

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6119 of 2025**=====
FULJAH NOORMOHAMMED SHAIKH & ORS.**Versus****STATE OF GUJARAT & ORS.**
=====**Appearance:****MR AJ YAGNIK(1372) for the Petitioner(s) No.
1,10,11,12,13,14,15,16,17,18,2,3,4,5,6,7,8,9****MR GURUSHARANSINGH H VIRK, GOVERNMENT PLEADER with
MS DHARITRI PANCHOLI, AGP with
MR SAHIL TRIVEDI, AGP the Respondent(s) Nos. 1 and 3****MR GURUSHARANSINGH H VIRK, GOVERNMENT PLEADER with
MR SIMRANJITSINGH VIRK, ADVOCATE for the Respondent(s) No. 2**
=====**CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT****Date : 29/04/2025****ORAL ORDER**

1. Urgent circulation of this petition was sought and accordingly, the matter was circulated and taken up for hearing on a court holiday on 29.04.2025 at 11:00 AM.

2. This petition is filed seeking to declare the demolition drive undertaken by the respondents on 28.04.2025 in Chandola Lake area to be violative of fundamental rights, in breach of principles of natural justice and therefore deserving restrain order of this Court from carrying out the demolition drive. It is also prayed that since illegal demolition drive is undertaken by the respondents from 28.04.2025 in Chandola

Lake area, unless and until the cases of the petitioners are considered as per the rehabilitation and resettlement policy of the State Government as amended and modified from time to time, and the petitioners have been provided with alternative accommodation, the activity of demolition may be stayed. In the prayer, reliance on the decision of Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures** reported in **2024 (0) INSC 866** is made to direct the respondents to restrain them from carrying out illegal demolition from 28.04.2025.

3. Heard learned advocate Mr. A. J. Yagnik for the petitioners and learned Government Pleader Mr. Gurusharansingh Virk assisted by learned Assistant Government Pleader Ms. Dharitri Pancholi and learned Assistant Government Pleader Mr. Sahil Trivedi for respondent Nos. 1 and 3 and learned Government Pleader Mr. Gurusharansingh Virk with Mr. Simranjitsingh Virk for respondent No. 2.

4. Learned advocate Mr. A. J. Yagnik for the petitioners submitted that activity of illegal demolition of petitioners' houses, contrary to their fundamental rights has been initiated without issuing any notice to them. The petitioners are 18 in number and residing in Chandola Lake area since last 60 years. Prior to initiation of activity of demolition on 28.04.2025, the petitioners have not been served with any notice; however, verbal notice in the nature of threat was given in evening of 28.04.2025 to the petitioners to vacate their houses indicating demolition proceedings. Since prior notices were not served to the petitioners before initiation of demolition, restraint orders

may be issued on this ground alone.

4.1 Moreover, since all the petitioners are affected by the impugned demolition in Chandola Lake area and on account of urgent filing of this petition, necessary documents could not be procured and placed on record along with this petition. However, the paper-book prepared may be taken on record. By placing reliance on the documents of paper-book, learned advocate for the petitioner submitted that all the petitioners are having some documents justifying their long occupancy in Chandola Lake area. By placing reliance on Aadhar Card, Electricity Bill, Voter ID Card, in some of the cases birth and death certificate of their parents, public distribution cards etc. it was submitted that considering their long occupancy on subject premises for more than 60 years, they may not be deprived of their residence without putting them to notice and therefore, the demolition activity needs to be restrained.

4.2 Further, it is true that Chandola Lake is a Water Body. However, till date no measurement has been done with regard to the residence of the petitioners as to whether they would fall in water body or otherwise. As per the Coastal Regulation Zone (CRZ) Notification, the area needs to be demarcated as a water body which has not been done in the present case and therefore, at present the petitioners are not in a position to ascertain that whether their residence would fall on/in water body or not. Therefore, also the action taken being without documents in support, needs to be restrained.

4.3 On the aspect of citizenship of the petitioners, learned

advocate submitted that no document is available for petitioners' citizenship, however, Article 14 and Article 21 of the Constitution of India refers to 'any person' and since all the petitioners are residing at the given address, they are entitled for their right to life. Further, without having them declared as non-citizens of India by the competent Court of law under the provisions of the Foreigners Act, 1946, they may not be deprived of their right to life. In this case, none of the petitioners have been considered for providing the residence despite having their long stay at the given address under the rehabilitation scheme and unless and until their cases are considered under the rehabilitation scheme, their residences may not be demolished.

4.4 Learned advocate for the petitioners in support of his submission of breach of principles of natural justice has placed heavy reliance on the decision of Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures** reported in **2024 (0) INSC 866** (Paragraph 90 and 91). Further, without demarcation under CRZ Notification, the petitioners may not be termed as having their premises on water body and therefore, the exceptions carved out in Paragraph No. 91 would not be applicable.

4.5 Further, irrespective of recent decision of the Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures**, the decision in the case of **Olga Tellis and Ors. vs. Bombay Municipal Corporation and Ors.** reported in **(1985) 3 SCC 545** holds the field that due procedure of putting the resident to notice is required which has not been

done in the present case and therefore also, the activity needs to be restrained.

4.6 Learned advocate for the petitioners also relied upon decision of this Court in the case of **Rasidaben w/o Sidikbhai Daudbhai Shaikh vs. State of Gujarat** passed on **04.02.2022** in **Special Civil Application No. 2844 of 2020** to submit that irrespective of the petitioners' citizenship, they would be entitled to relief under Article 226 of the Constitution of India. Learned advocate for the petitioners also relied upon decision of Hon'ble Supreme Court in the case of **Shiv Sagar Tiwari vs. Union of India and Ors** reported in **(1997) 1 SCC 444** to submit that any person as referred in Article 14 and 21 of the Constitution of India has a right of shelter and under the right of shelter, the present petitioners are also entitled for their residences since they are residing on the given address for many years and unless and until their cases have been considered for rehabilitation, they may not be deprived from their residences.

5. Learned Government Pleader Mr. Gurusharansingh Virk appeared for respondents and placed on record affidavit dated 29.04.2025 by DCP, Crime, Ahmedabad. Strenuously opposing the petition, Learned Government Pleader for the respondent made the following submissions: -

5.1 From the cause title of the petition, it is evident that 18 petitioners have filed this petition, however few names are in duplication. Further, no details of addresses are provided. None of the documents justify their occupancy for more than 60

years as contended. Thus, the petition filed by 18 alleged residence lacked basic documents. Accordingly, name-based verification was endeavored to be carried out by the answering respondent and it was found difficult to locate, identify and confirm the existence of the petitioners at the stated address. Their nationality is also highly suspected.

5.2 Notwithstanding the above contention, Chandola Lake is a historical lake and water reservoir situated at Dani Limda Road in Ahmedabad. The subject lake is a notified water body and no civic body has ever given any development permission to any person/applicant for construction of any structure on the lake land. Therefore, the construction referred in the petition with the prayer not to permit demolition cannot be considered, as no construction is permitted on water body. Further, as per provisions of Section 37 of the Gujarat Land Revenue Code, 1879, all lakes are Government land and on a Government land, no construction is permitted. Since, the activity of demolition was initiated to remove construction on water body, no notice is required and therefore there is no illegality committed by the respondents. Therefore, contention that the action was initiated without following the principles of natural justice has no application in facts of this case. To support the submission that water body needs to be preserved and no construction is permitted, reliance is placed on decision of this Court in the case of **Shailesh R. Shah vs. State of Gujarat** reported in **(2002) 3 GLR 2295**.

5.3 Further, by placing reliance on Paragraph No. 13 and 16 of the affidavit, Learned Government Pleader submitted that

the word “public order” is synonymous with public peace, safety and tranquility, which includes the actions for preempting/controlling/removing/regulating the areas illegally encroached upon by illegal immigrants, more particularly in the wake of the Pahalgam incident. The actions being taken for maintaining the safety and security of the people at large of the State as also protecting National Security, cannot be hounded by the principles of natural justice. Thus, the action undertaken by the respondents being in accordance with law no interference is called for.

5.4 On the aspect of CRZ Notification, learned Government Pleader Mr. Virk submitted that neither averments have been made in the petition, nor substantiated by cogent evidence on record.

6. Considered the submissions and perused the documents supplied by the petitioners (paper-book). At the outset, it is noticed that many averments are made in the petition and in the affidavit in reply referring to alleged criminal activities in the subject premises. However, since the issue involved is with regard to initiation of demolition by respondents, without entering into other aspects, this petition is considered for the prayer made with regard to demolition and rehabilitation. From the submissions made on behalf of the petitioners, it is noticed that this petition challenges the initiation of demolition by respondents on mainly two grounds. Firstly, that though the petitioners are residing with their families on the subject premises since decades, the activity of demolition was initiated without notice to the petitioners, and therefore there is gross

violation of principles on natural justice as observed by Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures** reported in **2024 (0) INSC 866**; and secondly that till the cases of the petitioners are considered under rehabilitation scheme of the Government, the respondents may be restrained to carry out demolition.

7. While dealing with the first contention of the petitioners, it is noticed that their case if plainly put is that merely because they are residing in Chandola Lake area since last 60 years, they may not be deprived of their residences without notice. To show long occupation at the subject premises, paper-book containing certain documents is placed on record. However, it is not disputed that Chandola Lake is a water body and on a water body, no construction can be permitted. The contention raised that without measurement done as per CRZ Notification, petitioners' premises cannot be stated to be on water body, in the opinion of this Court does not merit acceptance in view of the affidavit dated 29.04.2025, by respondent no.1 that the area for which the demolition activity has been initiated is a lake and water reservoir situated at Dani Limda Road in Ahmedabad. It is further stated on affidavit that said land being admittedly a notified water body, no civic body has ever given any development permission to any person/applicant for construction on the lake.

8. At this stage, it would be apposite to refer to the decision of Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures** reported in **2024 (0) INSC 866** on which heavy reliance is placed wherein

it is held as under: -

“91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

Therefore, the arguments canvassed of breach of principles of natural justice by non-issuance of notice prior demolition does not merit acceptance and thus rejected.

9. The second argument canvassed on behalf of the petitioners is in relation to applicability of rehabilitation and resettlement policy of the State government of 2010 and 2013. It is contended that without providing any alternative accommodation to the petitioners, the action taken of demolition of their houses being illegal, deserves to be stopped by passing restraint orders to the respondents. In this regard, it is noticed that for long occupancy, no documents have been produced along with the petition. The documents like Aadhar Card, Death or Birth Certificate, Electricity Bills, BPL Card, are produced by way of paper-book which refers to petitioners' addresses as Chandola Lake Chapra, Dani Limda, Ahmedabad. Nothing has been produced to justify the construction of premises with some permission.

10. Further, in view of Section 37 of the Gujarat Land Revenue Code, 1879, the land of a water body is a

Government land and, on such land, no construction is permitted. Hence, in the opinion of this Court the construction which has been carried out by the petitioners is illegal construction and appears to have been continued since many years.

11. Now taking the contention that since the petitioners are residing on the subject premises since many years and therefore, they should not be deprived of their houses without providing them adequate opportunity, this Court would like to refer to the decision of Hon'ble Supreme Court in the case of **Rajendra Kumar Barjatya and Anr. v.s. U P Avas Evam Vikas Parishad and Ors.** Reported in **2024 SC 1172** wherein it is held as under: -

“19. In a catena of decisions, this Court has categorically held that illegally of unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction. The following decisions are of relevance and hence cited herein below to drive home the point that unauthorized constructions must be dealt with, with an iron hand and not kid gloves.”

12. Therefore, in the opinion of this Court since the

construction of the petitioners are on the water body which is evident from the affidavit filed as also the area is also known as Chandola Lake area, the argument that procedure is not followed and the principles of natural justice being not adhered to, in the opinion of this Court would not be acceptable and therefore the submissions canvased on behalf of petitioners does not merit acceptance and hence the prayer prayed with regard to restraining the respondents from carrying out demolition activity of the subject area is hereby rejected.

13. In the opinion of this Court, reliance placed by the petitioners on Article 14 of the Constitution of India is misplaced since the present is not a case where the 18 petitioners have been discriminated since demolition has already been undertaken in respect of all illegal constructions as stated in the affidavit. Moreover, reliance placed on Article 21 of the Constitution of India is also misplaced because though right to life includes right to shelter, the petitioners cannot claim a vested right for resettlement and rehabilitation on the very subject premises, which at the cost of repetition, is a water body- Govt. Land.

14. Adverting to the prayer of giving alternative accommodation under rehabilitation scheme of 2010 and 2013 of the State Government, as canvased by learned advocate for the petitioners, it is open for the petitioners to make their individual application, if they are so entitled before the authorities along with required documents and the same may be considered in accordance with law. The contention of the learned advocate for the petitioners that till the time such

alternate accommodation is provided, the demolition may be restrained does not merit acceptance since the same would amount to perpetuating illegal occupation/ construction, which would be against the principles of law.

15. After this oral order, learned advocate Mr. A. J. Yagnik for the petitioners requested that since the reply on behalf of respondent no.1 is received, prior to the hearing, time may be granted to file rejoinder.

16. Considering the request, without issuance of notice, only to file rejoinder to the reply filed, the matter is adjourned to 19.06.2025.

(MAUNA M. BHATT,J)

SHRIJIT PILLAI