

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 496 of 2025****With****R/SPECIAL CIVIL APPLICATION NO. 497 of 2025****With****R/SPECIAL CIVIL APPLICATION NO. 503 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

=====

Approved for Reporting	Yes	No

=====

Appearance:

MR MTM HAKIM for

MR RIZWAN SHAIKH(7146) for the Petitioner(s) No. 1,2

MR GH VIRK GOVERNMENT PLEADER assisted by

MS DHARITRI PANCHOLI and

MR SAHIL TRIVEDI AGPs for the Respondent(s) No. 1

MR MANISH S SHAH(5859) for the Respondent(s) No. 4

NOTICE SERVED BY DS for the Respondent(s) No. 3

MR SHYAMAL K BHIMANI(8233) for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 04/02/2025****COMMON ORAL JUDGMENT**

1. Rule returnable forthwith. Learned Government Pleader Mr.G.H.Virk waives service of rule on behalf of respondent-State along with learned AGPs Ms.Dharitri Pancholi and Mr.Sahil Trivedi, learned advocate Mr.Shyamal Bhimani waives service of rule on behalf of respondent No.2 and learned advocate Mr.Manish Shah waives service of rule on behalf of respondent No.4.

2. These petitions are filed challenging the notices directing removal of unauthorised construction/ encroachment within three days, failing which, demolition has been indicated.

3. Since common issues are involved in all these captioned writ petitions, with the consent of learned advocates for the respective parties, they are heard and decided by this common judgment. Details of the challenge made in respective petitions are as under:

(i) **Special Civil Application No. 496 of 2025** challenges the notices dated 04.01.2025, 07.01.2025 and 09.01.2025, wherein the Petitioners are directed to remove encroachment on Survey No.105 (Old Survey no. 476) by giving three days' time, failing which, demolition has been indicated.

(ii) **Special Civil Application No. 497 of 2025** is filed challenging the notices dated 24.12.2024 and 30.12.2024 issued under Section 185 of the Gujarat Municipalities Act, 1963 ('**GM Act, 1963**' for short) directing removal of unauthorised construction, on Survey no. 386 (Old Survey no. 347) within 3 days, failing which, demolition has been indicated.

(iii) **Special Civil Application No. 503 of 2025** is filed challenging the notices dated 04.01.2025, 07.01.2025 and 09.01.2025 wherein the Petitioners are directed to remove encroachment on Survey No. 529 paiki (Old Survey no. 501/1/ Paiki 2) by giving three days' time, failing which, demolition has been indicated.

The lands situate at Survey No.105 (Old Survey no. 476), Survey no. 386 (Old Survey no. 347) and Survey No. 529 paiki (Old Survey no. 501/1/Paiki 2) are referred to as “**lands in question**”.

4. Facts in brief referred in each of the petitions are as under:

All the three petitions are filed by Bet Bhadela Muslim Jamat, a trust registered under the Waqf Act, through its President and Secretary. Petitioner No.1 is President and Petitioner No.2 is Trustee/ Mutawalli.

Special Civil Application No. 496 of 2025:

(i) It is case of the Petitioners that land bearing Survey No. 105 (Old Survey No. 476), situated at Village: Bet, Taluka: Dwarka, District: Devbhoomi Dwarka was used as Qabrastan

for burial of Muslims of Village Bet prior to independence. The revenue record (7/12 extracts, Page 21, Annexure-C) shows the land in question for use as Qabrastan. Moreover, mutation entry No. 219 (Annexure-D, Page 24) records the land (old Survey no. 347) as Qabrastan.

(ii) The Collector, Jamnagar *vide* order dated 20.03.1967 placed the said land along with other lands in the administration of Panchayat. Accordingly, mutation Entry No.219 was recorded in village Form No.6 (Annexure-E Page 26), however, the name of Qabrastan is still existing in the revenue records. Moreover, use of land as Qabrastan is recorded in Hissa Form No.4 maintained by the competent authority (Annexure-F Page 34). Therefore, the land in question is a Qabrastan land, used for burial of deceased Muslims of village Bet and for the religious observances and managed by Bet Bhadela Muslim Jamat since 16.05.1953.

(iii) So far as Bet Bhadela Muslim Jamat (the Petitioner trust) is concerned, it came to be registered under the provisions of Bombay Public Trusts Act *vide* registration No. B-29. Upon coming into force of the Waqf Act, 1995, in view of Section 43 of the Waqf Act, the Trust -Bhadela Muslim Jamat was deemed to be registered under Section 43 of Waqf Act, 1995 and, therefore, the property in question (Qabrastan) is property

under the control and supervision of Waqf. Public trust registration is at Annexure-H Page 36.

Special Civil Application No. 497 of 2024:

(i) It is case of the Petitioners that land bearing Survey No.386, Old Survey No.347, situated at Village: Bet, Taluka: Dwakra, District: Devbhoomi Dwarka was used as Qabrastan for burial of Muslims of village Bet prior to independence. The revenue record (7/12 extracts, Page 16, Annexure-C) shows the land in question for use as Qabrastan. Moreover, mutation entry No.120 (Annexure-D, Page 19) records the land (old Survey no. 347) as Qabrastan.

(ii) The Collector, Jamnagar vide order dated 20.03.1967 placed the said land along with other lands in the administration of Panchayat. Accordingly, mutation Entry No.219 was recorded in village Form No.6 (Annexure-D Page 19), however, the name of Qabrastan is still existing in the revenue records. Moreover, use of land as Qabrastan is recorded in Hissa Form No.4 maintained by the competent authority (Annexure-F Page 29). Therefore, the land in question is a Qabrastan land, used for burial of deceased Muslims of village Bet and for the religious observances and managed by Bet Bhadela Muslim Jamat since 16.05.1953.

(iii) So far as Bet Bhadela Muslim Jamat (the Petitioner trust) is concerned, it came to be registered under the provisions of Bombay Public Trusts Act vide registration No. B-29. Upon coming into force of the Waqf Act, 1995, in view of Section 43 of the Waqf Act, the Trust -Bhadela Muslim Jamat was deemed to be registered under Section 43 of Waqf Act, 1995 and, therefore, the property in question (Qabrastan) is property under the control and supervision of Waqf. The public trust registration is at Annexure-G Page 30.

(iv) The Gram Panchayat thereafter on 27.01.1999 granted permission for construction for Haji Kirmani Dargah in the said Qabrastan (subject land). Despite that, Notices under Section 185 of the Gujarat Municipalities Act were issued by Respondent No. 2- Okha Nagarpalika, for removal of encroachment.

Special Civil Application No. 503 of 2025:

(i) It is case of the Petitioners that land bearing Survey No.526 paiki, Old Survey No.501/1/paiki 2, situated at Village: Bet, Taluka: Dwakra, District: Devbhoomi Dwarka is having Shaikhpir Dargaah since time immemorial.

(ii) Therefore, Shaikhpur Dargaah is shown in the land map prepared by the Authority (Annexure-C Page 15).

(iii) The Collector, Jamnagar vide order dated 20.03.1967, placed the said land along with other lands in the administration of Panchayat. Accordingly, mutation Entry No.219 was recorded in village Form No.6 (Annexure-E Page 18), however, the name of Shaikhpur Dargah is shown in Akarni patrak maintained by Gram Panchayat (Annexure-F Page 19). The said Dargah is used for religious observances and managed by Bet Bhadela Muslim Jamat since 16.05.1953.

(iv) So far as Bet Bhadela Muslim Jamat (the Petitioner trust) is concerned, it came to be registered under the provisions of Bombay Public Trusts Act vide registration No. B-29. Upon coming into force of the Waqf Act, 1995, in view of Section 43 of the Waqf Act, the Trust -Bhadela Muslim Jamat was deemed to be registered under Section 43 of Waqf Act, 1995 and, therefore, the property in question (Dargah) is property under the control and supervision of Waqf. The public trust registration is at Annexure-G Page 21.

(v) Despite the above noted facts, Respondent No.2- Chief Officer Okha Nagarpalika, issued notices for removal of encroachment.

4.1. Moreover, the lands in questions are exempted from assessment of taxes by Gram Panchayat which is evident from assessment register and not in dispute.

4.2. It is thus, case of the Petitioners that lands in question are Waqf properties for which notices were illegally issued by Respondent No.2-Chief officer of Okha Nagarpalika, leading to filing of these petitions.

5. Heard learned advocate Mr. MTM Hakim assisted by learned advocate Mr. Rizwan Shaikh for the petitioners, learned Government Pleader Mr. G.H. Virk assisted by learned AGP Ms. Dharitri Pancholi and learned AGP Mr. Sahil B. Trivedi for Respondent- State, learned advocate Mr. Shyamal K. Bhimani for Respondent No.2- Chief Officer, Oka Nagarpalika and learned advocate Mr. Manish S. Shah for Respondent No.4- Gujarat State Waqf Board.

6. Learned advocate Mr. MTM Hakim assisted by learned advocate Mr. Rizwan Shaikh for the petitioners submitted that the notices issued in all the three petitions directing removal of encroachment/ un- authorized construction are illegal for the following reasons:

6.1. The notices dated 04.01.2025, 07.01.2025 and 09.01.2025 do not refer to any provision of law. Further, no description is referred in the notices of alleged unauthorised construction and therefore the notices being vague in nature, deserve to be quashed and set aside on this ground alone.

6.2. From the documents on record, particularly 7/12 extracts, village form No. 6 and mutation entries, it is evident that Bet Gram Panchayat allotted the subject lands i.e. Survey No. 105, Survey No. 386 and Survey No. 526 paiki, to the Muslim Community of Bet for use of Qabrastan. Moreover, in the assessment register, the lands in question are shown as Qabrastan and are exempted from tax. Further, as per Section 43 of Waqf Act 1995, the Petitioner is deemed to be registered under the said act. Lands in question are managed and administered by Petitioner and therefore, notices issued by Chief Executive Officer are illegal.

6.3. From the documents on record, the lands in question are shown as Qabrastan or Dargah land used for burial of people of Muslim religion. Therefore, notices for encroachment or unauthorized construction are contrary to the records.

6.4. On Survey no. 386 (subject land of Special Civil Application No. 497 of 2024), Haji Kirmani Dargah was constructed after having due permission dated 27.01.1999 from Gram Panchayat. The construction permission of Gram Panchayat is on record at Page 38 and therefore the notices issued in this case are ex-facie illegal. Survey No. 526 paiki, i.e land subject matter of Special Civil Application No. 503 of 2025 is also used as Qabrastan wherein Shaikh Pir Dargah is recorded to have been existing even in 1928 and has been recorded to be Gauchar only thereafter in 1955.

6.5. The allegations of unauthorised construction on Qabrastan or encroachment on Gauchar Land is not correct because what was constructed are certain structures on Graveyard for religious observance. Therefore, the authority erred in treating it as un-authorized construction. For the allegation of constructing and running School in Qabrastan, Learned Advocate submitted that it is structure of Madrassa where religious preaching is done.

6.6. Further, before service of Notices in respective cases the procedure prescribed by the Hon'ble Supreme Court in the case of **Re: Directions in the matter of demolition of structures** reported in **2024 Online SC 3291** (para 90 to 95) has not been followed.

6.7. Further, directions of Hon'ble Supreme Court to follow the procedure for religious structure in case of **U.O.I. v. State Of Gujarat & Ors in Special Leave to Appeal (C) No. 8519 of 2006**, is not adhered to.

6.8. The impugned notices alleging encroachments are the first notices issued objecting the status of land and the existing structures therein, in the year 2024-25.

6.9. That due process and procedure of law, which ought to have been followed, as per the settled law, particularly adherence to principles of natural justice have not been followed.

6.10. Therefore, grave and serious prejudice is caused, since without any inquiry, hearing and conclusion/order, the subject lands/properties are held to be government lands and alleged religious structures are held to be encroachments and sought to be removed.

6.11. In support of his submissions, learned advocate relied upon following judgments:

(i) Judgment of the Hon'ble Apex Court in the case of **Rajendra Kumar Barjatya v. U.P. Avas Evam Vikas Parishad and others**, reported in **2024 SCC OnLine SC 3737**. Paras 16, 16.1 and 16.2.

(ii) Judgment of the Hon'ble Apex Court in the case of **In Re: Directions in the matter of demolition of structures**, reported in **2024 SCC OnLine SC 3291**. Paras 12, 13, 29, 30, 44, 53, 54, 62, 63, 71, 72, 73, 74, 75, 87, 88, 89, 90, 91 and 95.

(iii) Judgment of the Hon'ble Apex Court in the case of **In Re Manoj Tibrewal Akash**, reported in **2024 SCC OnLine SC 3210**. Paras 29, 30 and 34.

(iv) Judgment of this Court in the case of **Dalwadi Laljibhai Gatorbhia and Ors. v. State of Gujarat and Ors.**, reported in **1995 (1) GLH 1**. Para 8 to 22.

(v) Judgment dated 31.08.2018 passed by the Hon'ble Apex Court in **Special Leave to Appeal (C) No(s) 8519/2006** in the case of **Union of India & Anr v. State of Gujarat & Ors.** Pg-106 unnumbered para 3 and 4, Pg-108 unnumbered para 2 and 3 and Pg-109 unnumbered para 2.

(vi) Judgment of this Court in the case **Miya Mohamed Abdulkarim Jariwala vs. Collector of Surat** reported in **1977 GLR 488**. Paras 5, 6, 7 and 8.

(vii) Judgment of the Hon'ble Apex Court in the case **Gulam Abbas and Others vs. State of U.P. & Ors.** reported in **(1984) 1 SCC 81**. Paras 5 and 6.

7. Strongly opposing the petitions, learned Government Pleader Mr. G.H. Virk assisted by learned AGPs Ms. Dharitri Pancholi and Mr. Sahil B. Trivedi submitted that impugned notices were rightly issued on following grounds:

7.1. In relation to all three Survey numbers for which notices have been issued, the lands are situated at village Bet, Taluka: Dwarka, District Devbhoomi Dwarka which has its own geographical importance. It may be considered that Bet Dwarka or Shankhodhar lies at Nation's Marine Cost. After independence, the area was integrated into Saurashtra State. Later, Saurashtra merged with Bombay State under State Reorganization. When the State of Gujarat was created, Bet Dwarka was under jurisdiction of Jamnagar District of Gujarat. In the year 2013, it became Devbhoomi Dwarka District created from Jamnagar District, for utilizing the free-flowing access to the sea.

7.2. In relation to registration of property in Public Trust Register (PTR), it was submitted that even as per public trust register, the concerned Survey numbers are not a part of the property of the said “Jamat”. Thus, even as per the evidence produced by the Petitioner, the subject lands are not a Waqf property. This aspect is evident from the respective mutation entries, where land in question is shown as Government Land or Gauchar Land as the case may be and therefore, the land which belongs to Government given for use of Qabrastan will not become Waqf properties. Thus, the subject land in Special Civil Application Nos. 496 of 2025 and Special Civil Application No. 497 of 2025 are Government land, as is evident from revenue records and Government Resolutions Dated 17.08.1984 and 12.09.1989. The subject land in Special Civil Application No. 503 of 2025 is Gauchar land, as is evident from Revenue records.

7.3. Moreover, the Petitioner i.e. Bet Bhadela Muslim Jamat, claiming to espouse the cause in relation to the illegal structures has no ownership, authority, right and/or interest over the subject lands. The Petitioner, claiming to be Waqf, does not have entry of any of the subject lands in its PTR. Therefore, it is clear that the Petitioner has no locus to file the present petitions.

7.4. Most importantly, the Government Resolution Dated 17.08.1984 and Government Resolution dated 12.09.1989 are unambiguous in declaring the allotted land for a specific purpose to be of the ownership of the State Government only. It further prevents any committee, trust or Waqf to transfer such land in their name.

7.5. In relation to allegation relating to harsh action taken without following the principles of natural justice, Learned Government Pleader submitted that encroachment removal drive is being undertaken in a phased manner. During phase 1 from 23.12.2024 to 29.12.2024 in Dwarka city, 3 houses at Hathi gate, 15 shops near Rawada Tadav and 17 houses of Hindu Pujaris near Siddhnath temple, all belonging to Majority community have been peacefully removed. During phase 2 from 03.01.2025 to 17.01.2025, total number of 406 residential, commercial and religious structures have been demolished. Consequently, a total land mass of 1,21,746 Sq. meters of Government land, valued at Approximately Rs. 62,72,97,000/- has been freed of illegal encroachment. In Phase 3, the encroachment removal drive has commenced from 18.01.2025.

7.6. In relation to the notices issued without quoting any provision of law or description of property, it was submitted that as held in *N. Mani vs. Sangeetha Theatre, (2004) 12 SCC 278*, that if an authority has a power under the law, merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

7.7. Further, the aspect of geographical importance cannot be ignored. Because of its geographical situation, the said region has become a hub for anti-national activities particularly, smuggling of narcotics for which FIRs have been lodged.

7.8. Further, as stated in the affidavit, the lands were demarcated for being used only as a graveyard (Qabrastan) as referred herein above as per the Government Resolutions dated 17.08.1984 and 12.09.1989. The said lands were so specified for the purpose of Qabrastan, where only fencing is permitted after getting permission from the Prant Officer. In this case, no such permission for erecting of fencing has been taken. Further, Clause (3) of Government Resolution dated 12.09.1989 stipulated that if the allotted land is being used for any other purpose than for which it was allotted, the State Government

may take back the land without any notice without any delay. Clause (4) of Government Resolution dated 12.09.1989 stipulated that no construction of any other nature than for which the land was demarcated, was permitted. In the present case, there are huge structures constructed, as evident from the photographs at Page-84. Clause (5) of Government Resolution dated 12.09.1989 provided that ownership of the stated land is of Government. Under no circumstances, the said land can be transferred to any committee or Waqf trust. Therefore, also contention of learned advocate for the Petitioners that the land in question is belonging to Waqf is contrary to above referred Government Resolutions. Further, there exists distinction between a place of religious activity and a Qabrastan.

7.9. What is to be removed is unauthorised structure/construction on the graveyard. On a graveyard, huge structures cannot be erected under the guise of religious structure that too without permission. Therefore, notices are issued for removal of unauthorised construction and graveyards will not be touched.

7.10. On relocation, it was submitted that graveyards cannot be relocated and, therefore, reliance placed on the decision of Hon'ble Supreme Court is misconceived. Learned Government Pleader by placing reliance on affidavit submitted that various

FIRs referred in reply at Page 69 are filed which depict that antisocial issues and elements are being faced on account of misuse of the structures in question. In the past three years, 2022, 2023 and 2024 there are total 38 fishermen from Devbhoomi Dwarka who have been apprehended by Pakistan authorities and have remained in jail in Pakistan. The intelligence feedback available with the District Administration has revealed that these fisherman during their incarceration are subjected to religious indoctrination at Madrassa and are then permitted to return to India. Moreover, it cannot be ignored that one of the structures for which notice has been issued is a school or a Madrassa in a Qabrastan. Learned GP submitted that a school or a Madrassa for religious activity cannot be permitted to be carried out in Qabrastan.

7.11. Further, the land in question in Special Civil Application No.503 of 2025 is a Gauchar land, for which demolition was undertaken 10 years ago. After demolition the entire area was cleaned up to be used for original purpose that is pasturage. However, once again around 150 houses and fish warehouses had been constructed on the said land and these structures have been demolished in the demolition drive of 2022. Therefore, these drives are regular administrative exercise and it may not be columned in the grab of religious sentiments being affected. Learned advocate once again referred to the

resolution dated 20.09.1981 and 12.09.1989 to submit that since the land is demarcated for a specific purpose of Qabrastan, no other construction for any other purpose can be permitted.

7.12. Learned Government Pleader submitted that therefore, in view of the above submissions, the petitions deserve to be rejected and notices deserve to be upheld permitting the Respondents to carry out demolition.

8. Considered the submissions. Upon revisitation of facts, it is noticed that there are three Survey Numbers involved in relation to the subject property. Details of which are as under:

(i) Special Civil Application No. 496 of 2025 relates to subject land bearing Survey No.105 (Old Survey No. 476), and challenges notices dated 04.01.2025, 07.01.2025 and 09.01.2025.

(ii) Special Civil Application No, 497 of 2025 relates to subject land bearing Survey No.386 (Old Survey No. 347) and challenges notices dated 24.12.2024 and 30.12.2024.

(iii) Special Civil Application No. 503 of 2025 relates to subject land of Survey No. 526 Paiki (Old Survey No. 501/1/ Paiki 2, and challenges notices dated 04.01.2025, 07.01.2025 and 09.01.2025.

8.1. Further, the revenue records i.e, 7/12 extract and village form no.6 refers to use of subject land in question as Qabrastan or Dargaah. (For Special Civil Application No. 496 of 2025- 7/12 extracts, Page 21, Annexure-C of that petition); (For Special Civil Application No. 497 of 2025-7/12 extracts, Page 16, Annexure-C of that petition) and (For Special Civil Application No. 503 of 2025- Shaikhpur Dargaah is shown in the land map prepared by the Authority at Page 15 Annexure C) Therefore, use of subject land for Qabrastran is not in dispute. Even the usage of lands in question as Qubrastran or Shaikhpur Dargaah is not disputed by the Respondents.

8.2. Therefore, the issue that arises for this Court's consideration is whether merely by usage of lands in question for a particular purpose, when admittedly the lands are not owned by the Petitioner, can they be considered to be Waqf property of the Petitioner Trust.

8.3. In that context it is noticed that the Petitioner Trust is registered in Public Trust Register (PTR). However, concerned Survey numbers of the lands in question are not reflected in the PTR. Further, under mutation entry no 219, lands in question are shown as Government Land or Gauchar Land. From mutation entry no.219 in village form no.6, it is evident that collector gave these lands to Gram Panchayat and in turn Gram Panchayat appears to have demarcated these lands for use as Qabrastan. The said mutation entry no 219 dated 11.04.1967 was never challenged and is final till date, therefore, the submission that the properties in question are part of the Petitioner Waqf is not accepted.

8.4. One more added consideration is Section 3(r) of the Waqf Act 1995, which defines Waqf and the same reads as under:

“3. Definitions. —In this Act, unless the context otherwise requires, —

[(r) “waqf” means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

(i) a waqf by user but such waqf shall not cease to be a waqf by reason only of the user having ceased irrespective of the period of such cesser;”

Section 4 (3) of the Waqf Act 1995 reads as under: -

4. Preliminary survey of auqaf.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report,

in respect of [auqaf] existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

- (a) the number of auqaf in the State showing the Shia auqaf and Sunni [auqaf] separately;*
- (b) the nature and objects of each [waqf];*
- (c) the gross income of the property comprised in each [waqf];*
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each [waqf];*
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each [waqf]; and*
- (f) such other particulars relating to each [waqf] as may be prescribed.”*

8.5. In this case nothing is brought on record which would indicate that the lands in question have been designated as ‘Waqf Property’. No list published by the State Government as contemplated under Section 4 of Waqf Act has been produced which could substantiate case of the Petitioners that the lands are Waqf Property. Therefore also, no case is made out that the lands in question being Waqf by registration or Waqf by usage, as defined in Section 3 (r) of the Waqf Act.

8.6. The subject land bearing Survey no. 526 paiki, which is subject matter of Special Civil Application No. 503 of 2025, is referred as Gauchar Land in the Revenue Records and admittedly no construction is permissible on Gauchar Land.

8.7. In relation to the grievance of the Petitioners in Special Civil Application No. 497 of 2025, for land bearing Survey no. 386(old Survey no. 347) that on the said subject land Haji Kirmani Dargah was constructed after due permission dated 27.01.1999, it is noticed that as submitted by Learned Government Pleader, no demolition will be done of that Dargah, and therefore, grievance would not survive.

8.8. At this stage, it would be apposite to refer to resolutions dated 17.08.1986 of the Revenue Department which states that the ownership of the land allotted for the purpose of Crematorium or Graveyard is of the Government only. There is one more resolution dated 13.09.1989 (Page No. 87), where Clause 2 of Government Resolution dated 13.09.1989 provides that to prevent illegal encroachment, land allotted for purpose of crematorium or Qabrastan may erect fence after getting permission from Prant Officer. Clause 3 of Government Resolution dated 13.09.1989 provides that if the stated land is used for any other purpose, other than it was demarcated, the State Government can take it back without any notice and without any delay. Clause 4 of the said Government Resolution provides that no construction of any other nature than for which the land was allotted is permitted on the allotted land. Clause 5 provides that ownership of allotted land will be of the Government. It also refers that under no circumstances the

allotted land can be transferred by any committee, any Trust or Waqf in its name. If facts of present petitions are considered than from the pictures annexed with the petitions at Pages 84 and 85; Pages 78 to 85; and Pages 51 to 62 in respective petitions, evidently all huge structures are constructed without any prior permission.

8.9. Further, phased manner demolition drive is noticed from the averments of the affidavits filed in each of the petitions. For the contention of the Petitioners that notices dated 04.01.2025, 07.01.2025 and 09.01.2025 are vague, as it does not refer to any provision of law and does not specify the structure to be demolished, the Hon'ble Supreme Court in the case of **N Mani vs. Sangeetha Theatre** reported in **(2004) 12 SCC 278** has held that if an authority has power under the law, merely because while exercising such powers reference was not specifically made to the provision or reference is made to some wrong provision does not vitiate the exercise of powers because the power does exist and can be traced to be available in law. In the present case, it is not the case that the notices were issued without jurisdiction, and therefore the submission of the Petitioners does not merit acceptance.

8.10. The decisions relied upon by learned advocate for the petitioners are considered hereinunder:

(i) In the case of **Re: Directions in the matter of demolition of structures** reported in **2024 SCC Online SC 3291**, the Hon'ble Supreme Court has held that before any demolition, the procedure as directed under Paragraph 90 of the said judgment is to be followed. In the opinion of this Court the said judgment will not be applicable since in Paragraph 91 the Hon'ble Supreme Court has held that such directions will not be applicable if there is 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.

(ii) The Hon'ble Supreme Court in the case of **Rajendra Kumar Barjatya vs. U. P. Avas Evam Vikas Parishad** reported in **2024 SCC Online SC 3737** permitted demolition of unauthorized construction and the same is to be done in present case. Therefore, in the opinion of this Court, the decision will not be applicable in the facts of the present case.

(iii) In the case of **Re. Manoj Kumar Tibrewal** reported in **2024 SCC Online SC 3210** the Court deprecated the practice of demolition as no documents were available. In the opinion of this Court the said decision would not be applicable in the facts of this case because in the present cases, the lands in question are Government Lands.

(iv) Further, reliance placed on the decision in the case of **Dalwadi Laljibhai and Others vs. State of Gujarat** reported in **1995 (1) GLH 1** and the other such decisions to submit that procedures were not followed and there is breach of principles of natural justice, is of no help because the Petitioners were aware of the phased manner demolition drive and absence of their right over the subject lands. Moreover, contention of learned Government Pleader that the authorities are not to touch any of the graveyard, and will only be demolishing unauthorized construction or encroachment, cannot be ignored.

(v) Reliance placed on the decision in the case of **Gulam Abbas & Others vs. State of U.P. & Ors** reported in **1984 (1) SCC 81** is also of no help since relocation of Graveyards is not possible.

9. In the decision of Hon'ble Supreme Court in the case of **Rajendra Kumar Barjatya (supra)**, it is held that illegality or unauthorized construction cannot be perpetuated. If construction is made in contravention of Act/Rules it will be construed as illegal or unauthorized construction which has to be necessarily demolished. It cannot be legitimized or protected solely under the guise of passage of time or citing inaction on the part of authority or by taking recourse to the excuse that substantial money has been spent on the said structure. The

Hon'ble Supreme Court after referring to various decisions has held that any construction which is put up in violation or deviation from the building plan approved by the local authority and the construction which are audaciously put up without any building plans being approved, cannot be encouraged.

10. In view of above reasons, the present petitions are without merits and do not call for any consideration. All writ petitions are therefore dismissed. Interim relief granted earlier stands vacated forthwith. Rule discharged. No order as to cost.

(MAUNA M. BHATT,J)

Learned advocate for the petitioners Mr.Rizwan Shaikh at this stage requested for continuation of interim relief granted earlier by this Court under order dated 20.01.2025, for further period of 15 days.

For the reasons stated herein above, request made is rejected.

(MAUNA M. BHATT,J)

NAIR SMITA V./Shrijit/09