

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2374 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 2257 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 2259 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 2291 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

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

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**MOHMMAD SARIFVISAD PURVALA & ORS.****Versus****AHMEDABAD MUNICIPAL CORPORATION & ORS.**

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**MR S.I. NANAVATI, SENIOR ADVOCATE with****MS HETVI H SANCHETI (5618) for the Petitioner(s) No.****1,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,3****2,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,6,7,8,9****MR G H VIRK (7392) for the Respondent(s) No. 1****MR SIMRANJITSINGH H VIRK (11607) for the Respondent(s) No. 1****MR SAHIL TRIVEDI for the Respondent Nos.2 and 3.**

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**CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT****Date : 24/07/2025****ORAL JUDGMENT**

1. Captioned writ petitions are filed seeking to quash and set aside execution and implementation of the notices issued by respondent Nos.1, 2 and 3, dated 11.01.2021; whereby the petitioners were directed to vacate their respective dwelling units within a period of four days, failing which, action in accordance with Law has been indicated. Respondent No.1 herein is Ahmedabad Municipal Corporation, Respondent No.2 is Commissioner of Police, Ahmedabad and Respondent No.3 is Police Inspector, Jamalpur, Ahmedabad. It is also further prayed that respondents may be directed to provide Legal Security of Tenure/Right to Adequate Housing recognized under Article 11 of International Covenant on Economic, Social and Cultural Rights and other rights narrated in Part III of Constitution of India. The prayer with regard to decision on representation of the petitioners is also made. From earlier orders dated 17.02.2021, 13.03.2021, 15.03.2021 and 23.03.2021 in the captioned writ petitions, it is noticed that after filing of these petitions, time was sought either by petitioners' advocate or by respondents' advocate however, till date no notice has been issued in these cases. Thereafter, urgent circulation was sought submitting that a coercive action by demolition of properties of the petitioners, situated at Rangwala Challi, now known as "Shana Apartment" situated at Rangwali Chali, Purbiyawa, Astodia Kot ni rang, Jamalpur, Ahmedabad (hereinafter referred to as 'property in question') has started by demolishing 6th floor and onwards and, therefore, this petition may be heard on priority

basis. Considering the request, these petitions were taken up for hearing on 15.07.2025.

2. Rule returnable forthwith. Learned advocate Mr. G.H.Virk waives service of rule on behalf of respondent No.1 and learned AGP Mr.Sahil Trivedi waives service of rule on behalf of respondent Nos.2 and 3.

3. For the sake of convenience, facts referred in Special Civil Application No.2374 of 2021 are considered for adjudication of all petitions. All these petitions, challenge the notices issued to respective petitioners dated 11.01.2021, whereby, they have been directed to vacate the property in question.

4. Facts in brief as referred in the petition are as under:

4.1. The petitioners herein are residents of Rangwala Chali, Jamalpur Area, Ahmedabad; for more than 50 years as tenants/owners, belonging to poor strata of the society. All the petitioners are either unorganized labourer, fruits and vegetable vendors, drivers, rickshaw pullers, daily wagers, foremen, butchers, ac-repairers or small shop owners etc. The petitioners along with their families totaling to more than 250 to 300 people are currently residing in redeveloped Rangwala Challi, now known as “Shana Apartment” situated at Rangwali Chali, Purbiyawa, Astodia Kot ni

rang, Jamalpur, Ahmedabad (hereinafter referred to as 'property in question'). It is case of the petitioners that the property in question was in extremely dilapidated condition and on account of its dilapidated condition, notices from Corporation were issued to vacate the same. At that time, the tenants occupying the property were not sure of their possession if they had decided to vacate their respective dwelling units, hence they had filed a suit seeking restrain orders that original owners may not sell the properties to the developer, for redevelopment. However, upon a compromise having been arrived at between the parties, the suit was withdrawn. The petitioners withdrew the suit upon assurance given by the developer of giving them the possession of their dwelling units back at no additional cost. Accordingly, sale deeds were executed between the petitioners and the developer and therefore petitioners are owners of the property in question having registered sale deed in their favour. Despite that, notices dated 11.01.2021, were issued by respondent – Corporation, wherein the petitioners were directed to vacate the property in question on account of the un-authorized construction. Petitioners contend that they are owners of the property in question, however, they are not aware about whether the developer constructed the property without development permission. Since the petitioners are from poor strata of the society, it would be difficult for them to catch hold of the developer who had cheated them and if the property in question is demolished on account of unauthorised construction, the petitioners would be

rendered homeless and their survival would be difficult. Therefore, these notices are required to be quashed and set aside. It is also case of the petitioners that they have the ‘Right to Adequate Housing and Legal Right to Secure Tenure’ as guaranteed under the Constitution of India and therefore, also the notice dispossessing the petitioners from their property deserves to be quashed and set aside.

5. Heard learned senior advocate Mr. Sudhir I. Nanavati assisted by learned advocate Ms. Hetvi Sancheti for the petitioners, learned advocate Mr. G.H. Virk for the respondent No.1 – Corporation and learned AGP Mr. Sahil Trivedi for respondent Nos.2 and 3.

6. Since the issue involved in all these petitions is common, challenging the Notice dated 11.01.2021, with the consent of learned advocates appearing for respective parties, these petitions are taken up for final hearing.

7. Learned senior advocate Mr. Nanavati for the petitioners submitted that as referred in the facts, earlier H.R.P. Suit No. 40 of 2019 (Annexure-C- page 99) was filed by the tenants of Rangwali Chali, seeking to restrain original purchaser (developer) from directing the petitioners to vacate the property in question. Thereafter, H.R.P. Suit No. 40 of 2019 was withdrawn and compromise pursis dated 21.02.2019 was filed (page 102). The sale

deeds were executed between the parties. The petitioners herein are parties to the Sale deeds and they being owner of the property in question, were served with the notices on 11.01.2021 directing them to vacate their respective property which is subject matter of present petitions. Learned senior advocate submitted that the said notices refer to unauthorised construction however, the petitioners were not aware about the unauthorised construction done by the developer and for the fault of the developer, they may not be penalized. Moreover, the petitioners are in possession of the property in question and therefore they made applications under Gujarat Regularization of Aunauthorised Development Act, 2022 (“GRUDA, 2022” for short) in the year 2025 and the same were rejected. Against rejection of GRUDA application order, appeal is provided under GRUDA -2022 Act and till the appeal gets decided in accordance with law, the notice dated 11.01.2021 may not be acted upon. Moreover, the developer by an application dated 05.03.2025 has applied for permission for construction to the National Monument Authority as per the provisions of Ancient Monuments and Archaeological Sites and Remains Act, 1958 (“AMASR Act, 1958) and the said application is still not decided by the National Monument Authority and till the application under AMASR Act, 1958, gets decided, the notice dated 11.01.2021 may not be acted upon.

7.1. Learned senior advocate Mr. Nanavati submitted that since the property in question is within the radius of 300 meters of ancient monument and under the provisions of AMASR Act, 1958, the height beyond 18 meters is not permissible. In this case, construction done over and above 18 meters height has been demolished, therefore, the petitioners' properties may not be further demolished more particularly, in view of pending application before the Central Government authority under the AMASR Act, 1958.

7.2. Learned senior advocate in the alternative submitted that the ownership of the land is not in question, and therefore, since the petitioners are owners of the property in question, at least reasonable time of three to four months may be provided to vacate the property in question. Learned senior advocate thus submitted that these petitions deserve consideration by appropriately directing the respondent – Corporation not to act upon the notices dated 11.01.2021 by taking coercive action.

7.3. Learned senior advocate Mr. Nanavati in relation to breach of principles of natural justice has relied upon the decision of the Hon'ble Supreme Court in the case of ***Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and Ors.*** reported in ***(1997) 11 SCC 121.***

8. Opposing the petition, learned advocate Mr.G.H.Virk for the respondent – Corporation submitted that the notice dated 11.01.2021 at page 27 refers to earlier notice dated 11.09.2019, issued under Section 267 of the Gujarat Provincial Municipal Corporation Act, 1949 (GPMC Act). Under notice dated 11.09.2019, the petitioners were informed not to carry out constructions. Thus, the restrain order for further construction of property in question is evident from the notice dated 11.09.2019. The notice dated 11.09.2019 was followed by another notice dated 18.09.2019 under Section 260 (1) of the GPMC Act and an order dated 10.10.2019 under Section 260(2) of the GPMC Act. Despite that, since the petitioners have continued with the construction that too without permission, sealing orders dated 02.09.2019, 15.09.2019 and 24.09.2019 were passed and the property in question were sealed. However, the petitioners broke open the seal and started using the property which was informed to the police on 11.08.2020. Thus, the conduct of the petitioners is not bonafide. Thereafter, the notice dated 11.01.2021 (impugned in the petition) was issued. After issuance of the notice, the petitioners responded to the notice dated 11.01.2021 by its reply dated 31.01.2021 (page 92). In the reply it was stated that since the officers of the Corporation were threatening to vacate the property in question for demolition of constructed building, the petitioners were compelled to prefer Civil Suit seeking injunction against the Corporation. However, the said Civil Suit was withdrawn, therefore, the contention raised of

pendency of suit is of no consequence. Thus, there is nothing to support that the property in question was duly constructed after obtaining development permission. Thus, since the construction of the property in question was unauthorised, notices dated 11.01.2021, were issued and there is no illegality in the same.

8.1. Further, the reliance placed on application preferred under the provisions of GRUDA, 2022 on 19.02.2025 is also of no consequence because the said applications were rejected by respondent Corporation by order dated 01.03.2025, on the ground that property in question is situated within radius of 300 meters of protected monument. The aspect of property in question located within radius of 300 meters of protected monument (in this case 187.19 meters) is not in dispute and also evident from an application filed by the developer seeking permission under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act). Therefore, the rejection of GRUDA 2022, by applying Section 8(2)(f) of GRUDA, 2022, is appropriate. When the GRUDA application is rejected as it falls in exception clause, filing of appeal challenging that order is inconsequential.

8.2. Further, the contention raised in the petition that the developer had cheated the petitioners as they were not aware about unauthorized construction is also not believable because the developer - Salimkhan Jummakhan Pathan filed an application under Ancient Monuments and Archaeological Sites and Remains

Act, 1958 on 05.03.2025, and the said application is available to the petitioners. Therefore, the petitions being devoid of merits deserves rejection.

9. Learned advocate Mr.Virk relied upon the following decisions in the case of (i) ***Kaachni Masjid Trust vs. State of Gujarat & Ors.*** In Special Civil Application No.410 of 2025 dated 09.01.2025 (Paragraph Nos.7.3, 7.5, 7.6, 7.8, 7.9) and (ii) in the case of ***Kaniz Ahmed vs. Sabuddin and Ors.*** reported in 2025 SCC Online SC 995 to submit that strict compliance is required of the Act for removal of the un-authorized construction.

10. Considered the submissions and decisions relied upon. At the outset, it is noticed that though the petitions are filed in the year 2021 challenging the Notices dated 11.01.2021 issued to respective petitioners, directing them to vacate the property in question, till date no efforts are made for hearing of these petitions. Even no notice till date has been issued. Further, the impugned Notices dated 11.01.2021, refers to earlier Notice dated 11.09.2019 (Annexure “A” Page-161 of the reply) informing the petitioners that construction of the property in question is without development permission and therefore to be stopped with immediate effect. The notice dated 11.09.2019 (Annexure “A” Page 161 to the reply), was also forwarded to the concerned Police Inspector for its service and accordingly, it was served.

11. Thereafter, Notice dated 18.09.2019 under section 260(1) of GPMC Act was issued to the petitioners calling for their explanation and a hearing was also fixed on 20.09.2019 at 3:30 pm (Page-163). Notice under section 260(1) dated 18.09.2019 was followed by an order dated 10.10.2019 under section 260(2) of GPMC Act. In the order under section 260(2) of GPMC Act, the reason to remove unauthorised construction was mentioned. From the reasons stated, it is evident that the petitioners were informed that construction was done without any development permission. Though time was granted to produce documents justifying their construction, no documents were produced by the petitioners. Moreover, vide Notice dated 11.09.2011, under Section 267 of the GPMC Act, the petitioners were restrained from further construction however, they continued with the same. Therefore, the unauthorized construction of the property in question without development permission resulted into order dated 24.09.2019, of seal of property in question. The order of seal dated 24.09.2029, was followed by two other orders of placing seal dated 15.10.2019 and 02.09.2020. As evident from the record, the petitioners did not challenge the orders of sealing the property in question and therefore, action was initiated by communication dated 16.11.2019 and 13.11.2019 informing Gaekwad Haveli Police Station seeking police assistance for demolition work. It appears that despite that, the work of demolition could not be effected on account of COVID 19 pandemic and therefore at this stage to accept the contention on behalf of

petitioners that action taken of issuing notices dated 11.01.2021 is beyond the provisions of the GPMC Act does not appeal to this Court and is hence rejected.

12. In respect to the contention that petitioners were not aware about the construction done by developer without prior permission, it is noticed that impugned Notices were issued in the year 2021, however, no proceedings have been initiated by the petitioners against the developer. The ground raised of filing of suit also is of no help because it was withdrawn by the petitioners. Thus, it was a conscious decision by the petitioners to agree to the settlement and to withdraw the Suit. The compromise purshis dated 21.02.2019 is on record. Further, another Civil Suit No.1167 of 2020 was also dismissed on 04.08.2022, under Order 7 Rule 11 of CPC. Therefore, at this stage no proceedings are pending restraining the respondent- Corporation to refrain from acting upon the Notice dated 11.01.2021.

13. One more aspect which needs consideration is that, though the Notice dated 11.01.2021 was served and petition was filed in the year 2021, an application under GRUDA-2022, seeking regularization of unauthorized construction was filed only on 19.02.2025. The said application was rejected by an order dated 01.03.2025 on the ground that property in question is situated within the radius of 300 meters of protected Monument. Further,

property in question is situated within radius of 300 meters of protected Monuments is a fact and therefore, the developer has filed an application dated 05.03.2025, before the authority under The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short “The AMASRA Act, 1958”).

14. At this stage it is apposite to refer section 8(2) of GRUDA-2022; which provides for the cases in which the Designated Authority shall not regularize unauthorised development, which reads as under:

“8(2) The Designated Authority shall not regularise unauthorised development in respect of the following matters, namely: -

- (a) where the permissible FSI (Floor Space Index) in a zone is less than 1.0;
- (b) where FSI consumed in other than residential use, is more than fifty percent of the maximum permissible FSI as per CGDCR;
- (c) where projections are beyond the plot boundary;
- (d) where the change of use which in the opinion of the Designated Authority may cause danger to health or lead to health and safety hazard;
- (e) where the unauthorised development falls under the alignment of means of water supply, drainage, sewerage, supply of electricity or gas or of any other public utility service; and

(f) Such unauthorised development which the State Government may, prescribe.”

15. Therefore, undisputedly, since the property in question is situated within 300 meters of Protected Monument, the case of the petitioners would fall under Section 8(2) of GRUDA-2022, where regularization of unauthorised construction is not permissible. Once the regularization is prohibited under the Act, filing of appeal is of no help to the petitioners. Further, mandatory permission of National Monuments Authority under AMASRA Act 1958, prior to construction is also missing here and the application at this stage on 05.03.2025, filed by the developer appears to be an afterthought and to frustrate the further proceedings. The application filed by the developer to National Monuments Authority under AMASRA Act 1958, forming part of record creates doubt on the relationship of petitioners and developer.

16. Further, Section 19 of AMASRA Act, 1958, provides restrictions on enjoyment of property rights in protected areas. Section 20B of AMASRA Act 1958, provides for regulated area in respect of every protected monument. Section 20C of AMASRA Act, 1958, provides for applications for repair or renovation in prohibited area, or construction or re-construction or repair or renovation in regulated area. If these provisions are read with section 2(j) of GRUDA-2022, the designated authority is not empowered to regularize the unauthorized development, if the same

is prescribed “unauthorised development” by the Government. In these cases, since property in question is situated within the radius of 300 meters of protected Monument, which is not disputed by the petitioners, for which no permission of construction is permissible, therefore, pendency of appeal as contended by the petitioners, would not have any assistance. The other documents relied upon by the respondents against the developer inter alia the criminal proceedings are not referred herein since they are not relevant for the subject matter.

17. Moreover, the Hon’ble Supreme Court in the case of **Kaniz Ahmed V/s. Sabuddin and others** reported in **2025 SCC OnLine SC 995**, has held that each and every construction must be made scrupulously following and strictly adhering to the Rules and Regulations. In the event of any violation, being brought to the notice of the courts, the same should be dealt with iron hands and any leniency or mercy shown to the person guilty of unauthorised construction would amount to showing misplaced sympathy.

18. Moreover, as observed by the Hon’ble Supreme Court in the very decision, that a person, who has no regards for the law cannot be permitted to pray for regularization after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorized construction has to be demolished. There is no way out. Judicial discretion would be

guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law.

19. Thus, if the facts of these cases are compared, it would not be out of place to observe that the petitioners have taken the Law in their hands. Despite earlier intimation under notice dated 1109.2019, to stop the construction they continued with construction breaching the directions. Thereafter, the seal put by the respondents was broken and without challenge to the sealing order, they started using the property in question; without Building Use permission. Thus, once again they breached the directions. Further, despite alleging that developer had cheated and constructed their units without prior permission, till date no action is initiated against developer. Therefore, in the opinion of this Court, the citizen who has no regards to law, is not entitled to seek any relief under Law, and in this case, it would amount to misplaced sympathy.

20. In the opinion of this Court that the decision relied upon by learned Senior Advocate Mr. S.I. Nanavati in the case of **Ahmedabad Municipal Corporation V/s. Nawab Khan Gulab Khan and others** reported in (1997)11 SCC 121, would not be applicable in these cases because in the decision relied upon, the issue was with regard to opportunity of hearing not granted before passing the order, and the same is not the case here, the said decision

would not applicable to the facts of the present case.

21. In view of afore-stated reasons this Court does not find any merits in the petitions and the same are rejected. Rule discharged. No costs. Civil Application (s) if any also stands disposed of.

22. The alternative prayer of providing three months' time to vacate the property in question is also rejected.

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

NAIR SMITA V./13