

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6716 of 2025**

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SAMSUDDIN JAINULABIDDIN SHAIKH & ORS.

Versus

THE STATE OF GUJARAT & ORS.

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Appearance:

MR MIHIR JOSHI, LD.SENIOR COUNSEL WITH MR MTM HAKIM,
LD.ADVOCATE WITH MR RIZWAN SHAIKH(7146) for the Petitioner(s) No.
1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,
33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,5
6,57,58,6,7,8,9

MR G H VIRK, LD.GOVERNMENT PLEADER WITH MR SAHIL TRIVEDI,
LD.ASSTT.GOVERNMENT PLEADER for the Respondent(s) No. 1,2
MR G H VIRK(7392), LD.GOVERNMENT PLEADER WITH MR S.H.VIRK for
the Respondent(s) No. 3

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 06/05/2025

ORAL ORDER

1. This petition is filed with the following prayers:

“(A) THIS HON'BLE COURT MAY BE PLEASED TO direct the Respondents to provide rehabilitation and alternate accommodation as per the Government policies and also consider representation 02/05/2025 “Annexure F” before evicting and removing the Petitioners from their hutments.

(B) Pending admission, hearing and till final disposal of present petition THIS HON'BLE COURT MAY BE PLEASED TO restrain the Respondent No.3-Ahmedabad Municipal Corporation from undertaking any further demolition of their premises situated near Chandola Lake, Ahmedabad.

(C) Pending admission, hearing and till final disposal of present petition THIS HON'BLE COURT MAY BE PLEASED TO direct the Respondents to consider representation dated

02/05/2025 “Annexure F” and rehabilitate and provide alternate accommodation to the petitioners as per the Government policies, in the interest of justice and equity.

(D) THIS HON'BLE COURT MAY BE PLEASED TO award the costs of present petition.

(E) THIS HON'BLE COURT MAY BE PLEASED TO grant such other and further relief/s as may be deemed fit, just and proper in the facts and circumstances of the case, in the interest of justice.”

2. Heard learned Senior Advocate Mr. Mihir Joshi assisted by learned advocate Mr. MTM Hakim for the petitioners and learned Government Pleader Mr. G.H. Virk for the respondents.

3. This petition is filed by in all 58 petitioners residing near Chandola Lake, C- Wards Chapara, Danilimda, Ahmedabad. It is stated in the petition that all the petitioners are residing at the address given in the cause title. Learned Senior Advocate Mr.Joshi submitted that all the petitioners belong to Economically Weaker Section (EWS) of the society and had come to the city seeking livelihood. Having been not able to afford rented roof or shelter, the petitioners have constructed hutments along the periphery of Chandola Lake and residing there since more than 60 years. There are approximately 6500 hutments existing in the area surrounding Chandola Lake. All the petitioners possess some documents, justifying their long possession over the subject residences and are annexed at Annexure “A Colly.” However, since on account of ongoing

activity of demolition on and around area of Chandola lake, and residences of the petitioners being likely to be removed, prior to such removal or demolition of petitioners' residences, they may be provided with alternative accommodation under rehabilitation Scheme, framed by the State Government. The State Government and Corporation are duty bound to provide alternative accommodation to the slum dwellers / hutments because their houses are going to be removed.

4. Learned Senior Advocate Mr.Mihir Joshi for the petitioners further submitted that there are policies of the year 2013 i.e. Gujarat Slum Rehabilitation Policy- PPP- 2013 and subsequently of the year 2015. The Government of India has also launched the Pradhan Mantri Awas Yojna to address the housing need of slum dwellers and other people belonging to Economically Weaker Sections (EWS), Lower Income Group (LIG) and Middle-Income Group (MIG) and therefore the cases of petitioners are required to be considered accordingly.

4.1 Moreover, in the above context, if the facts of the present petition are seen, then it is evident from the communication dated 18.02.2025 (Annexure "B" Page-212) by Deputy Municipal Commissioner (Estate) to the Collector, Ahmedabad stating that DILR, Ahmedabad may be directed to demarcate the land of Chandola Lake and also the surrounding

area. The details are also directed to be provided. Resultantly an order dated 21.02.2025 “Annexure “C” Page-213) by the Collector, Ahmedabad was passed. However, till date no details are available with regard to location of petitioners’ residences, whether the same are located on water body or on Government land. The order of the Collector also refers to details to be provided in relation to nature of construction either residential or commercial or religious. Since, no details are available as ordered by the Collector, initiation of demolition is required to be stayed. In absence of details available, it would be difficult for petitioners to provide details for their long possession/ occupation of their premises.

Thus, in absence of any clarity with regard to location of petitioners, either on Lake Land or Government Land, action taken by the respondents is without authority of law and therefore, deserves to be stayed.

4.2 Further, the petitioners have right to shelter and right to livelihood. The right to shelter and right to livelihood is a constitutional right and shall not depend upon the policies of the State Government or corporation. Moreover, no authority can reject their right of livelihood and therefore till reallocation, the demolition may not be permitted.

4.3 Further, there is no clarity with regard to available policy

to the petitioners for their rehabilitation and therefore, till an appropriate response is received from the respondents with regard to available policy under which the petitioners' cases can be considered, action of demolition deserves to be stayed.

4.4 In support, learned Senior Advocate Mr. Joshi relied upon the decision in the case of **Utran Se Besthan Railway Jhopadpatti Vikas Mandal V/s. Government of India and others** in Special Leave Petition (Civil) Diary No.19714 of 2021, to submit that as held by Hon'ble Supreme Court, before commencing the process of eviction or removal of structures, the Collector of the concerned District must ensure that necessary details about the names and number of persons occupying the concerned structure, including their identity and profile should be duly recorded. Even the identification and profile of person occupying such property must be required and the same has not been done in this case and therefore, action taken deserves to be stayed.

4.5 Reliance is also placed on interim direction issued by this Court vide order dated 20.02.2024 in Special Civil Application No.2936 of 2024 to submit that till details are provided, action of demolition may be stayed.

5. Opposing the present petition, learned Government

Pleader Mr. G.H. Virk for the respondents submitted that it is true that in all 58 petitioners have filed this petition stating their residential addresses as Near Chandola Talav, C-Wards Chapara, Danilimda, Ahmedabad. The main grievance of the petitioners is in relation to their rehabilitation. Accordingly, it was submitted that prior to removal of petitioners' illegal construction, their cases may be considered for rehabilitation. However, after initiation of removal of unauthorized/ illegal construction of the premises on and in the area of Chandola Lake, not a single application is filed by the petitioners' seeking rehabilitation. What is annexed along with this petition is an application dated 02.05.2025 at Annexure "F" Page-228, addressed to Municipal Commissioner, Ahmedabad Municipal Corporation, Ahmedabad by one Shehzad Khan Pathan. In the context of the said application, if averments made in para 3.14 are read it states that one Shri Shehzad Khan Pathan, leader of Opposition, Municipal Congress Party has filed the said application seeking to provide alternative accommodation to the petitioners and others under the scheme, similar to what was provided to affected persons from the Sabarmati Riverfront and Kankaria Lake area. Thus, it is evident that as required by law, individual applications are not filed under the Scheme seeking their rehabilitation.

5.1 Moreover, to justify their long possession over subject

premises, the petitioners have annexed several documents along the petition. Page-44 of the petition refers to the document of petitioner No.9, where date of birth is shown as 01.06.1993, whereas the same petitioner at Sr.No.9 has placed on record the election card reflecting his date of birth as 10.08.1991 (Page 44 and 46). Similar is the case with petitioner No.16 where date of birth in Aadhar Card is shown as 01.01.1975 whereas in the PAN Card, date of birth is referred as 20.05.1970 (Page 70 and 72). Similarly, for petitioner No.20, at Page-85 the Aadhar Card refers to year of birth as 1989 whereas PAN Card refers the date of birth as 04.04.1988. Thus, several documents annexed show discrepancies which justifies production of fraudulent and forged documents. One more aspect that certain documents in the nature of electricity bill and Aadhar Card at Page-200 and page 208 refer name of Aisiabanu Ibrahimkhan Pathan and Ansar Husen Shekh, who are not the petitioners herein.

Thus, filing of this petition without filing individual application seeking rehabilitation speaks volume of petitioners' conduct.

5.2 Learned Government Pleader for the respondents at this stage, upon instruction submitted that irrespective of discrepancies referred herein above and the documents referred hereinabove, if the petitioners will make individual applications

along with requisite documents, the authority shall consider the cases as per extant policy. As per terms and conditions of extant policy, individual applications are required to be made and shall have to be considered by the authority upon scrutiny. Thus, a premature petition is filed, without any cause. Therefore, this petition being devoid of merits, deserves to be dismissed.

5.3 In support of his submissions, learned Government Pleader Mr.Virk relied upon decision of this Court of order dated 29.04.2025 passed in Special Civil Application No.6119 of 2025 to submit that this aspect has been considered and liberty has been granted to the petitioners therein to file an application seeking accommodation under Rehabilitation Scheme if they are entitled.

5.4 In response to the decisions relied upon by learned Senior Advocate for the petitioners, learned Government Pleader submitted that reliance placed on the order of the Hon'ble Supreme Court in case of Special Leave Petition (Civil) Diary No.19714 of 2021 was an interim direction. Final order has been passed on 14.07.2022, wherein it is held that authority is free to take action necessary in the facts situated in the present case and if the person is aggrieved by the decision, it is open for the petitioner to approach further. Thus, interim

direction has merged with the final order and may not be considered. Learned advocate further relied upon decision of Hon'ble Supreme Court in the case of **Kaniz Ahmed V/s. Sabuddin and others in Special Leave to Appeal (C) No.12199-12200/2025**, wherein it is held as under:

“4. We admire the courage and conviction with which the High Court has proceeded to take care of unauthorised construction in exercise of its jurisdiction in public interest.

5. In one of our recent pronouncements, in the case of Rajendra Kumar Barjatya and Another v. U.P. Avas Evam Vikas Parishad and Others reported in 2024 INSC 990, we have made ourselves very explicitly clear 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. In our decision referred to above, we have issued the following directions:

xxx xxx xxx

6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularization of the unauthorised construction. We do not find any merit in such submission. 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. Unauthorised 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. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularization of Unauthorized Development Act based on payment of impact fees.”

6. Considered the submissions, documents on record and decisions relied upon. From the submissions advanced on behalf of the petitioners, it is gathered that the petitioners' main grievance is that till the time an alternative accommodation under Rehabilitation Scheme of the State Government or Corporation is provided, the demolition process may be stayed. In the above context, it is further contended that since under the Constitution of India, the petitioners' have a right to shelter and right to livelihood, the same may not be compromised. To this Court, while acknowledging that the petitioners belong to Economically Weaker Section of the society, the act on their part to have illegal and unauthorised constructions on either Lake Land or Government Land cannot be ignored.

7. If the petitioners' prayer with regard to providing alternative accommodation under the rehabilitation Scheme of the State Government is considered, the basis for the same are communications dated 18.02.2025 by Deputy Municipal Commissioner (Estate) to the Collector, Ahmedabad and the order of Collector dated 21.02.2025, where in DILR has been directed to demarcate and identify the nature of premises whether residential, commercial or religious. The reliance placed on such communications to drive home their contention of granting stay till the time such process is complete is

misplaced also because all these communications are internal communications and not addressed to the petitioners, which makes the source of procurement of such communications doubtful. Be that as it may, the order dated 21.02.2025 itself refers to demarcation and keeping of record and details. Importantly, not a single document is annexed with the petitions justifying the construction and occupation either on Lake Land or Government Land, and this aspect has been considered by this Court in earlier order dated 29.04.2025 in Special Civil Application No.6119 of 2025.

8. In relation to petitioner's right to livelihood and right to shelter, it is open for the petitioners to make their individual applications with requisite documents to the authority concerned. In absence of application made to that effect, the extinguishment of the petitioners right to shelter and right to livelihood does not merit acceptance. What has been relied upon is the application/representation made by one leader of opposition party dated 02.05.2025, seeking rehabilitation on behalf of the petitioners and others, which as per the submission of Mr. Virk is not permissible under law.

8. Moreover, as held by Hon'ble Supreme Court in its recent decision that a person cannot pray for regularization of construction, which is against the rule of law. Unauthorized

construction has to be demolished. Therefore, applying the same principle and in absence of any document justifying the construction of the petitioners, the prayer prayed for that demolition may be stayed till rehabilitation of the petitioners, being devoid of merits, the same is rejected.

9. However, in relation to the prayer of the petitioners to consider them to provide alternative accommodation under the rehabilitation Scheme of the State Government, it is directed that it is open for the petitioners to make their individual applications, if they are eligible, along with requisite documents to respondents. Once such individual applications are filed, the authority shall consider the same in accordance with law.

10. With this, the present petition is disposed of.

(MAUNA M. BHATT,J)

DIPTI PATEL...