

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 137 of 2011****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024****In R/WRIT PETITION (PIL) NO. 137 of 2011****With****CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2025****In R/WRIT PETITION (PIL) NO. 137 of 2011****With****CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 3 of 2025****In R/WRIT PETITION (PIL) NO. 137 of 2011**

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SHARIFBHAI HASAMBHAI SAKARYANI**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR. BHASKAR TANNA, SR. ADV. WITH MR BJ TRIVEDI(921) for the Applicant(s) No. 1****MR.DEVENDRA H PANDYA(6462) for the Applicant(s) No. 1****MS JIGNASA B TRIVEDI(3090) for the Applicant(s) No. 1****MS. HETAL PATEL, AGP for the Opponent(s) No. 1,2,3,4****MR. YATIN OZA, SR. ADV. WITH MR APURVA R KAPADIA(5012) for the Opponent(s) No. 10,12,13,16,17,19,8****UNSERVED EXPIRED (N) for the Opponent(s) No. 14****MR PREMAL R JOSHI(1327) for the Opponent(s) No. 6,7****MR VIVEK V BHAMARE(6710) for the Opponent(s) No. 7****MS RENU D CHAUDHARY(6065) for the Opponent(s) No. 15,18,19,9****NOTICE SERVED for the Opponent(s) No. 15,18****NOTICE SERVED BY DS for the Opponent(s) No. 1,2,3,4,5****SHRIJIT G PILLAI(7937) for the Opponent(s) No. 11**

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 03/02/2025****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)****1. Heard Mr. Bhaskar Tanna, learned senior advocate**

assisted by Mr. Brijesh J. Trivedi, learned counsel for the petitioner. At the outset, we may note that Mr. Tanna, learned senior counsel has made certain submissions on the observations made in the order dated 17.1.2025 with respect to the manner in which the matter was proceeded with by Mr. Brijesh J. Trivedi, learned advocate appearing for the petitioners. Mr. Bhaskar Tanna, learned senior counsel representing the views of the Bar being the senior member of the Bar would also submit that lawyer cannot ask the Court for recusal from the case just because the Court is not accepting the views of the lawyer. Having heard that, noticing that Mr. Brijesh J. Trivedi, learned advocate appearing for the petitioner expressed his regret over the incident, as to whatever happened in the Court on 17.1.2025, and gave assurance that such occurrence will not be repeated in future, we deem it fit and proper to expunge the remarks made against the conduct of Mr. Brijesh J. Trivedi on 17.1.2025 in our oral order dated 17.1.2025.

2. Mr. Brijesh J. Trivedi learned counsel for the petitioners would further submit that the petitioner seeks withdrawal of both the applications namely Civil Application No.2 of 2025 and Civil Application No.3 of 2025 filed on 29.1.2025. Both the applications are, accordingly, dismissed as withdrawn.

3. Coming on the merits of the case, having heard the learned counsels for the parties and perused the record, we may note that the present Public Interest Litigation (PIL) has been filed in the year 2011 by the petitioner who was a Municipal Councillor in Dhoraji Nagarpalika, making a

grievance with respect to certain constructions raised by the private respondent Nos. 8 to 20, with the contention that the constructions in question are all illegal and unauthorised. Prayer has been made in the writ petition to issue a writ of direction commanding the respondent-authorities to take action against the persons who had raised illegal constructions, impleaded as respondent Nos. 8 to 20.

4. We may record that on the presentation of the writ petition, notice was issued on 21.10.2011 making it returnable on 7.12.2011. Certain information was called for from the municipal authority vide order dated 29.12.2011 and it was directed that in the meantime, the municipal authority shall see that no further constructions take place. On 29.3.2012, on a supplementary affidavit filed by the respondent disclosing the date of filing of the application for grant of sanctioned plan before the municipal authority, direction was issued to the municipal authority to file response disclosing the date of filing of such application for sanction by all private respondents and indicating as to whether such applications have been disposed of within 90 days from the date of filing thereof. While issuing such a direction, the Court had passed an order to the effect that no construction shall be made unless construction is strictly in accordance with the rule, regulation and bye-laws of the concerned municipality, until further orders of this Court. It seems that a contempt application has arisen out of the order dated 29.3.2012, wherein allegations were made of non-compliance of the directions made in the said order which has led to the

proceedings pending before the Apex Court.

5. Be that as it may, having gone through the merits of the present petition, filed in the nature of PIL, we may simply record that the proceedings arising out of the contempt application filed by the petitioner, pleading for non-compliance of the interim order dated 29.3.2012 has no bearing on the final disposal of the present petition which is pending for more than 14 years.

6. As regards the claim of respondent Nos. 8 to 20 who are represented by Mr. Yatin Oza, learned senior counsel with Mr. Apurva Kapadia , the learned advocate for 8, 10, 12, 13, 16, 17, 19, Mr. Shrijit G. Pillai, learned advocate for the respondent No.11, Mr. Premal R. Joshi, learned advocate for respondent No. 6 and 7, and Ms. Renu D. Chaudhary, learned advocate for the respondent Nos. 15, 18, 19 and 9, we may record the common submissions made by the learned senior counsels and other counsels for the private respondents, whose constructions are subject matter of consideration in the present petition.

7. The submissions of the learned senior counsel and other advocates appearing for the private respondent Nos. 8 to 20 are that during the pendency of the present petition, the State legislature has enacted an enactment in the name of Gujarat Regularisation of Unauthorised Development Act, 2022 (Gujarat Act No. 1 of 2023) as amended upto date by Gujarat Act No.3 of 2023 (in short referred to as 'GRUDA, 2022'). The

said enactment as is evident from the long title thereof is to regularise the unauthorised development in the Municipal Corporation areas, Nagarpalika areas and development areas in the State and for matters connected therewith or incidental thereto. The opening paragraph of the enactment, laying down the object and purpose of the enactment is that there have been large scale unauthorised development in the Municipal Corporation area, Nagarpalika areas and development areas in the State; such unauthorised development has been put up without obtaining building use permission; such unauthorised development is liable to be removed and pulled down; citizens have not earlier regularised their unauthorised development due to economical constraints and other reasons; by removal and pulling down of such unauthorised development hardship to a large number of people more particularly common men who have invested their hard earned saving is likely to be caused; it is, thus, expedient to have a law to provide for regularisation of certain unauthorised developments.

8. The "Applicant" as defined in Section 2(1)(a) means an occupier or owner who makes an application for regularisation of unauthorised development under Section 5. The "Designated Authority" within the meaning of Section 2(b) means the Municipal Commissioner or the Chief Executive Officer of the Development Authority or the Chief Officer of the Municipality or any other authority or person can be appointed as "Designated Authority". A Comprehensive General Development Control Regulations have been framed

in exercise of power under Section 12(2) of the GRUDA, 2022, which in short is known as "CGDCR". "Relevant laws" and "Unauthorised Developments" are defined in Section 2(1)(i) & (j) of the Act, 2022, which provide the methodology for regularisation of certain unauthorised constructions.

9. The definition of "Unauthorised Development" as per Section 2(1)(j) may be noted hereinunder:

"2(1)(j) means the development where, irrespective of ownership, no permission to use a building or a part thereof is obtained from the authority competent to given such permission, or having obtained the permission, the development is in contravention of the relevant law or of such permission."

10. By means of the Gujarat Act No. 1 of 2023, amendments have been incorporated in Section 5 which prescribed the time line for making of such an application.

Section 5(1), (2) and Sub-section (2A) & 3 of Section 5 are relevant to be extracted hereinunder:

"5. (1) At any time on or before the 30th September, 2022, a notice issued to an owner or occupier or any order issued or decision taken under the relevant law, except under the provisions of the Real Estate (Regulation and Development) Act, 2016, requiring such owner or occupier to remove or pull down or alter unauthorised development carried out shall be deemed to have stood

suspended unless and until such notice, order or decision stands revived under sub-section (2) of section 6:

Provided that such provision shall not be applicable in case of development carried on land in respect of matters provided in sub-sections (1), (2) and (3) of section 8.

(2) Any applicant who has been served with the notice under the relevant laws as provided in sub-section (1), or not, may make an application in such form and in such manner as may be prescribed to the Designated Authority for regularisation of any unauthorised development within a period of four months from the commencement of this Act. Making an application shall be an obligation on part of owner/occupier:

Provided that in case where more than one owners or occupiers are availing the facility of unauthorised development in part or whole, all such owners or occupiers shall make an application jointly to the Designated Authority;

Provided further that the Designated Authority may after making such inquiry as it thinks fit, if satisfied, allow the lesser number of owners or occupiers to make an application.

(2A) Notwithstanding anything contained in sub-section (2), the State Government may extend, by notification in

the Official Gazette, the period for making an application for regularisation of any unauthorised development, in such circumstances and on such terms and conditions as may be specified in the said notification.

(3) The above provision of sub-section (1) shall not be applicable to the notice issued to the owners or the occupiers under the Real Estate (Regulation and Development) Act, 2016."

11. A perusal of Section 6(1) indicates that on an application made by an applicant under Section 5 to the designated authority, within a period of 6 months, it shall scrutinise the application and after making such inquiry as it may deem fit, may regularise "unauthorised development" by passing an order requiring the applicant to pay fees, if any, payable under the relevant laws and the fees payable in accordance with provisions of this Act (GRUDA) for regularisation of unauthorised development as a one time measure. Further sub-sections of Section 6 provide the mode and manner in which the application is to be filed. Section 7 pertains to fees for regularisation. Section 8 aligns the circumstances in which unauthorised development shall not be regularised and reads as under:

"8. (1) Notwithstanding anything contained in this Act, an unauthorised development shall not be regularised in a case where unauthorised development is carried out on any of the following lands, namely:-

- (a) land belonging to Government, local authority or statutory body;
- (b) land acquired or allotted by the Government, local authority or statutory body for a specific purpose;
- (c) land under alignment of roads indicated in development plan or a town planning scheme or under alignment of a public road;
- (d) land designated or reserved under a development plan or a town planning scheme;
- (e) water courses and water bodies like tank beds, river beds, natural drainage and such other places;
- (f) areas earmarked for the purpose of obnoxious and hazardous industrial development;
- (g) playground attached with the educational institution.

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

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

supply of electricity or gas or of any other public utility service; and

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

(3) An unauthorised development shall not be regularised if it is inconsistent with the provisions of -

(a) the Gujarat Fire Prevention and Life Safety Measures Act, 2013, or

(b) the Real Estate (Regulation and Development) Act, 2016, or

(c) the Gujarat Clinical Establishments (Registration and Regulation) Act, 2021, or

(d) structural stability requirements as per the CGDCR.

Provided that subject to other provisions of this Act, on presentation of a certificate from the authority, for the fire safety measures and a certificate from the structural engineer authorised by the authority as may be prescribed, with regard to the compliance of the provisions of clause (a) or (d) or both, as the case may be, the Designated Authority may regularise the unauthorised development.

(4) Any unauthorised development carried out or an order issued or decision taken as specified in section 5, on or after the 1st October, 2022 shall not be regularised."

12. Section 9 starts with a non-obstante clause and provides that any grant of regularisation of unauthorised development or part thereof under GRUDA shall be deemed to be a Building use Permission for that building as sought under CGDCR or any other provisions of the laws/orders/bye-laws, notwithstanding anything contained in the Gujarat Provincial Municipal Corporation Act, 1949 and the Gujarat Municipalities Act, 1963.

13. Sub-section 12(1) provides remedy to a person aggrieved against the order or decision of the designated authority under Section 6, to prefer an appeal to an appellate authority within the time period prescribed thereunder. Sub-section (2) of Section 12 mandates the State Government to appoint as many Appellate Officers as it may deem fit for different areas or part thereof, who shall have jurisdiction to entertain the appeal. Proviso to sub-section (2) of Section 12 further empowers the appellate authority to entertain the appeal after expiry of period of sixty days prescribed in sub-section (1), subject to its satisfaction.

14. Placing these provisions before us, it was sought to be submitted by the learned advocates for the respondent Nos. 8 to 20 that with the enforcement of GRUDA, now the grievances raised by the petitioner in the present petition can be met at the end of the designated authority, defined in Section 2(b) of GRUDA, 2022.

15. Having noticed the above, we deem it fit and proper that

private respondent Nos. 8 to 20 be relegated to make their applications, if not already made, before the designated authority in accordance with the provisions of the GRUDA, 2022. On such applications being filed along with the copy of this order, the designated authority shall be required to consider the applications on merits without raising any issue of limitation prescribed under subsection (1) of Section 6 of the Act, 2022 and pass a reasoned and speaking order strictly in accordance with the provisions of the Act, keeping in mind the provisions of Section 8 which prescribes the circumstances in which unauthorised development shall not be regularised.

16. Of all those private respondents herein who have already moved an application before the designated authority under the GRUDA, 2022, their applications should be considered on merits, and decision be taken strictly in accordance with the provisions of the GRUDA, 2022. As the matter has been prolonged for about 14 years, we find it fit and proper that each of the applicants shall be given a personal hearing on submissions of the application along with a copy of this order on a date to be fixed by the designated authority and by fixing dates in the pending application before it. In any case, due opportunity of hearing shall be provided to each of the applicants and in any case, the designated authority shall be under obligation to deal with the applications keeping in mind the provisions of the GRUDA, 2022.

17. With respect to one of the respondents namely

respondent No.19, it is submitted by the learned advocate appearing for the respondent No.19 that the application under GRUDA has already been decided and the constructions have been regularised.

18. Be that as it may, we do not find any reason to go into the merits of the claims of the parties. With respect to any dispute pertaining to the decision taken by the designated authority under the directions given hereinabove or under an order already passed by the designated authority under GRUDA, 2022 with respect to the constructions which are subject matter of consideration in the present petition, filed as a Public Interest Litigation, the petitioner would be at liberty to file appeal invoking the provisions of Section 12(1) of the GRUDA, 2022 and would be treated as "person aggrieved" within the meaning of said provisions.

19. It is further clarified that at the stage of dealing of the applications by the designated authority, the petitioners would have no right of the hearing.

20. The learned senior counsels and other counsels appearing for the respondent Nos. 8 to 20 would submit that all the respondents whose constructions have not been regularised so far, will move their applications within a period of 2 weeks from today along with the copy of this order. On such application being filed, the designated authority shall be required to fix a date for grant of personal opportunity of hearing and shall intimate the same to the applicants. The

respondents/ applicants shall cooperate and will not make any effort to prolong/ delay or stall the proceedings before the designated authority. In any case, all such applications filed shall be decided by the designated authority, as expeditiously as possible, preferably within a period of six weeks of the receipt of this application after grant of due opportunity of hearing, strictly in accordance with law.

21. With the above observations and directions, the writ stands disposed of. The connected Civil Application No.1 of 2024 also stands disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

SAJ GEORGE