

**HIGH COURT OF GUJARAT****ASHOKBHAI MANIBHAI DESAI***Versus***STATE OF GUJARAT****Date of Decision:** 11 January 2008**Citation:** 2008 LawSuit(Guj) 91**Hon'ble Judges:** [M R Shah](#)**Case Type:** Special Civil Application**Case No:** 3137 of 2002; 3138 of 2002**Subject:** Constitution**Acts Referred:**[Constitution Of India Art 226](#)[Gujarat Municipalities Act, 1963 Sec 258](#)**Final Decision:** Petition disposed**Advocates:** [Anshin H Desai](#), [Nanavati Associates](#), [Dipen Desai](#), [Patel](#)

**[1]** Heard Mr.Anshin Desai, learned Advocate appearing for the petitioners, Mr.Asim Pandya, learned Advocate appearing for respondent No.3 Valsad Municipality and Mr.Dipen Desai, learned AGP appearing for respondent Nos. 1 and 2 State of Gujarat and Collector, Valsad.

**[2]** Special Civil Application No.3137 of 2002 is filed by the petitioner Ashokbhai Manilal Desai under Article 226 of the Constitution of India for an appropriate Writ, direction and/or order to quash and set aside the order dated 05.11.2001 passed by respondent No.2 herein Collector, Valsad quashing and setting aside the Resolution No.16 of the Valsad Municipality dated 26.05.2001.

**[3]** Special Civil Application No.3138 of 2002 is filed by the petitioner Marzban Faramroz Dhanbhura under Article 226 of the Constitution of India for an appropriate Writ, direction and/or order to quash and set aside the order dated 05.11.2001 passed by respondent No.2 herein Collector, Valsad quashing and setting aside the Resolution No.16 dated 26.05.2001 passed by the Valsad Municipality- respondent No.3.

**[4]** The petitioner of Special Civil Application No.3137 of 2002 was the owner of the plot of land situated at Bhagdawada Village being Revenue Survey No.598/1 and on implementation of the Town Planning Scheme No.2, Valsad, the said plot was subdivided and it was given Final Plot No.4 and out of the said land admeasuring 3269 Sq.Mts. came to be reserved under the said Town Planning Scheme for the purpose of housing for weaker section of the society. Petitioner of Special Civil Application No.3138 of 2002 was holding plot at the same village being Revenue Survey No.600/2 and on implementation of the Town Planning Scheme No.2, Valsad, the said plot was subdivided and it was given Final Plot No.11 and the land admeasuring 1457 Sq.Mtrs. came to be reserved under the Finalized Town Planning Scheme for the purpose of housing for weaker section of the society.

**[5]** It appears that the petitioners submitted applications with respondent No.3 Valsad Municipality for de-reserving the said plots which was reserved for the purpose of housing for weaker section of the society under the Town Planning Scheme No.2, Valsad and permit them to develop the said land by submitting that since many years the land is not used and has not been used for which it is reserved. It appears that at the relevant time when the said applications came to be considered there was Administrator and the then Administrator of the Valsad Municipality by Resolution No.16 dated 26.05.2001 passed a Resolution / order to allot the plots of the petitioners back to them to develop the same for constructing houses for weaker sections of the society. It appears that aforesaid Resolution came to be taken under Suo-moto Revision by the Collector, Valsad under Section 258 of the Gujarat Municipalities Act and the Collector, Valsad by impugned order dated 05.11.2001 quashed and set aside the Resolution No.16 dated 26.05.2001 by holding that the Resolution No.16 dated 26.05.2001 is illegal and without jurisdiction and once the Town Planning Scheme has become final, said Resolution could not have been passed by the Administrator more particularly when the powers were vested in the Town Planning Committee under the provisions of the Gujarat Town Planning Act. Being aggrieved and dissatisfied with the order dated 05.11.2001 passed by the Collector, Valsad quashing and setting aside the order dated 26.05.2001 of the Valsad Municipality, both the petitioners have preferred the present Special Civil Applications for the aforesaid reliefs.

**[6]** After both the petitioners were heard at length and having realized that the Administrator of the Valsad Municipality was not having jurisdiction to pass a resolution de-reserving the plots which were reserved under the Town Planning Scheme; there is broad consensus between the learned Advocates appearing on behalf of the respective parties that let the order passed by the Collector, Valsad dated 05.11.2001 quashing and setting aside the Resolution No.16 dated 26.05.2001 as well as the Resolution No.16 dated 26.05.2001 passed by the Valsad Municipality be quashed and set aside

and liberty be reserved in favour of the petitioners to submit an appropriate application for modification of the Town Planning Scheme before the competent authority under the Town Planning Scheme and same may be considered by the Committee / Authority under the Town Planning Act without being influenced by the earlier Resolution and decision of the Collector, Valsad.

**[7]** In view of the aforesaid broad consensus between the learned Advocates appearing on behalf of the respective parties, the impugned orders dated 05.11.2001 passed by the Collector, Valsad in Munci.Case No.19/2001 and Minci.Case No.20/2001 as well as Resolution No.16 dated 26.05.2001 passed by the Valsad Municipality are hereby quashed and set aside. It will be open for the respective petitioners to submit an appropriate application for modification of the Town Planning Scheme No.2, if permissible under the Gujarat Town Planning Act before the competent authority / Committee constituted under the provisions of the Gujarat Town Planning Act. As and when such applications are made, same may be considered by the Competent Authority / Committee constituted under the Gujarat Town Planning Act in accordance with law and more particularly considering the provisions of the Gujarat Town Planning Act and after following due procedure as required under the provisions of the Gujarat Town Planning Act for which this Court has not expressed any opinion on merits in favour of the either parties. With these, both the petitions are disposed of.

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