averred in the affidavit in reply.

33. In view of above facts emerging from the record, the petitioners cannot be granted any benefit of either compensation or restoration of land in question vis-a-vis the use of land to be made for the public purpose by the respondent corporation. It is also not in dispute that the land has continued to be vested for the public purpose as per Form-F which is part of the sanctioned varied TP Scheme no. 24. The petitioners have never applied for variation of such varied Town Planning Scheme which has become part of the statute. In such circumstances, the prayers made by the

petitioners to quash and set aside the varied Town Planning Scheme qua Final Plot No. 64/4 cannot be acceded to."

[7.0] In view of the above discussion, we do not find any error in the impugned CAV judgment and hence, the present Letters Patent Appeal is dismissed.

In view of dismissal of Letters Patent Appeal, no order in Civil Application (For Stay) No.1/2021 and same is disposed of accordingly.

Sd/-
(A.J. DESAI, J.)

Sd/-
(ANIRUDDHA P. MAYEE, J.)

Ajay

