**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**
**R/SPECIAL CIVIL APPLICATION NO. 26594 of 2022**
**With**
**CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2024**
**In R/SPECIAL CIVIL APPLICATION NO. 26594 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MRS. JUSTICE MAUNA M. BHATT sd/-**

==========

| Approved for Reporting | Yes | No |
|---|---|---|
| | YES | |

==========

BHAGYALAKSHMI HOUSING SOCIETY & ORS.
Versus
STATE OF GUJARAT & ORS.

==========

Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1,2,3
MR SAHIL TRIVEDI, AGP for the Respondent(s) No. 1,10,2
MR KAUSHAL D PANDYA(2905) for the Respondent(s) No. 3
MR RUTVIJ M BHATT(2697) for the Respondent(s) No. 4,5,6,7,8,9

==========

CORAM:**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 04/09/2025**

**ORAL JUDGMENT**

1. Rule. Learned Additional Government Pleader Mr. Sahil Trivedi waives service of notice on behalf of respondent Nos. 1, 2 and 10 and learned advocate Mr. Kaushal Pandya waives service of notice on behalf of respondent No. 3 and learned advocate Mr. Rutvij Bhatt waives service of notice on behalf of respondent Nos. 4 to 9

2. This petition is filed challenging the orders (i) dated 02.12.2022 (Annexure-A, Page No. 73) of respondent No. 10

Chief Town Planning Officer and (ii) an order dated 09.01.2024 (Annexure-AH, Page No. 163F) of Chief Officer Bilimora Nagarpalika, whereby the petitioners' application seeking variation in the Town Planning SchemeNo.1 (Bilimora -Desra) has been rejected. A prayer to direct respondent No. 3-Bilimora Nadarpalika to forward proposal for variation as sought by the petitioner under Section 70 of the Gujarat Town Planning and Urban Development Act, 1976 (for short 'the TP Act, 1976') is also made. It is case of the petitioner that rejection of the application preferred by the petitioner, under Section 70 of the TP Act, 1976 seeking variation is unjust, arbitrary and illegal, more so the same is contrary to the directions of this Court and therefore deserves to be quashed and set aside.

3. Heard learned advocate Mr. Dipak Dave for the petitioners and learned Additional Government Pleader Mr. Sahil Trivedi for respondent Nos. 1, 2 and 10 and learned advocate Mr. Kaushal Pandya for respondent No. 3 and learned advocate Mr. Rutvij Bhatt for respondent Nos. 4 to 9.

4. Learned advocate Mr. Dipak Dave for the petitioners submitted that the petitioner No. 1 herein is a Society and petitioner Nos. 2 and 3 are residents of said Society. The Society was formed in the year 1992 by converting the land situated at Revenue 485/1 having Final Plot No. 72/A & 72/B admeasuring about 8205 sq. mtrs. and 72/C admeasuring about 8086 sq. mtrs, respectively (herein after referred as 'land in question') in to non-agricultural use. Vide order dated 13.04.1992 (Annexure-B, Page No. 81), the office of Collector,

Valsad gave permission to convert the plot situated at Revenue Survey No. 485/1, Final Plot No. 72/B admeasuring about 7104 sq. mtrs. as non-agricultural land. The sanction given vide order dated 13.04.1992 was for 'A' type and 'B' type plots. The 'A' type plots were having area of 1493 sq. mtrs. and 'B' type plots were having are of 759 sq. mtrs. In these plots, common plot was provided of 830.80 sq. mtrs. Thus, the permission for non-agricultural use was granted with a common plot of 830.80 sq. mtrs. Accordingly, members of the Society got together and basis the development permission, plotting was done and sold to private individuals.

4.1 Learned advocate for the petitioners submitted that thereafter, construction was done in the form of residential house that too after getting necessary development permission from respondent No. 3 – Bilimora Nagarpalika. Thus, undisputedly, the construction was done as per the permission granted by respondent No. 3 – Nagarpalika by keeping 830.80 sq. mtrs. open area in the form of common open plot. The said common open plot is used by all the residents of the Society for their common use and this is the only common plot available to the petitioner No. 1 - Society. The issue herein is the common open plot forming part of T.P.Scheme No.1-(Bilimora-Desra).

4.2 Learned advocate for the petitioners submitted that however pursuant to the intention of Town Planning Scheme Billimora No. 1 (Billimora-Desra) a development plan was published. The petitioners sought copy of the plan, and was not supplied and thereafter a notice dated 13.04.1992 was

issued to the petitioner No. 1 – Society by respondent No. 2 – Town Planning Officer. In response to the notice dated 13.04.1992, the petitioners raised their objections vide communication dated 26.02.1999 (Annexure-D, Page No. 88). Learned advocate submitted that it was stated in the objections that the construction done by the petitioner No. 1 – Society is as per the plans sanctioned by Billimora Nagarpalika and there is no illegality and therefore the intention to take away common plot of the petitioner for development of Town Planning Scheme deserves reconsideration. Referring to objections dated 26.02.1999, learned advocate submitted that it was case of the petitioners that since the earlier plan was sanctioned by Nagarplika; the Town Planning Officer is required to act as per the plans sanctioned by the Nagarpalika and no deviation is required. Further, without considering the said objections, only to benefit the private respondent Nos. 4 to 9 that too behind back of the petitioners, the common plot of petitioner No. 1 – Society was merged with adjacent private plot of respondent Nos. 4 to 9. Learned advocate submitted that if the allegations made in the petition are perused, it is clear case of malafide action by officers of Billimora Nagarpalika; who in connivance with the private respondents just to help them had acted beyond the provisions of the Act and the guidelines of the State issued for development of Town Planning Scheme.

4.3 Learned advocate for the petitioners in support of his submissions relied upon various allegations to justify that the action taken was behind the back of the petitioners and just to favour the private respondents. Therefore, one more

representation dated 05.03.2010 was made conveying to the authority that as called for, relevant documents of Rajjachitti and development permission were placed on record. Despite that, Form J (Annexure-F, Page No. 91) under Rule 29(9) of the Gujarat Town Planning and Urban Development Rules, 1979 (for short 'the Rules, 1979') was issued in the month of September, 2014 and from the said Form J, it is evident that the entire common plot of the Society was taken for the development of the Town Planning Scheme and respondent Nos. 2 and 3 proposed a Preliminary Town Planning Scheme to the State Government for its sanction on 01.08.2014. Copy of the proposed Town Planning Scheme dated 01.08.2014 is at Annexure-G, Page No. 94).

4.4 Learned advocate for the petitioners submitted that it is true that under Section 42 of the TP Act, 1976 Draft Town Planning Scheme was published on 16.10.1992. However, the petitioners were not aware about the said sanctioning of Draft Town Planning Scheme under Section 42 of the TP Act, 1976. The moment petitioners came to know about the sanctioning of Draft Town Planning Scheme and its further proceedings before sending the proposal to the State for sanction as the Preliminary Town Planning Scheme, the petitioners immediately responded by raising their objections. Despite that ignoring everything the scheme was sanctioned by the State Government as preliminary Town Planning Scheme No.1(Bilimora Desara) under its notification dated 27.05.1999 (Annexure-I, Page No. 99).

4.5 Learned advocate submitted that since the sanction of the

Preliminary Town Planning Scheme was illegal and unjust the petitioners filed a representation before respondent (Annexure-J, Page No. 101) the Town Planning Officer, Billimora Nagarpalika on 20.03.2021. It was their case that the scheme needs variation and therefore appropriate application under Section 70 of the TP Act, 1976, the petitioner Society will file. In response to the same, a communication dated 16.10.2021 (Annexure-R, Page No. 119 was received from Town Planning Officer of Town Planning Scheme Billimora No. 1 (Billimora-Desra) that since the scheme is sanctioned under Section 65 of TP Act, 1976, it has become part of the Act and is also sanctioned vide its notification dated 27.05.2019, and therefore no action in response to application seeking variation is to be considered by the Town Planning Authority. Pursuant to the order dated 16.10.2021 (Annexure-R, Page No. 119) a petition was filed by private respondents being Special Civil Application No. 2236 of 2021 and the same was dismissed vide order dated 18.11.2021.

4.6 It is case of the petitioners that they had requested the respondent no.3 -Nagarpalika to give the orders basis which the plan was sanctioned and without providing the same Notification dated 27.05.2019 was issued. The respondent authorities thereafter issued eviction notice dated 30.11.2021 (Annexure-X, Page No. 134). The said notice was followed by another communication dated 10.01.2022 (Annexure-Y, Page No. 136) informing the petitioners that though they have filed an application seeking variation to the Chief Officer, Billimora Nagarpalika, the variation sought is not within the purview of Billimora Nagarpalika, and petitioners were requested to do the

needful as per the provisions of the Act. The said order was challenged before this Court in Special Civil Application No. 2973 of 2022. In SCA 2973 of 2022, it was prayed that the respondents may be directed to immediately consider and decide the representation of the petitioners for variation of the Town Planning Scheme No.-1(Bilimora-Desra) under Section 70 of the Act, 1976, wherein this Court directed that the application under Section 70 of the TP Act, 1976 since pending before the Chief Town Planning Officer, the same may be considered in accordance with law, after giving opportunity of hearing to both the petitioners as well as respondent Nos. 4 to 9. Status quo was granted vide order dated 05.05.2022, in Special Civil Application No. 2973 of 2022. Accordingly, the petitioners were given notice of hearing (Annexure-A8, Page No. 139). A detail reply was also filed (Page No.141). The petitioners remained present on the day of hearing and raised their objections and after hearing; an order dated 15.06.2022 (Annexure-AC, Page No. 147) was passed rejecting the application of the petitioners. Once again aggrieved by the order dated 15.06.2022, the petitioners approached this Court by filing Special Civil Application No. 17315 of 2024 and this Court vide order dated 10.10.2022 was pleased to set aside the order dated 15.06.2022 and remanded the matter with a direction to respond respondent No. 10 to decide the application of the petitioners afresh after giving sufficient opportunity of hearing. Pursuant to order dated 10.10.2022, notice of hearing dated 04.11.2022 was issued and thereafter an order dated 09.01.2024 (Annexure-AH, Page No. 163) was passed.

4.7 Learned advocate for the petitioners submitted that the order dated 02.12.2022 and 09.01.2024 are unjust and illegal because though directed by this Court vide orders dated 05.05.2022 in SCA 2973 of 2022 and order dated 10.10.2022 in SCA 17315 of 2022, the orders dated 02.12.2022 by the TPO and order dated 09.01.2024 by Billimora Nagarpalika were passed without taking in to consideration the objections of the petitioners. Both the orders, despite directions of this Court are unreasoned and therefore the same may be quashed and set aside. Moreover, no reasons are assigned as to why the variation is not possible. Merely, the scheme being sanctioned by Notification dated 27.05.2019, the petitioners right of variation under Section 70 of the TP Act, 1976 may not be extinguished. Moreover, the allegations made of malafide are also not considered. Even if the orders dated 02.12.2022 and 09.01.2024 are perused, the reasons given are the same. The reasons given are not appropriate to reject the application seeking variation. It is true that this is third round of litigation however, considering the procedure not followed, this Court vide order dated 20.11.2023 has granted interim relief in favour of the petitioners. The submissions made that the respondents have not followed the procedure was accepted. The respondents have done the same with a malafide intention to favour the private respondents to allot the common plot of the Society in the Town Planning Scheme. As per the guidelines of the State Government issued for framing the Town Planning Scheme, consideration of common plot of the Society shall have to be avoided. Despite that ignoring the guidelines, the Town Planning Scheme was sanctioned taking away the common plot of the Society. Moreover, the majority

residents of the Society are senior citizen and this is the only common plot available for their leisure. Further, proportionate deduction was not considered. If the proportionate deduction was considered then some of the portion of the common plot of the Society might have saved.

4.8 Learned advocate for the petitioner has relied upon decision in the case of **Kranti Associates Private Limited and Anr. v.s. Masood Ahmed Khan and Ors.** reported in **(2010) 9 SCC 496**; to submit that non reasoned order is nullity in eye of Law. Learned Advocate submitted that, in view of non-reasoned order, the respondent authorities may be directed once again to pass a fresh order giving one more opportunity of hearing to the petitioners so that they can express their case well.

5. Opposing the petition, learned Additional Government Pleader Mr. Sahil Trivedi for respondent Nos. 1, 2 and 10 submitted that Section 2(3) of the TP Act, 1976 defines appropriate authorities and before sanding proposal for variation to the State Government, subjective satisfaction is required of the appropriate authority. In this case, the subjective satisfaction arrived at by the appropriate authority is that no proposal is required to be forwarded as requested by the petitioners since the town planning scheme has attained finality. The petitioners failed to appreciate that despite opportunities granted earlier, they did not present their objections and at this stage when the scheme has been finalized, it is not appropriate to forward the application to the State Authority for consideration of variation.

6. Learned advocate Mr. Kaushal Pandya for respondent No. 3 – Surat Municipal Corporation submitted that the sanctioning of the Scheme vide notification dated 27.05.2019 is not in dispute. From the record it is evident that the petitioners were given several opportunities to raise their objections, despite that they did not raise their objections. Referring to the reply filed by Nagarpalika, learned advocate submitted that all the details have been mentioned in the reply and in this case, if the common plot is not taken, the residential houses were covering the scheme and demolition of the residential houses was required. Therefore, appropriate decision beneficial in the interest of all members of the Society was taken. Moreover, in all earlier rounds of litigation, directions were issued to consider the objections of the petitioners and they were considered objectively.

6.1 Referring to the order dated 02.12.2022 learned advocate submitted that the entire facts have been narrated in the said order. It refers also the earlier directions issued and the hearing granted. By the reasoned order, opinion of Town Planning Officer of Town Planning Scheme Billimora No. 1 (Billimora-Desra) is incorporated. Hence, the submission made that the order passed is non-reasoned is not correct. Moreover, the argument of non-supply of document is also not correct since at no point of time the petitioners earlier appeared and placed their objections. When the documents were called for; the stage of sanctioning of Town Planning Scheme was over and prior thereto petitioners objections were called. The allegation of favouring any private respondents is without any

proof. After, reading the complete details of the order, learned advocate submitted that in view of detailed order passed dated 02.12.2022 followed by order dated 09.01.2024, the present petition deserves rejection.

6.2 Learned Advocate Mr. Pandya in support of his submissions relied upon decisions in the case of **Savitaben Chaturbhai Patel v.s. State Of Gujarat** reported in **2009 (0) AIJEL HC 222772** and decision in the case to submit that when the pettioners had never raised their objections at appropriate stage before the appropriate authority i.e. in this case before the authority at the stage of Draft Town Planning Scheme and even before the preparation of Preliminary Town Planning Scheme by Town Planning Officer they may not be raise their objections eventually at a later stage.

7. Considered the submissions and the documents on record.

7.1 The petitioner No. 1 – Society is situated on original Plot No. 72/A, 72/B and 72/C having area of 8205 sq. mtrs and 8086 sq. mtrs. of land. Pursuant to sanctioning of Draft Town Planning Scheme, the Final Plots Nos. 72/A+B and 72/C having area of 6540 sq. mtrs. and 6201 sq. mtrs. were allotted. Similarly, private respondent Nos. 6 to 9 against their original Plot Nos. 73/A and 73/B having area of 11758 sq. mtrs. and 5815 sq. mtrs.; were allotted Final Plot Nos. 73/A and 73/B admeasuring 8153 sq. mtrs. and 5185 sq. mtrs. The said allotment of final plot was done pursuant to sanctioning of Draft Town Planning Scheme Billimora No. 1 (Billimora-Desra) by the State Government vide its Notification dated 16.01.1992

under Section 48(2) of the Act. The procedure followed by respondents nos. 1 to 3, prior to sanctioning of Preliminary Town Planning Scheme No.1 (Bilimora -Desra) by the State Government vide its notification dated 27.05.2019, is enumerated here under:

| Date | Particulars | Page Nos. |
|---|---|---|
| 20.01.1990 | Intention to prepare T.P. Scheme had been declared as reuired u/s 41(1) of the Act, 1976 | 77-78 |
| 18.07.1991 | Draft T. P. Scheme had been published as required u/s 42(1) of the Act, 1976 | 77-78 |
| 16.10.1992 | The State Government had sanctioned the Draft T.P. Scheme u/s 48(2) of the Act, 1976 | 77-78 |
| 21.01.193 | Town Planning Officer had been appointed | 77-78 |
| 13.03.1995 | Individual notices had been served upon the owners/interested persons to remain present in hearing on 22.03.1995 | 77-78 |
| 22.03.1995 | None of thre members or representative reamined present in hearing | 77-78 |
| 20.02.1999 | Notice (@Page Nos. 190-244) had been issued by TPO on owners/interested persons whose land affected by Road/Reservations, to remain present for hearing on 25.02.1999 | 77-78 |
| 25.02.1999 | Representative of Society remained present however; no objection/suggestions submitted in the hearing but informed to TPO that they will submit it later on | 77-78 |
| 26.02.1999 | Members of the Society had submitted written submission to maintain T.P. Road as per sanctioned plan (of Society) (@Page Nos. 88-89) | 77-78 |
| 18.06.2005 | TPO had issued individual notices to remain present on 27.06.2005 to state their view on tentative proposal of preliminary scheme | 77-78 |

| | | |
|---|---|---|
| | (@Page No. 245) | |
| 27.06.2005 | None of the owners/interested persons from society reamined present on 27.06.2005 | 77-78 |
| 01.08.2014 | TPO had declared award (decision) of preliminary Scheme as required u/s 52 of the Act, 1976 (@page Nos. 248-252) and notice of said decisions also published in newspaper on 01.08.2014 (@Page No. 253) | 77-78 |
| 27.05.2019 | The State Government had accorded its sanction to preliminary T.P. Scheme No. 1 (Bilimora-Desra) vide notification dated 27.05.2019 (@Page No. 99) | 77-78 |

7.2 Thus, prior to sanctioning of Preliminary Town Planning Scheme by the State Government vide its Notification dated 27.05.2019, the procedure provided under the T.P.Act was followed and representative of the petitioners participated meeting of stake-holders on 25.02.1999. On 25.02.1999, the petitioners sought time and raise their objections on 26.02.1999 (page 88-89). Thereafter individual notices were issued to remain present on 27.06.2005 and none of the Owner or Society's representative remained present and thereafter the TPO declared its decision on 01.8.2014 under Section 52 of the Act. If the decision of TPO at page 248 is perused it refers to representation of the petitioners, their objections and lastly the consideration done of existing structures on the land in question. Therefore, the submission on behalf of respondent-Nagarpalika that common plot of the petitioner Society was taken to avoid demolition of existing residential units merit acceptance.

7.3 After sanctioning of preliminary T.P.Scheme No.1

(Bilimora-Desra) by the State Government, the respondent-Nagarpalika issued notice under Section 67 of the TP Act, 1976 for change of possession of plot/land on 14.11.2019. Since possession of plot was not handed over by the petitioners, notice dated 04.01.2021 was issued directing the petitioners to hand over possession of plot/land to respondent-Nagarpalika.

8. At this stage the private respondents filed Special Civil Application No. 2236 of 2021, seeking possession of their plot. It was case of the private respondents that Nagarpalika may be directed to implement the Scheme, by handing over possession of their final plot. The said petition was dismissed by an order dated 18.11.2021. It appears that since implementation of T.P.Scheme was going on respondent-Nagarpalika took part possession of plot of petitioner Society and that of private respondents for development of Road. Therefore, from above chronology it is evident that implementation of the T.P.Scheme was in progress.

9 During process of implementation of T.P.Scheme, Special Civil Application No. 2973 of 2022 was filed by the petitioners to direct the respondent authorities to consider the application seeking variation in the T.P.Scheme No.-1 under Section 70 of the TP Act, 1976, wherein this Court Vide order dated 05.05.2022, directed the City Town Planner to consider petitioners application after opportunity of hearing (page 137-138). Following the directions, City Town Planner passed an order dated 15.06.2022 (Page Nos. 147 to 154).

10. Aggrieved by the order dated 15.06.2022, Special Civil

Application No. 17315 of 2022 was filed on the ground that though Additional City Town Planner had given hearing, order was passed by City Town Planner. Hence, this Court vide order dated 10.10.2022 in Special Civil Application No. 17315 of 2022 directed respondents to decide the application afresh, after providing opportunity of hearing. Pursuant to order dated 10.10.2022, an order dated 02.12.2022 was passed rejecting the application seeking variation of the T.P. Scheme No.1(Bilimora -Desra), qua petitioners' plot (page 73 to 80). Thus, consideration of petitioners variation application, twice after granting personal hearing is not in dispute. Thereafter, pending petition an order dated 09.01.2024 was passed by Chief officer of respondent Nagarpalika, wherein also the variation application was rejected. In above context, if the contentions of petitioners are considered then it's their grievances that the both the orders dated 02.12.2022 and 09.01.2024 are non-reasoned order. In the opinion of this Court, if the order dated 02.12.2022 is read in context with earlier paragraph it refers to the procedure followed, the objections raised and the stage of the Town Planning Scheme with the reason for rejection. In the order while referring to the objections of the petitioners, it is stated that the Town Planning Scheme has accorded its sanction of the State Government by its notification dated 27.05.2019, and prior thereto objections were not raised. The order of N.A use permission may not be applicable in view of implementation T.P. Scheme. The application preferred does not come within purview of under Section 70 of the Act and upon personal hearing dated 04.11.2022, it was ascertained by the authority that there is no error, irregularity and infirmity in the sanctioned T.P.Scheme. Therefore, if the order is read in

context, in the opinion of this Court, the order cannot be said to be non-reasoned order.

11. One more aspect which requires consideration is, during pendency of petition an order dated 27.10.2023 was passed directing to carry out measurement of the common plot of the petitioners' society and accordingly Rojkam dated 03.11.2023. was prepared (page 640) along with map. From the map it is evident that some portion of common plot is available to the petitioners. Thus, the contention of respondent- Nagarpalika that the T.P. Scheme was prepared keeping in mind the best interest of the residents of the Society merit acceptance.

12. At this stage, it would be apposite to refer to Section 65(4) of the T.P. Act; which provides that the appropriate authority shall, after the preliminary scheme is sanctioned by the State Government under Sub Section 2, completed the execution of such scheme within a period of 2 years from the date of sanction of such scheme. If the submission of the petitioners are accepted, in the opinion of this Court it would amount to prolonging the implementation of the Town Planning Scheme No. 1 (Billimora-Desra) despite having passed the earlier orders rejecting variation.

13. Further, it is contended on behalf of the petitioners that mere sanctioning of Preliminary T.P.Scheme No-1 (Bilimora-Desra) would not extinguished the right of petitioners seeking variation under Section 70 of T.P.Act. It is true that Section 70 of the T.P.Act provides for variation after Sanctioning of Preliminary Town Planning Scheme, however, the petitioners

cannot claim variation under Section 70 of the T.P.Act as a matter of right. The subjective satisfaction either of Town planning Authority to send proposal for variation is required. Or else stake holder can independently file an application before the State Government under Section 70 of the T.P.Act, where the Scope of Judicial review is limited. This Court in the petition under Article 226 of The Constitution of India cannot seat as an appeal authority, over the decision of Town planning authority or of the State Authority. Even, the deduction pursuant to T. P. Scheme appears to be done as per the provisions of the Act and no discrimination is found between petitioners and private respondents.

14. In view of above and in view of the orders dated 02.12.2022 and 09.01.2024, there is no illegality in the order and hence, no interference of this Court is required.

15. With the above, present petition is dismissed. Rule is discharged. No order as to costs. sd/-

**(MAUNA M. BHATT,J)**

16. Learned advocate for the petitioner has requested for continuation of the stay on the ground that the same has been operating since long.

17. Considering the submissions, the stay earlier granted is extended for further period of 4 weeks from the date of receipt of this order. sd/-

**(MAUNA M. BHATT,J)**

SHRIJIT PILLAI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PILLAI SHRIJIT P(HC01400), PRIVATE SECRETARY, at High Court of Gujarat on 04/09/2025 14:40:33