IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11139 of 2021

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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KRUPESHBHAI N. PATEL
Versus
VADODARA URBAN DEVELOPMENT AUTHORITY

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Appearance:
MR. R.R. MARSHALL, SENIOR ADVOCATE WITH
MR MRUGEN K PUROHIT(1224) for the Petitioner(s) No. 1
MR. PRASHANT DESAI, SENIOR ADVOCATE WITH
MR.RAJESH CHAUHAN, ADVOCATE FOR MR HS MUNSHAW(495)
for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 08/06/2022

CAV ORDER

1. By way of this petition under Article 226 and Article 300A read with Articles 14 and 19(1)(g) of the Constitution of India, the petitioner has prayed for the following reliefs:-

> *"10(A) This Hon'ble Court may be pleased to issue a writ of mandamus or any other writ in the nature of mandamus and/or any other appropriate writ, order or direction*
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> > *(i) to declare that the respondent authority – VUDA is legally not entitled and justified in demanding betterment charges, incremental charges, contribution charges etc., at the time of preparing and sanctioning the draft Town Planning Scheme and*

they cannot raise the demand of the said amount or the charges till the State Government under Section 65 of the Act:

(ii) to permanently restrain the respondent authority from depositing and encashing 12 monthly post-dated cheques & 12 undated blank cheques for interest handed over by the petitioner for total amount o Rs.18,25,05,245/- and also may be pleased to quash and set aside the action of the respondent authority in raising demand of Rs.18,25,05,245/-;

(iii) to declare that the demand of 12 post dated cheques and 12 undated blank cheques for the amount of interest by the respondent authority is unjust, arbitrary, illegal and improper.

(B) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to restrain the respondent authority from depositing and encashing 12 post-dated cheques and 12 undated blank cheques fro interest handed over by the petitioner on 6th July, 2021 towards betterment charges, incremental charges, contribution charges etc.;

(C) Such other and further relief/s as may be deemed fit and proper may be granted in the interest of justice;"

2. The background of facts which has given rise to the present petition is that the petitioner along with others had purchased land bearing Block Nos. 44 and 69 situated at Village Khanpur, Vadodara by way of registered sale deed dated 20.02.2008 and 17.05.2012 respectively and by virtue of such execution of sale transaction, the petitioner and others became exclusive owners and occupiers of the land in question. The learned Collector, Vadodara, was pleased to grant N.A. permission over the land in question vide order dated 09.04.2012 and 17.09.2012 respectively in exercise of powers under Section 65 of the Bombay Land Revenue Code, 1879. The respondent authorities also granted development permission to the aforementioned lands on 13.12.2012 and it has also issued a plinth check certificate on 28.02.2013.

2.1. It is the case of the petitioner that subsequently revised lay-out plan and building permission was also granted by the respondent

authorities on 03.03.2014 and the plinth check certificate was also published on 24.09.2015. The said revised development permission was then renewed by the authority on 24.09.2015. Subsequently, on 01.09.2018, the petitioner also made an application for revised development permission and for that purpose an amount of Rs.2,59,755/- was also deposited with the respondent authority and the petitioner has also applied for plinth check certificate on 07.12.2018 and towards that an amount of Rs.8,520/- came to be deposited. These amounts were calculated by the respondent authority itself and all due procedure were also completed, according to the petitioner.

2.2. The petitioner has further asserted that on 21.02.2019, intention to prepare a Town Planning Scheme No. 24/A was declared by the appropriate authority, but according to the petitioner, the draft Town Planning Scheme in respect of it has not been sanctioned by the State Government under Section 48 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the "Act") and the same is still lying with at that stage. So in substance, the stand of the petitioner is that the said draft Town Planning Scheme (Musadda) has become at a stage of approval by the State Government and it is not certain that at this stage as to whether the said scheme would be sanctioned with or without modification or subject to what conditions which may be imposed upon or it could also be refused to sanction it or send it back to the appropriate authority. So in the background of the aforesaid facts, the demand of the authority to pay charges is not just and proper. On the contrary, the Town Planning Officer is required to issue notice to the concerned owner before determining the amount and at that stage the very owner can get an opportunity to object to the tentative proposal of the Town Planning Scheme and as such, demanding to pay the

charges at this stage of the proceedings is depriving the petitioner of his right to prefer an appeal under Section 54 of the Act.

2.3. According to the petitioner, VUDA has prepared redistribution form in respect of the land in question and as per the said re-distribution form unilaterally an amount of Rs.17,05,36,589/- is determined to be paid by the petitioner under different heads and this amount has been asked by the authority to be paid by the petitioner along with additional interest charges at Rs.1,62,13,451/- calculated at 18% interest per annum which amount comes to total Rs.18,67,50,040/- which includes the development charges, scrutiny fee, tree plantations, cess, UAT fees, amenity charges, incremental charges, contribution charges and betterment charges. As per the say of the petitioner, the aforesaid amounts unless and until final preliminary scheme is sanctioned by the State authorities cannot be demanded from the petitioner and further the aforesaid amount is not determined by the Town Planning Officer as required under Section 52 of the Act and therefore, the demand is premature and also is unjust, arbitrary without authority of law and suffers from the vice of non application of mind.

2.4. The petitioner has further asserted in the petition that initially he was asked to pay an amount of Rs.42,44,795/- which includes development charges, scrutiny fee, tree plantations, cess, UAT fess, part of amenity and betterment charges and directed to hand over the postdated cheques for the remaining amount in 12 monthly installments and also hand over 12 undated blank cheques for the amount of interest @ 18% per annum, otherwise, it was informed to the petitioner that development permission would be withheld. In anticipation, the petitioner has already began developing the property and he could not afford to withhold the development because it would

affect the entire project of the petitioner and various other transactions executed by the petitioner in respect of land in question. It has been stated that the project has already been registered with RERA authority and under the provisions of the RERA 2016, the said project has to be completed within the time bound schedule, failing which, the petitioner would invite serious consequences under the provisions of RERA 2016 and as such, under this precarious position, the petitioner had to deposit as left with no other option, an amount of Rs.42,44,795/- on 22.06.2021 and also handed over 12 monthly installments postdated cheques along with 12 undated blank cheques for interest amount @ 18% per annum on 06.07.2021. On deposit of this amount and the cheques the respondent authority has granted revised development permission on 12.07.2021, and issued plinth check certificate on 19.07.2021.

2.5. It has further been asserted that the petitioner since made an application on 01.09.2018 for revised development permission and paid and deposited the amount as determined by the authority for a period of three months, no decision was taken upon the said application and according to the petitioner, by virtue of Section 29 of the Act the said permission is deemed to have been granted. It has been stated that after almost a period of nine months, a reply came to be received from the respondents on 17.05.2019 in which, it has been informed that an application for revised development permission which was made on 01.09.2018 has been rejected due to proposed new Town Planning Scheme no. 24/A and objecting against the said arbitrary decision, the petitioner submitted a reply on 27.05.2019 and has clearly asserted that after such a long period of time, it is not open for the authority to reject such application without any clarification or communication to the petitioner. It has been submitted in the memo of petition that after handing over 12 monthly

installments by advance cheques and 12 undated blank cheques, the petitioner immediately made a detailed representation on 20.07.2021 requesting the authority that they may not deposit and encash the aforesaid cheques since demand raised is arbitrary, against the provisions of law and the said cheques have been collected from the petitioner under the threat and coercion that development permission would not be renewed.

2.6. It is further the case of the petitioner that in view of the aforesaid sequence of events and in view of the process which has been carried out by the petitioner, since time bound schedule is to be maintained in view of the provisions of RERA 2016, as already prescribed as 30.09.2026. The petitioner has also yet to complete the formalities such as occupancy certificates etc., and it was expected that before completing the project as per the above timeline, the Town Planning Scheme would be finalized along with the correct charges to be paid and the petitioner would remain responsible and is ready to pay correct charges that may be determined at that stage and as such, the action of the respondent authority in demanding the amount towards betterment charges, incremental charges, contribution charges etc., at this stage to the extent of Rs.18,67,50,040/- is without the authority of law and to demand the said charges by way of 12 advance postdated cheques and 12 undated blank cheques of interest is absolutely an example of arbitrariness, unreasonableness and illegal to the provisions of law. Hence, in such a situation, left with no other alternative, the petitioner has approached this Court by way of present petition under Article 226 read with Article 300A of the Constitution of India for the reliefs as prayed for in the petition stated here-before.

3. This petition was initially heard by the co-ordinate Bench of this

Court at the admission stage itself and vide order dated 10.08.2021, *prima facie* having found that a case is made out, the Court was pleased to issue notice and also granted ad-interim relief in terms of paragraph 10(B) and at the time when the notice came to be issued a detailed order is passed, which the Court deems it proper to reproduce hereunder :-

> *"1. Mr.R. R. Marshall, learned senior advocate appearing with Mr. Mrugen K. Purohit, learned advocate for the petitioner submitted that the petitioner had applied for the development permission and thereafter, revised development permission, which was granted vide letter dated 12.07.2021. It is submitted that the respondent Vadodara Urban Development Authority (hereinafter referred to as the 'Authority') has asked the petitioner to pay an amount of Rs.17,05,36,589/- along with additional interest charges of Rs.1,62,13,451/- calculated at 18% interest per annum totaling to the tune of Rs.18,67,50,040/- which, includes development charges, scrutiny fees, tree plantations, cess, UAT fees, amenity charges, incremental charges, contribution charges and betterment charges etc. It is submitted that the petitioner was required to pay an amount of Rs.42,44,795/- which is already been paid towards the very same charges. It is submitted that the said demand by the authority, is against the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the 'Act of 1976'). It is submitted that the Draft Town Planning Scheme, is yet not sanctioned by the State Government under Section 48 of the Act of 1976 and the Government is still to sanction with or without modification.*
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> *2. It is submitted that after the Draft Town Planning Scheme is sanctioned by the State Government under the provisions of Section 50, the Town Planning Officer is appointed, who, as per the provisions of sub-Section (3) of Section 52 of the Act of 1976, prepares Final Town Planning Scheme and will fix and determine the amount with respect to incremental charges, contribution charges, betterment charges and the decision if any, is appealable under the provisions of Section 54 of the Act of 1976. It is submitted that when the scheme is yet to be sanctioned by the State Government, the action of the authority requiring the petitioner to deposit an amount of Rs.18,67,50,040/-, is without authority of law.*
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> *3. While inviting the attention to the Board Meeting dated 22.09.2020, it is submitted that in the neighbouring scheme, the authority has derived the expenses approximately of Rs.5,737 per square meters on the Final Plot and on the basis of which, betterment charges were determined. The State Government, was of the opinion that the charges determined, were very high and*

accordingly, it instructed the authority to consider and revise the same. Apropos the instructions issued by the State Government, the authority, issued a notification dated 22.09.2020 and the charges, were revised to the tune of Rs.650 per square meter. It is submitted that so far as the Town Planning Scheme No.24/A is concerned, the final development expenses derived by the authority, is approximately Rs.4000 and resultantly requiring the petitioner to pay an amount of Rs.18,67,50,040/- is bad inasmuch as, there is no demand except oral instructions by the authority. Requiring the petitioner to pay such a whooping amount without any demand or order is bad.

4. Having regard to the submissions made by the learned senior advocate, this Court, is of the prima facie opinion that the demand by the authority without there being any determination by the Town Planning Officer under the provisions of Section 52(3) of the Act of 1976 is premature. Hence, issue notice, returnable on 25.08.2021.

5. Ad-interim relief, in terms of paragraph 10(B) is granted.

6. Direct service, is permitted."

4. The petition thereafter came up for consideration before this Court wherein since the pleadings have been completed, a joint request is made by the learned advocates appearing on behalf of both the sides and have submitted that in view of such situation, the matter may be taken up and accordingly, the petition was heard at length.

5. Shri R. R. Marshall, learned Senior Advocate assisted by Mr. Mrugen Purohit, learned advocate appearing for the petitioner has vehemently contended that the action on the part of the respondent authority in determining and demanding the amount is absolutely unconstitutional, arbitrary, unreasonable, illegal and premature looking to the sequence of events and as such, it is not open for the authority to make any demand as mentioned in the petition. It has been submitted that final preliminary scheme has yet not been sanctioned by the State authority and the said amount is also yet to be determined by the Town Planning Officer in view of Section 52 of

the Act and as such, demanding any amount as indicated above is premature and unilateral determined is also absolutely and without authority of law. Mr. Marshall, learned Senior Advocate has submitted that under the provisions of the Town Planning Act, only the Town Planning Officer is a competent person to prepare the Town Planning Scheme and will prepare preliminary as well as final Town Planning Scheme where he is required to determine the aforesaid charges after giving an appropriate opportunity of hearing to the affected persons, i.e. the petitioner. And if the concerned person is aggrieved by the said decision of the Town Planning Officer a special statutory mechanism is provided by way of statutory appeal under Section 54 of the Act and as such, the authority has no jurisdiction to arrive at aforementioned amount and to compel the petitioner to straightway pay the same which is practically depriving even the right of appeal provided under the Act.

5.1. Mr. Marshall, learned Senior Advocate has further submitted that it is the Town Planning Scheme Officer who can determine the amount towards the contribution charges etc., whose decision is appealable and as such, the appropriate authority while preparing Town Planning Scheme cannot raise demand at this stage which is without the authority of law and as such, has requested the Court to grant the reliefs as prayed for in the petition.

5.2. Mr. Marshall, learned Senior Advocate has further submitted that at the time of preparing the Town Planning Scheme either preliminary or final Town Planning Scheme, the Town Planning Officer is required to give necessary notice to all the parties concerned in view of Rule 26 and appropriate opportunity deserves to be granted so as to enable the concerned affected persons to raise any objection with respect to such preliminary scheme and after considering the

said objection, the Town Planning Officer had to take appropriate decision, whose decision is appealable under Section 54 of the Act as stated above and it is only thereafter the Town Planning Officer has to prepare preliminary and final scheme and forwarded the same to the State Government under Section 64 of the Act and upon receipt of such preliminary and final scheme prepared by the Town Planning Officer, the State Government can sanctioned the same by virtue of powers under Section 65 of the Act and as such, demanding the amount at this stage would frustrate the very legitimate right of affected persons either to object or to make any representation in that regard. Hence, the entire exercise which is undertaken by raising demand which is questioned in the petition is ill-founded, not permissible in law.

5.3. Mr. Marshall, learned Senior Advocate has further submitted that by virtue of Section 82 of the Act, the appropriate authority can permit the concerned owner to pay contribution charges, betterment charges etc., in 12 monthly installments and can charge the interest as per the RBI guidelines and they cannot charge any interest as per their own whims. It has been submitted that insistence to pay the amount of interest @ 18% per annum by the authority is in outrageous violation of the RBI guidelines and as such, such excessive interest even otherwise is out of place to be demanded. Hence, in any case, the action is required to be corrected. Here is a case on hand, where the respondent authority has practically compelled the petitioner to pay the aforesaid charges by 12 postdated advance cheques and 12 undated blank cheques, otherwise, it was conveyed to withhold or reject the revised development permission which would practically put the entire activity on hold and as such, under this coercive measure, the petitioner has been made to deposit and give the said cheques, which

action is not only high-handed, arbitrary, but was contrary to the provisions of law and as such, the reliefs prayed for deserves to be granted.

5.4. In addition to the aforesaid oral submissions which have been made, just with a view to give emphasis, the submissions on law and the facts have been placed on record to assist the Court and by submitting such, a request is made to grant the reliefs as prayed for in the petition. At this stage, while reiterating the submission, Mr. Marshall, learned Senior Advocate has submitted that a detailed affidavit-in-rejoinder is filed and in addition thereto, the petitioner has also filed a specific undertaking sworn on 21.10.2021 to the effect that the petitioner is ready and willing to pay all the charges that may be determined by the Town Planning Officer. Since an undertaking is in specific form, the Court deems it proper to reproduce hereunder:-

> *"I, Krupeshbhai Narharibhai Patel, Age-67 years, petitioner herein do make the declaration on oath as under :*
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> *1. I undertake to make the payment of betterment/incremental charges which may be determined by the Town Planning Officer in respect to the present dispute and I shall not step away from the said liability/responsibility on the grounds of having created third party rights by selling the plots subject to the rights and remedies available to me under the Law.*
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> *2. I shall make the said payment of betterment/incremental charges in respect of the present Town Planning Scheme after the same is determined by the Town Planning Officer subject to the rights and remedies available to me under the Law.*
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> *3. I have already made the payment of betterment/ incremental charges, etc., in respect of the Town Planning Scheme- Ankodia – 1 after the said amount was determined by the Town Planning Officer.*
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> *4. To further show my bona fide to what I am saying, as VUDA is saying that they are claiming as deposit, I am willing to deposit a sum of Rs.1,38,57,650/- (Rupees One Crore Thirty Eight Lakhs Fifty Seven Thousand Six Hundred Fifty) before this Honourable Court and await the decision of the Town Planning Officer."*

5.5 No other submissions have been made.

6. As against this, Mr. Prashant Desai, learned Senior Advocate assisted by Mr. H.S. Munshaw, learned advocate appearing for the respondent authority has vehemently opposed the petition and has requested to dismiss the same. Mr. Desai, learned Senior Advocate has submitted that the petitioner is a developer, developing a farmhouse at the land bearing Survey/Block No.44 admeasuring 13,355 sq.mtrs., and started a scheme on 27.02.2009 and thereafter, both the portion of the land came to be consolidated, i.e. Survey/Block Nos.44 and 69 and thereafter the petitioner applied for development permission only on 12.07.2012. In fact, the petitioner divided the aforesaid portion of land in such a manner that in the land totalling around 39,862 Sq. Mtrs., after consolidation, total 47 sub plots and 47 residential bungalow plus common plot, club house etc., are planned out and asked for revised development permission on 13.12.2012 and the plinth check certificate was issued by the authority on 28.12.2013. Mr. Desai, learned Senior Advocate has submitted that on 21.02.2019, intention was declared for Town Planning Scheme No. 24/ A (Ankodiya-Khanpur-Mahapura-Sevasi) and by way of letter dated 17.05.2019, the petitioner was informed that in view of the intention for Town Planning Scheme is declared under Section 41 of the Act, no revised development permission can be granted. On 06.06.2020, Architect Engineer – Shri Kirit A. Patel on behalf of the petitioner submitted a letter for revised development permission plus renewal after re-opening the case and it was submitted that before the said letter was given to the VUDA, the authority has already framed the draft Town Planning Scheme and submitted the same to the State Government on 12.05.2020 i.e. prior to letter written in June, 2020. Mr. Desai, learned Senior Advocate has submitted that on receipt of such application from the petitioner for revised development and for

re-opening the case, the VUDA calculated the fees and the same was informed to the petitioner to pay the same by way of 12 equal monthly installments of the net demand made by VUDA as per Form-'F' on 14.02.2021 and 12.07.2021, the petitioner has already deposited such cheques with 18% per annum interest. On 28.06.2021, the petitioner has deposited the part payment of Rs.14,50,415/- and thereby total deposit made by the petitioner comes to Rs.42,44,795/- and on receiving the said advance cheques, the development permission was granted by VUDA on 12.07.2021 for 46 plots, 46 residential Bungalows, plus one club house and swimming pool. By obtaining this permission, it has been revealed by the authority that the petitioner has already transferred 17 plots to the third party which is reflecting clearly from 7/12 extract and this facts have been suppressed by the petitioner in the present proceedings.

6.1. Mr. Desai, learned Senior Advocate has submitted that the intention was already declared under Section 41 of the Act and the owners meeting was also called in view of Rule 17 of the with Gujarat Town Planning and Urban Development Rules and when the Scheme was tentatively prepared there was 40% deduction from the land of the petitioner and the petitioner was allotted three final plots to the extent of admeasuring 23,917 sq.mtrs., The petitioner represented to the VUDA that in view of the revised development permission and plinth check certificate and since it is a RERA project instead of 40% deduction, the deduction should be only 3.17% and at the relevant time, same was accepted by VUDA and the Town Planning Scheme was modified as regards the land of the O.P. No. 126 which was admeasuring 39,862 sq.mtrs., against which land of Final Plot No. 126 was allotted to the extent of 38,387 sq.mtrs. Form-'F' was also prepared and the net demand of Rs.16,89,42,213/- is mentioned in Form-'F' which was never objected by the petitioner at any point of

time after the Scheme was published under Section 42 of the Act. According to Mr. Desai, learned Senior Advocate, the petitioner himself has agreed for the allotment of land in the Town Planning Scheme after the deduction of 3.17% from the O.P. and now he is objecting to the demand made at the time of applying for development permission and as such, it is not open for the petitioner to raise any grievance in respect of demand for which he is already having knowledge.

6.2. Mr. Desai, learned Senior Advocate has submitted that the petitioner is a developer and was quite aware about the amounts towards incremental benefits at the time of taking permission before the Town Planning Scheme is sanctioned and he himself has paid the amount of Rs.2,30,00,400/- in respect of land in Town Planning Scheme of Ankodia No. 1, of many other persons who wanted to develop before the Town Planning Scheme got sanctioned. It is the usual practice not only in VUDA, but also in SUDA and various other authorities by charging incremental amount in respect of plots included in the Town Planning Scheme and as such, there is no substance in the grievance raised by the petitioner. It has further been contended by Mr. Desai, learned Senior Advocate that Section 49(1) (a), 49(b) of the Act, after the date on which the draft scheme is published, no person shall carry out any development in a scheme area unless the development permission is asked for which is granted and it is also provided that if the permission is asked, it may be refused or granted always subject to certain conditions as may be imposed and as such, the permission is granted subject to the condition to deposit the amount of incremental charges calculated at the time of draft scheme. The amount was never paid by the petitioner nor the allotment of land was objected at any point of time before the draft scheme is sent to the State Government for its

approval and as such, when such is the conduct of the petitioner, it is now not open for the petitioner to challenge once having participated in it. Mr. Desai, learned Senior Advocate has further submitted that once the draft scheme is sanctioned under Section 48 of the Act, VUDA is required to spent the amount towards infrastructural facility as provided under Section 48-A and for that development also, the authority is in need of the amount and the amount which has been demanded by the VUDA, the petitioner must deposit subject to the outcome of the ultimate amount that may be calculated which will always be subject to the ultimate decision being taken by the Town Planning Officer or by the District Court as the case may be and this fact having been clearly emerged, hardly any case is made out by the petitioner to seek any equitable relief.

6.3. It has been submitted that the boundary of the land of Final Plot is only considered as final only after the preliminary Town Planning Scheme is sanctioned by the State Government under Section 65 of the Act, but since the petitioner has accepted the entire proposal of the draft Town Planning Scheme submitted to the State Government i.e. O.P. number, O.P. boundary, O.P. area, Final Plot number, Final Plot area, Final Plot boundary and hence, now the petitioner cannot deny the part of the said contents when he himself wanted to develop the land and was in dire need in view of the RERA project registered by him. Hence, there is neither any coercion nor any arbitrariness, and it is the petitioner himself who on the contrary persuaded the authority to determine the tentative amount at this stage which would be subject to the ultimate conclusion. Hence, it is not open for the petitioner to invoke extra ordinary jurisdiction of this Court by raising certain too technical afterthought pleas for which the petitioner himself has made responsible for such payment.

6.4. Apart from that learned Senior Advocate Mr. Desai has referred to provisions contained under the Act namely Section 44 of the Act. Rule 21 which provided for other particulars of the draft scheme and indicates about redistribution statement in Form-'F' showing the estimated amount to be paid to or by each of the owners included in the scheme and even by referring Rule 21 it has been contended that here is the case in which Form-'F' is prepared and the estimated amount is calculated and the Town Planning Officer now will decide upon sanctioning the draft scheme whether the amount calculated by VUDA is proper or not and thereafter an appeal remedy is also available to the petitioner and as such, when the petitioner has been given permission for development of the land before the Town Planning Scheme is sanctioned, then as per the condition, the incremental charges arrived at by the VUDA is to be deposited which would be subject to the final accounting and then would be adjusted once the scheme is completed and as such, it is not open for the petitioner not to deposit the amount or wait till the final Town Planning Scheme is completed. If the petitioner wants to make development in view of aforesaid peculiar situation has to deposit the amount as determined tentatively which may be adjusted at the final calculations. It has further been contended that all the persons whose land is included the demand is not made, but only from those persons who wanted to develop the land and ultimately wanted to transfer the same to third parties, deposit is demanded so that ultimately after the development, when the land is transferred, the authority will not be at loss. According to Mr. Desai, learned Senior Advocate, the petitioner has acquiesced by conduct to raise grievance and as such, on

this ground also, the petitioner is estopped from raising any grievance against such deposit or demand of charges by the authority.

6.5. On the contrary, he has waived his right to object even on the quantification of amount since the petitioner has not raised any objection when the draft scheme was published and Form-'F' was also published before the procedure laid down and as such, in view of the decision laid down by the Hon'ble Apex Court in the case of ***Babulal Badriprasad Varma v. Surat Municipal Corporation*** reported in ***2008 (3) GLH 137***, the challenge made in the petition no longer requires any consideration. Hence, the petition being devoid of merit, deserves to be dismissed.

7. In re-joinder to this submission, Mr. Marshall, learned Senior Advocate has reiterated his stand and then has contended that Section 49 would not talk about the deposit as a condition precedent and as such, the same is premature and filling up Form-'F' is merely at a stage of proposal and as such, raising of no objection at that stage is of no consequence accordingly, when the law does not permit to raise such kind of demand, the stand taken by the authority is absolutely unjust, devoid of merit and the reliefs prayed for in the petition deserve to be granted.

8. Having heard the learned counsel appearing for the respective parties and having gone through the material on record, in consideration of the submissions made by learned Senior Advocate of both the sides, few circumstances are not possible to be ignored by the Court while arriving at a ultimate

conclusion on the issue.

9. Having heard learned advocates appearing for the parties and having gone through the record placed before the Court, before dealing with the controversy raised in the petition, following few circumstances are not possible to be unnoticed by the Court:-

(1) The petitioner claiming to be the owner and occupier of Block Nos.44 and 69 situated at Village Khanpur, District Vadodara, was granted N.A. permission with respect to both these portions of land, by Collector, Vadodara in the month of April and September 2012 respectively. Later on, development permission was also granted by the respondent authority on 13.12.2012 and also issued a plinth check certificate on 28.2.2013. Petitioner with respect to these lands had also sought revised layout plan and building permission which was also granted by the respondent authority along with plinth check certificate on 3.3.2014 and 24.9.2015 respectively. Said revised development permission was again got renewed by the petitioner from respondent authority on 24.9.2015 and also plinth check certificate.

(2) Later on, yet another application was made for revised development permission by the petitioner on 1.9.2018 and necessary charges have also been deposited and also applied for plinth check certificate on 7.12.2018 by depositing a requisite amount of Rs.8520/-. By this time, during pendency, on 21.2.2019, intention to prepare Town Planning Scheme No.24/A was declared by appropriate authority by way of public notice. But on account of this, it appears that said revised permission appears to have not been considered and directed that without obtaining development permission not to continue development work. Later on, in the process of said declaration of intention, VUDA, i.e. respondent authority, had

prepared a redistribution form in respect of the land in question and as per the said form, an amount of Rs.17,05,36,589/- came to be determined under various heads, which is indicated to be paid by the petitioner, and along with the said amount, additional interest charges have also been determined to the extent of Rs.1,62,13,451/-, calculated at the rate of 18% interest per annum, totaling around Rs.18,67,50,040/- to be payable by the petitioner, which includes development charges, security fees, tree plantation cess, UAT fees, amenities charges, incremental charges, contribution charges and betterment charges, etc. and that having been indicated, petitioner appears to have raised grievance that unless and until final preliminary scheme has not been sanctioned, said amount is not liable to be paid by the petitioner and further, it is only by the Town Planning Officer who is authorized to claim such amount and not the respondent authority, i.e. VUDA. It appears that the project which has been launched by the petitioner is a RERA project and as such, looking to the time schedule, related to it, it appears that an amount of Rs.42,44,795/-, which was initially demanded, which amount includes development charges, scrutiny/ security fees, tree plantation and betterment charges, UAT fees, etc. and for that, under such situation, petitioner has paid and deposited said amount on 22.6.2021 and also was required to handover 12 monthly installments by postdated cheques along with 12 undated blank cheques for interest amount @ 18% per annum on 6.7.2021 and it is upon that, respondent authority granted development permission on 12.7.2021 and issued plinth check certificate on 19.7.2021.

(3) After securing such development permission and plinth check certificate, petitioner informed the authority to encash the cheques and raised all-sorts of technical plea about Section 29 of Act, lack of authority to demand at that stage etc. and as an afterthought

measure filed this petition by invoking extraordinary equitable jurisdiction.

10. From the pleadings, it appears that the stand which has been taken by the authority is that petitioner has suppressed the material fact from the Court while approaching and the allegation with regard to forceful demand or under threat of withholding of development permission, cheques have been recovered, are seriously disputed and stated to be far from truth. It has been canvassed before the Court in the affidavit on oath that it is a routine known practice and procedure to give such blank and duly signed account payee crossed cheques in favour of VUDA till total chargeable amount towards fees, interest amount and other deposit by almost all developers and interested persons, if any, till final calculations to be made by the authority. On the contrary, the petitioner himself has requested to accept the said amount and deposited willingly being part of the amount and based upon such payment being made and advance cheques being given, the authority was persuaded to issue revised development permission on 12.7.2021 and said advance cheques and payments were made for the purpose of developing 46 sub-plots with 46 bungalows, one club house + swimming pool and after securing said revised permission, aforesaid petition has been brought immediately within couple of days, i.e. on 30.7.2021. In fact, petitioner had already carried out development work and out of said 46 sub-plots, 26 sub-plots even have been sold, which is evident from the letter written by RERA and as such, by making said payment, petitioner has already availed due benefits and to some extent, it can be said that without obtaining revised development permission, went on carrying out development activity and now, after securing the same, has come out to raise grievance and to show all these niceties of law. Further, there is no material nor any stand or assertion that said payments and advance

cheques were given under protest. In fact, these facts have been suppressed by the petitioner in the petition and as such, no equitable relief be extended is the specific stand of the authority.

11. From the pleadings, it has also been asserted by the authority that pursuant to the declaration of Town Planning Scheme under Section 41 of the Act, owners' meeting was also called in view of Rule 17 read with Section 41 of the Town Planning Act and tentative plan was also shown in which there was deduction of 40%. But, based upon the representation being made by petitioner and on the basis of payment, as indicated above, and submission of advance cheques voluntarily, authority was persuaded to issue revised development permission and plinth check certificate and since it was a RERA project, instead of 40% deduction, by accepting proposal, 3.17% deduction was obtained by the petitioner and Town Planning Scheme against the land of O.P. No.126 admeasuring 39862 Sq. Mtrs. and land of F.P. No.126 admeasuring 38387 Sq. Mtrs. was allotted to petitioner and as per the draft Town Planning Scheme, net demand of Rs.16,89,42,213/- which the petitioner was knowing, had never objected at any point of time. So, on one hand, petitioner has already availed the benefits and encashed the benefits pursuant to the revised development permission which has been granted on the basis of his own volition of tendering advance cheques and payment in part, and as such, now it is not open for the petitioner to raise any grievance with regard to it as has been specifically emphasized by the authority in its submission.

12. It has also been asserted by authority that there are other developers/ plot-holders who have also deposited net amount as per the draft Town Planning Scheme while taking development permission and as such, it is not the petitioner only who has been differently

treated. On the contrary, consistent practice has been observed with respect to all the persons concerned and there is no other discriminatory treatment or arbitrariness made out by the authority. It has been clearly asserted that this practice is vogue not only in this respondent authority, i.e. VUDA, but also it is prevailing everywhere like in SUDA, SMC, AUDA, AMC and all which collecting the amount of incremental fees, if person is coming for development of land before Town Planning Scheme is sanctioned and same would remain as tentative deposit subject to final adjustment and as such, petitioner being a developer is quite well within knowledge of such practice and in fact, with respect to other scheme, petitioner did make such kind of payment and as such, it is not open for the petitioner to invoke extraordinary jurisdiction by making misreading projection by suppressing such material facts.

13. One fact is also not possible to be ignored by this Court is that moment, the amount and advance cheques, as stated above, have been handed over on 6.7.2021, within a couple of days only, i.e. on 12.7.2021, renewal permission was obtained and plinth check certificate was also handed over on 19.7.2021 and then it appears that on the very next day, i.e. on 20.7.2021, at Annexure-K, a protest letter has been written not to encash said amount related to blank cheques and not to deposit and as such, petitioner has induced the authority upon handing over of cheques in advance, got and secured renewal permission and then turned out with an intention not to encash the same and by that time, as stated above, substantial plots have been even sold away, which was not disclosed, which indicates that development work was not stopped by the petitioner, it was continued and by that time, the authority realized that out of 46 sub-plots, 26 sub-plots were already sold away, which came to the knowledge from the letter written by the petitioner to RERA, which

was also fortified by revenue extract in the form of 7/12 which reflects a transfer of sub-plots to third parties. Now, this relevant conduct also worth consideration when equitable jurisdiction is being exercised.

14. In the light of the aforesaid factual matrix, which is prevailing on record, in an undisputed facts, certain settled legal propositions deserve to be noticed.

(1) It is a settled proposition of law that the conduct of a party is very relevant while considering an equitable relief, whether to be granted or not and additionally, the disputed facts are also not to be adjudicated in exercise of extraordinary jurisdiction. While dealing with an issue related to challenge to auction sale, Hon'ble the Apex Court has discussed and opined on the principle of WAIVER in the case of **Pravesh Kumar Sachdeva Vs. State of Uttar Pradesh and others** reported in **(2018) 10 SCC 628** and Hon'ble Apex Court in para 17 to 19 after quoting the observations from the other decisions, have delivered the judgment and as such, said observations being relevant to the present controversy, the Court deems it proper to quote the same hereunder:-

> 17. In Waman Shriniwas Kini v. Ratilal Bhagwandas & Co. it was observed as follows:
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> "13. Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied."
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> 28. In Municipal Corporation of Greater Bombay v. Dr Hakimwadi Tenants' Association it was held that:
>
> "14.....In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver.

> Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case."

19. Finally, in P. Dasa Muni Reddy v. P. Appa Rao this Court held:

> "13.... Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. ..... The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts."

(2) Yet, in another decision, Hon'ble the Apex Court also has dealt with the issue of principle of WAIVER and few observations contained in the decision in the case of **Union of India Vs. Susaka Private Limited and others** reported in **(2018) 2 SCC 182**, the Court deems it proper to quote hereunder:-

> 26. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Cuilibet licet renuntiare juri pro se introducto. (See Maxwell on The Interpretation of Statutes 12th Edition at page 328)
>
> 27. If a plea is available-whether on facts or law, it has to be raised by the party at appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.

15. In the light of aforesaid situation, when the Court examines the case on hand, it appears that undisputely, petitioner has deposited and handed over advance cheques to the authority on 6.7.2021 and on the basis of it, has got renewal permission on 12.7.2021 and also plinth check certificate on 19.7.2021 and by that time, has already sold 26 sub-plots out of 46 sub-plots and said transfer by sale was

mutated in the revenue record as well and as such, it is evident that once having obtained such due benefit, now petitioner has shown an audacity to retract and presented the petition by raising technical pleas for securing equitable reliefs. During pendency of the revised permission, development work was not stopped by the petitioner and went on continuing and then on the basis of advance cheques, the authority was persuaded to handover and grant revised renewal permission. So, this conduct is not to be ignored for consideration of exercise of extraordinary jurisdiction. Whether said cheques have been forcefully taken by the authority or voluntarily given by the petitioner is a seriously disputed version which this Court would not like to adjudicate in exercise of extraordinary jurisdiction but from the record, it appears that when the cheques were handed over and when renewal permission were sought, there was no protest and petitioner has also not pointed out anything from the record that said cheques were given subject to their right of challenge and as such, subsequent objection raised after securing renewal permission and to prefer the petition on the basis of technical plea is the conduct which the Court would not like to encourage and as such, on the basis of this conduct itself, this Court is not inclined to exercise extraordinary jurisdiction and hence, keeping the legal issue open for other appropriate proceedings, on this count alone, petition deserves to be dismissed. Accordingly, without expressing any opinion on the legal issue which is tried to be projected, this Court would not like to exercise extraordinary jurisdiction.

16. At this stage, the Court deems it proper to refer few observations made by the Hon'ble Apex Court in a decision in the case of **Prestige Lights Ltd. Vs. State Bank of India** reported in **(2007) 8 SCC 449**, which read as under:-

33. It is thus clear that though the appellant- Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should made a full and fair disclosure of all the material facts facts, not law. He must not misstate the law if he can help itthe Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

17. Yet, in another decision very recently, Hon’ble Apex Court in the case of **K. Jayaram and others Vs. Bangalore Development Authority and others** reported in **2021 SCC OnLine 1194** has

observed on the issue of exercise of extraordinary jurisdiction and since Court has considered, deems it proper to quote relevant paras here-under:-

> 12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.
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> 13. This Court in Prestige Lights Ltd. V. State Bank of India 1 has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:
>
> "33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."
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> 14. In Udyami Evam Khadi Gramodyog Welfare Sanstha and Another v. State of Uttar Pradesh and Others, this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.
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> 15. In K.D. Sharma v. Steel Authority of India Limited and Others 3, it was held thus:
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> "34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are

issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs.- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514)

".....it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material factsit says facts, not law. He must not misstate the law if he can help itthe court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been 3 (2008)12 SCC 481 fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, We will not listen to your application because of what you have done. The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs.(supra), Viscount Reading, C.J. observed: (KB pp. 495-96)

".....Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicants affidavit, and everything will be heard that can be urged to influence the view of the

> Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."
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> (emphasis supplied)
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> 38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play hide and seek or to pick and choose the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because the court knows law but not facts.
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> 39. If the primary object as highlighted in Kensington Income Tax Commrs.(supra) is kept in mind, an applicant who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

18. Further, petitioner has also not projected in any manner as to whether the plots have been sold or not, which authority came to knowledge on the basis of the letter written to RERA authority by petitioner and not from the petitioner nor from memo.

19. Even petitioner has not disputed that there is a consistent practice in respondent VUDA that all such similarly situated developers and persons are following such practice while getting development permission of making payment and handing over advance cheques and this practice is also prevailing in other

appropriate authorities as well and hence, on the basis of this sheer conduct of the petitioner, this Court would not like to exercise extraordinary jurisdiction, otherwise same would tantamount to be encouraging a foul play upon the authority and as such, without expressing anything on the legal issues, which is tried to be projected in the petition, leaving it open for appropriate case in future, present petition stands **DISMISSED**.

Notice is discharged.

Interim relief, if any, stands vacated forthwith.

Sd/-
(ASHUTOSH J. SHASTRI, J)

OMKAR/PHALGUNI

FURTHER ORDER

After pronouncement of order, learned senior advocate Mr. R.R. Marshall appearing with learned advocate Mr. Mrugen Purohit has requested that since interim relief is operative till date, same may be extended for a reasonable period to enable the petitioner to approach higher forum. Considering the fact that interim relief appears to have been continued throughout, same shall be continued for a period of FOUR WEEKS from today with a clear rider that no further extension will be sought for.

Sd/-
(ASHUTOSH J. SHASTRI, J)

OMKAR/PHALGUNI