

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 851 of 2024**

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DURGABEN W/O AMRUTBHAI PARMAR

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR VIRAT G POPAT(3710) for the Petitioner(s) No. 1

MR GH VIRK, GOVERNMENT PLEADER with MS SIMRANJIT H. VIRK and
MS.NENCY SHETH for the Respondent(s) No. 1

G H VIRK(7392) for the Respondent(s) No. 6

NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3,4,5

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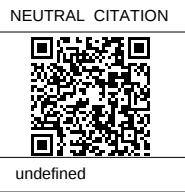
CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 03/12/2024****ORAL ORDER**

1. Heard learned advocate Mr.Virat Popat on behalf of the petitioner and learned Government Pleader Mr.G.H.Virk with learned advocates Ms.Simranjit Virk and Ms.Nency Sheth on behalf of respondents no.1, 2, 3, 4 and 6. None appears for respondent no.5.

2. By way of this petition, the petitioner has sought for the following reliefs:-

“(a) To allow this petition;

(b) To issue a writ of mandamus and/or any other appropriate writ, order or direction quashing and setting aside the impugned order (Annexure-A) dated 20.10.2023 passed by the respondent no.3 as well as



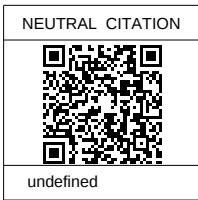
the notice (Annexure-A) dated 09.11.2023 issued by the respondent no.4 and further be pleased to pass all other consequential orders in that regard;

(c) Pending admission, hearing and final disposal of the present petition, to stay the implementation, execution and operation of the impugned order (Annexure-A) dated 20.10.2023 passed by the respondent no.3 as well as the notice (Annexure-A) dated 09.11.2023 issued by the respondent no.4;

(d) To pass any other and further orders as may be deemed fit and proper to this Hon'ble Court."

3. It was submitted that the petitioner was working with the respondent no.5 - Trust from the year 1983 and had been living in the premises in question since 1990. It is the case of the petitioner that the petitioner was having a residential accommodation in the precincts of Gandhi Ashram and the petitioner was a tenant of the house in question. It is submitted that the premises is occupied by the petitioner, her husband and three sons of whom the eldest is married and lives with his wife and daughter in the said premises.

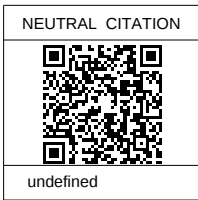
3.1. It is submitted that the State Government, by way of notification dated 06.09.2021 had formed the Mahatma Gandhi Sabarmati Ashram Memorial Trust (hereinafter referred to as 'MGSAMT' for short) for the purpose of redevelopment of the Gandhi Ashram and whereas, the



redevelopment inter alia envisaged surrender of the premises in which the petitioner was residing with her family.

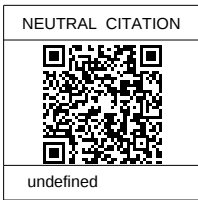
3.2. It is submitted that the main case of the petitioner appears to be that the petitioner while she was entitled to a better offer, has been short-charged and whereas, the case of the petitioner has been considered to her detriment as against the case of the similarly situated persons.

4. Learned advocate Mr.Popat on behalf of the petitioner would submit that the petitioner challenges an order dated 20.10.2023 passed by the District Collector, Ahmedabad inter alia granting Rs.60,00,000/- to the present petitioner in lieu of the principal premises held by the petitioner and an additional Rs.30,00,000/- for the first floor portion held and whereas, learned advocate would, at the first instance, in this regard draw the attention of this Court to an order passed by a learned Coordinate Bench of this Court dated 09.10.2023 in Special Civil Application No.16879/2023 whereby the petitioner was permitted to withdraw the petition more particularly with a liberty to approach the District Collector to submit a proposal as per the options available.



4.1. Learned advocate Mr.Popat would submit that the principal grievance of the petitioner arises from the fact that though the petitioner was entitled for her family to be considered as four different units and whereas, the order passed by the Collector has only granted one and a half unit to the present petitioner. In this regard, learned advocate would draw the attention of this Court to information received by the petitioner under the Right to Information Act, whereby persons residing in the Ashram precincts have been allotted alternative accommodation and whereas reference is particularly made to four persons namely Dhirendrabhai Dalpatbhai Badhiya, Narendrabhai Dalpatbhai Badhiya, Mahendrabhai Dalpatbhai Badhiya and Harishbhai Dalpatbhai Badhiya (hereinafter referred to as the 'Badhiya Brothers') and whereas it is submitted that the said persons though were residing in one single accommodation, yet, the said persons have been considered for grant of four different units and whereas, it is submitted that though the petitioner, her husband and her children were entitled to be treated alike, the petitioner has been discriminated.

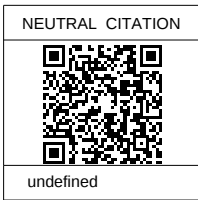
4.2. Learned advocate would submit that the petitioners



ought to be treated like the said Badhiya Brothers by granting them four different units in lieu of the premises in question and whereas, under such circumstances, the Collector has passed the impugned order granting only one and a half unit to the petitioner, therefore, the petitioner being left without any remedy, has approached this Court.

5. As against the same, the present petition is vehemently opposed by learned Government Pleader Mr.Virk on behalf of the official respondents. Learned Government Pleader would submit that there is no error whatsoever committed by the Collector and whereas, it is submitted that though the petitioner was entitled only for one unit, the Collector had been more than fair to the petitioner by granting the petitioner an additional half unit. Learned Government Pleader would submit that the petitioner has not been satisfied with the same, approached this Court for some more benefits, which the petitioner is not entitled to.

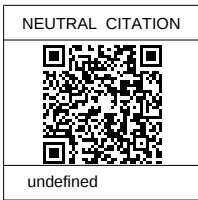
5.1. Learned Government Pleader would submit that as such, the entire controversy would be required to be considered from the perspective of the order dated 09.10.2020 passed by the learned Coordinate Bench in the first round of litigation of



the present petitioner. Learned Government Pleader would submit that the petitioner had sought to withdraw the petitioner "to submit proposal pursuant to the options available in accordance with the policy so framed". It is submitted by learned Government Pleader that as per the policy which is reflected in an order of the Hon'ble Division Bench of this Court in Writ Petition (PIL) No.137/2021, 260 families inside the Ashram Vashis / long term tenants were to be rehabilitated with either of the option:-

- (i) Ownership of 4 BHK Flat in prime locality of Ahmedabad i.e. Naranpura, or
- (ii) 3 BHK Tenement in Ashram Housing Campus in an area adjacent to Gandhi Ashram Memorial, within the SPD Zone, or
- (iii) a generous one time monetary compensation of Rs.60,00,000/-.

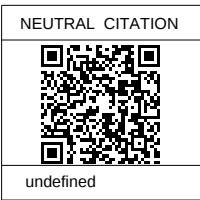
5.2. Learned Government Pleader would submit that the petitioner vide her representation dated 13.10.2023 had requested that her family which consist of the petitioner, her husband and three sons including one married son with his wife and daughter may be declared to be entitled for four



different units and whereas, while the petitioner was only entitled, as per the policy, for one of the options as noted hereinabove, yet, considering the fact that the petitioner was living with a married son, the Collector had granted half unit extra. Learned Government Pleader would submit that the Collector having been more than generous, this Court may not intervene in the present petition.

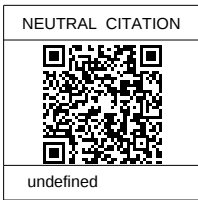
5.3. Learned Government Pleader would further submit that offers as has been noticed by the Hon'ble Division Bench as well as this Court are extremely generous inasmuch as the families who were residing in the Ashram precinct are getting a 4 BHK Flat in a prime locality or a 3 BHK tenement also in a prime locality or a substantial amount of cash. The learned Government Pleader would submit that the petitioner having been granted more than her entitlement, may not be granted any further indulgence by this Court.

5.4. Learned Government Pleader would submit that as such, the petitioner had also preferred a House Rent Petition Suit No.110/2022 before the Small Causes Court, Ahmedabad and whereas, while ad interim relief came to be granted in the proceedings the same had been vacated and whereas under



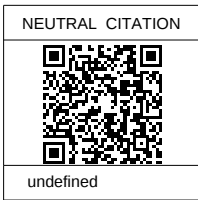
such circumstances, the petitioner had approached this Court by preferring Civil Revision Application No.232/2024 and in the said application, it would appear that the learned Coordinate Bench of this Court had vide order dated 09.05.2024 refused to interfere, resulting in the property having been taken over by the respondents and as of now, the property has already been demolished.

5.5. Learned Government Pleader would further submit that as such, the amount of Rs.90,00,000/- i.e. Rs.60,00,000/- in lieu of one unit and Rs.30,00,000/- in lieu of half a unit has already been deposited by the Collector, Ahmedabad with the City Deputy Collector, Sabarmati (West) with an option to the petitioner to withdraw the same and as and when either the petitioner can request an option for one of the properties i.e. 4 BHK Flat or 3 BHK Tenement in lieu of Rs.60,00,000/-, which would be appropriately considered or the petitioner can withdraw Rs.60,00,000/- + Rs.30,00,000/- = Rs.90,00,000/- which is deposited. Learned Government Pleader would reiterate that the petitioner having received more than a fair compensation, this Court may not at all interfere.



5.6. Learned Government Pleader insofar as the submissions with regard to the Badhiya Brothers would take this Court to a very specific averment made in the affidavit-in-reply which would show that the Badhiya Brothers were comprised of four married brothers and living in separate dwelling units within the Gandhi Ashram precincts. It is submitted that each of the brother have obtained an alternative flats, four units have allotted to the said brothers. It is further submitted that none of the brother had been given additional Rs.30,00,000/- which the petitioner had been given. Learned Government Pleader would also submit that the petitioner was residing as a single unit and whereas, while the married son, according to the respondents, was residing at a different place with his family, yet, in the larger interest of redevelopment, the option of one unit plus half a unit had been accorded in favour of the petitioner.

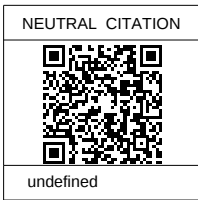
6. In rejoinder, learned advocate Mr.Popat would submit that the Badhiya Brothers were residing in one single unit which was also even lesser in size to the present petitioner then the house which was occupied by the present petitioner and whereas, a list of occupants of the respondent no.5 -



Trust which is annexed with the affidavit is relied upon in this regard along with tax bill which is annexed with the rejoinder.

6.1. Learned advocate Mr.Popat would submit that the Badhiya Brothers having been accorded a different treatment, the petitioner was required to be accorded the same treatment and since there is a discrimination, this Court may intervene.

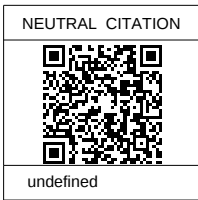
7. Learned Government Pleader, in this regard, would submit that since some new facts / documents have been placed in the rejoinder, he may be permitted to make submissions with regard to the same and whereas, such permission being granted, learned Government Pleader would draw the attention of this Court to the tax bill which has been annexed by the petitioner with the petition and would submit that the area of property which was being used by the petitioner as per the tax bill was 49.53 sq.mtrs. Learned Government Pleader would emphasize on the usage code and would submit that the type of residence, upon which the tax bill was issued as could be noticed from the tax bill, was in the form of a Chawl. Learned Government Pleader would compare the same to the tax bill of the Badhiya Brothers which is



annexed with the affidavit-in-rejoinder and would submit that while the usage and usage description remains the same, the total area of usage is 160.89 sq.mtrs i.e. approximately more than three times bigger than the property which was occupied by the petitioner. Learned Government Pleader would submit that it is in this regard that the Badhiya Brothers were given four separate units and whereas it is submitted that this Court may not intervene in this petition since no discrimination has taken place.

8. Heard learned advocates for the respective parties and perused the documents on record. The only question which arise for consideration of this Court is whether the petitioner is discriminated upon i.e. whether the petitioner is entitled to anything further than what has been granted in favour of the petitioner by the Collector vide order dated 20.10.2023 as per the policy.

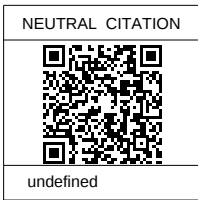
8.1. In the considered opinion of this Court, at the first instance, it would be relevant to state that the policy in question as has been noted hereinabove appears in the order of the Hon'ble Division Bench of this Court dated 08.09.2022 in Writ Petition (PIL) No.137/2021. It would also require to be



mentioned that the application of the petitioner, as had been submitted before the learned Coordinate Bench, was to come as per the policy in question.

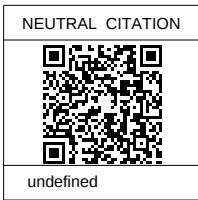
8.2. The policy, as could be seen, grants three different options to an occupant of Ashram for his rehabilitation i.e. as noted hereinabove either a 4 BHK Flat, a 3 BHK Tenement or a compensation of Rs.60,00,000/-. It would appear that in the application, the petitioner has mentioned that she would be entitled to four different units, such claim to entitlement based upon the fact that she was residing in the accommodation in question with her husband and three sons of whom one is married having his wife and daughter residing in the same accommodation in question and whereas apart from the petitioner and her husband along with her married son being entitled to be considered as independent units, even the unmarried sons were also entitled to be considered as individual units.

8.3. It would also appear perusing the order of the Collector dated 20.10.2023 that the Collector has inter alia considered that the petitioner had not responded to the notices issued and whereas, it also appears that the Collector had considered



the fact that the petitioner, while she had claimed that she was entitled for four different units, but, at the same time, there were only two families which were residing in the unit. It appears in this regard that the Collector has considered that the petitioner has a gas connection in her name from the year 1996 and whereas, the son of the petitioner namely Vipul i.e. married son has a gas connection in his name from 20.12.2014 which was hitherto in the name of his wife Ranjanben and the address where the gas connection was allotted appears to be one Kirtan Apartment at Chandkheda. The Collector also notes that the second son of the petitioner also has a gas connection running in his name but the same, according to the Collector, was acquired recently i.e. in the month of April, 2023.

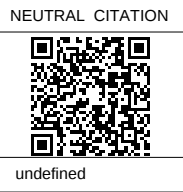
8.4. It appears that the Collector had also taken into consideration that while the petitioner vide her representation dated 13.10.2023 sought for four houses and Rs.30,00,000/- for the amount spent on repairs of the house and further Rs.30,00,000/- for the amount spent on a cabin which is constructed on the terrace of the house etc. and whereas, according to the Collector, the demands made by the



petitioner were completely beyond the scope of the policy and were not required to be granted. The Collector having observed as above, had granted the petitioner Rs.60,00,000/- in lieu of one unit and Rs.30,00,000/- for the first floor of the house in which the petitioner was residing. Hence, a total of Rs.90,00,000/- i.e. one unit in total and half a unit were granted to the petitioner. As noted hereinabove, the said amount is lying deposited with the office of the City Deputy Collector, Sabarmati (West) with an option for the petitioner to withdraw the same.

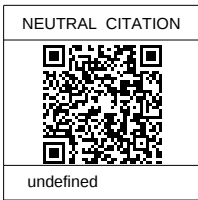
9. Be that as it may, the aspect which requires consideration is that whether the petitioner was entitled to something beyond what had been granted by the Collector vide the impugned order.

9.1. While considering the above aspect, the first issue would be as to what was the policy involved which had been applied by the respondents while considering the cases of the persons similarly situated to the present petitioner. It appears that vide an order dated 08.09.2022 in Writ Petition (PIL) No.137/2021, the Hon'ble Division Bench of this Court had inter alia noted that the policy envisaged three different



options which would be available to the 260 families of Ashram Vashis / long term residents residing within the Gandhi Ashram Memorial. As noted hereinabove, the policy as noted by the Hon'ble Division Bench envisages choice of (i) 4 BHK Flat in a prime locality in Ahmedabad i.e. Naranpura area; or (ii) 3 BHK Tenement in Ashram Housing Campus in an area adjacent to Gandhi Ashram Memorial, within the SPD Zone, or (iii) a generous one time monetary compensation of Rs.60,00,000/-.

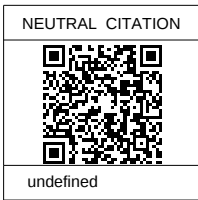
9.2. It appears that the grievance of the petitioner is that a family residing within the Ashram precincts which has been referred to hereinabove as the Badhiya Brothers have been given four different units whereas the petitioner was only provided with one single unit. In this connection, while the petitioner is trying to rely upon some document which is annexed with the affidavit-in-rejoinder which inter alia portrays itself to be a list which reflects that the Badhiya Brothers were residing in one single facility within the Ashram premises, yet, it would be pertinent to note here that the tax bill which has been produced by the petitioner in the affidavit-in-rejoinder, if compared to the tax bill of the



property which the petitioner was holding, would show a completely different picture. As noted hereinabove, more particularly as highlighted by the learned Government Pleader, the area of accommodation which was held by the petitioner was around 50 sq.mtrs categorized as a residential Chawl whereas similarly, while the property which was held by the Badhiya Brothers was also a Chawl but the size of the property appears to be more than three times the size of the property held by the present petitioner i.e. around 160.89 sq.mtrs. Thus, it would appear prima facie that the Badhiya Brothers were granted separate accommodation considering the size of their property.

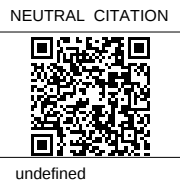
9.3. It would also appear here that as far as the allegations are concerned, such an allegation of the family having received more than its entitlement is being made insofar as only one family is concerned and it would appear to this Court that there is no such allegation further made as regards the 260 Ashram Vashis who were to be given alternative accommodations as per the policy as noted by the Hon'ble Division Bench of this Court.

9.4. Furthermore, it also requires to be observed at this



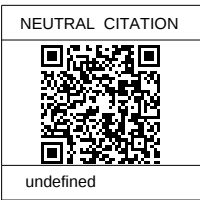
stage that the case of the petitioner is not that she has not been granted the option as per the policy. The case of the petitioner as noted hereinabove being that probably, another group of persons have received more benefits than what the policy as envisaged and therefore, she would also be entitled to a same treatment. To this Court, it would appear that such a request made by the present petitioner is absolutely misconceived. The policy, as noted hereinabove, inter alia envisages three different options and whereas, since the petitioner has not chosen any specific option as regards the property, the third option of the amount of compensation of Rs.60,00,000/- decided by the Collector as the compensation which could be awarded to the petitioner in lieu of being one unit i.e. one family unit and whereas it also prima facie appears that the Collector has gone a step further and has granted Rs.30,00,000/- to the petitioner benevolently beyond the entitlement of the petitioner.

9.5. Again, it would be worthwhile to reiterate that the policy envisages that the family would be entitled to one option i.e. one of the three options referred to hereinabove and whereas, considering the fact that the first floor of the residential



premises of the petitioner was being used by her married son with his independent family, probably, the Collector appears to have granted an additional Rs.30,00,000/- in favour of the family of the petitioner. To this Court, prima facie, it would also appear that the grant of Rs.30,00,000/- may also be beyond what has been envisaged in the policy itself. This Court does not opine any further on the said aspect since the implications of any observation by the Court may be too hard to comprehend at this stage.

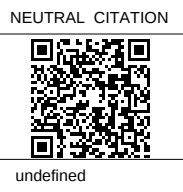
9.6. To this Court, it would appear that the policy envisaging that the residents would be entitled to choose one of the three options and the petitioner having been declared entitled for one option, it would not be open for the petitioner to claim any further benefit of the policy more particularly by comparing her case with the cases of other persons in whose case probably the policy may have been stretched. This Court hastens to add that the above observations may not be treated as this Court having given any finding on the said issue. Suffice it to state that the petitioner having been given an option as per the policy, it would not be open for the petitioner to approach this Court for invoking writ /



discretionary jurisdiction of this Court seeking to be granted something beyond the policy itself. The law on this issue is well settled that writ jurisdiction of this Court cannot be invoked by requesting that since the State has committed a mistake / illegality in case of one person, the State may be directed by a writ of this Court to commit the same error / illegality in case of petitioner also. To put it pithily, there cannot be any direction by the Court against the State to perpetuate any illegality.

9.7. Reliance is placed on paragraphs no.9, 10 and 11 of the recent decision of the Hon'ble Supreme Court in case of **Tinku vs. State of Haryana & Ors. (Civil Appeal No.8540/2024, Dtd. 13.11.2024)** which are quoted herein below for ready reference:-

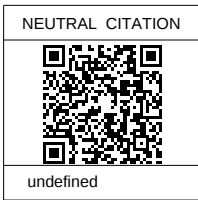
“9. That apart, the claim as has been stated above, cannot be accepted being not supported with any statutory backing. This is required for making any claim including a claim for compassionate appointment, which is an exception to the general rule of appointment requiring a proper advertisement and selection process to be followed as per rules which is an accepted norm. If some wrong benefit has been conferred or some benefit which is contrary to the scheme has been granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India.



10. *There are catena of judgments of this Court that clearly lay down the principles which govern such claims. Some of which are Shanti Sports Club v. Union of India, Chandigarh Administration v. Jagjit Singh, R Muthukumar v. TANGEDCO, Basawaraj & Anr v. Special Land Acquisition Officer.*

11. *The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.”*

9.8. In the considered opinion of this Court, the petitioner having been granted one unit as per the policy of the respondents and since the petitioner is being granted even something beyond the policy of the respondents, no interference is required at this stage. Suffice it to state that in case the petitioner is of the opinion that instead of the amount



of Rs.60,00,000/- which has been deposited by the respondents with the City Deputy Collector, Sabarmati (West) as one of the options, then it would be open for the petitioner to request the authorities to change the option i.e. either for grant of one 4 BHK Flat at Naranpura or one 3 BHK Tenement at Ashram Housing Campus in an area adjacent to Gandhi Ashram Memorial, within the SPD Zone and whereas, if such an application is received, the Collector, Ahmedabad shall take action appropriately within a period of four weeks from the date of receipt of such application. It is further clarified that the above direction is only with regard to the amount of Rs.60,00,000/- and the petitioner would be further entitled to seek for withdrawal of Rs.30,00,000/- which the Collector has already granted.

10. With the above observations and directions, the present petition stands disposed of as rejected.

(NIKHIL S. KARIEL,J)

Bhoomi