

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 110 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 16682 of 2024

With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 110 of 2025

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VITTHALBHAI KHUSHALBHAI PATEL THROUGH ADMINISTRATOR
 PUREN UPENDRABHAI PATEL & ORS.

Versus
 THE STATE OF GUJARAT & ORS.

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Appearance:

MR NIRAV C THAKKAR(2206) for the Appellant(s) No.
 1,10,11,12,13,14,15,2,3,4,5,6,7,8,9
 MS. HETAL PATEL, AGP for the Respondent(s) No. 1
 MR. GURSHARANSINGH H. VIRK, ADVOCATE WITH MR MEHUL
 SHARAD SHAH(773), ADVOCATE WITH MS. DHARITRI PANCHOLI,
 ADVOCATE WITH SIMARNITSINGH H. VIRK, ADVOCATE for the
 Respondent(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
 and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 01/05/2025

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

[1] Heard learned counsels for the parties and perused the record. By means of the present appeal, the appellants (15 in number), the occupants of shops at Sardar Bhuvan Complex besides Sardar Statue on the Station road, Nadiad, are seeking to challenge the judgment and order dated 02.01.2025 passed

by the learned Single Judge, whereby the writ petition seeking to challenge the notices dated 25.11.2024 issued by the Corporation to the petitioners asking to vacate the premises in question has been turned down.

[2] In a detailed order dated 29.01.2025, we have noted that there is no dispute about the fact that the building in question which comprised of 46 shops occupied by 40 people, had been built on the top slab of the *kaans* (underground sewage drain). There is an expert report to the effect that the bottom part of the top slab of the *kaans* is deteriorated due to direct contact with Sewage. It seems that earlier with the intervention of this Court, the cleaning work of the *kaans* has been completed but based on the investigation, the expert report states that the most crucial element is *kaans* for the stability of the entire building, which is found to be inadequate because of corroded top slab of *kaans* which in turn, is supported on the brick wall of *kaans*.

[3] Pursuant to our order dated 29.01.2025, wherein we required the learned counsel for the respondent - Corporation to

find out a solution for rehabilitation / re-settlement / by providing alternative accommodation to the shops owners / petitioners herein, an affidavit dated 15.03.2025 has been filed by the Municipal Commissioner, Nadiad Municipal Corporation, wherein a categorical statement has been made to the effect that efforts were made to find out the solution in the meeting of the occupants of the building / shops in dilapidated conditions and as an offer for rehabilitation of the occupants (40 in number), paragraph '14' of the affidavit clearly states that :-

"14) I respectfully submit that with respect to suggestions made by the occupiers, detailed reply was given by the Deputy Municipal Commissioner of the Corporation and proper explanations as to why the suggestions of the occupiers cannot be accepted have been provided. The Corporation informed the occupiers that, recently, Nadiad Nagarpalika stands converted into Nadiad Municipal Corporation and therefore, development of the City will be planned by the Nadiad Municipal Corporation and therefore, at present, there is no possibility to construct a new building for the shop owners as a special case. It was suggested that a shopping center was constructed by the erstwhile Nagarpalika near Kasibhai Park where the shops were in dilapidated condition but all those shops can be demolished and at the said place, a semi-permanent structure can be placed or a shed can be prepared by the Corporation and all the occupiers can be shifted to the said land near Kasibhai Park, which is approximately 2 kilometers from the existing site of the dilapidated structures. It was clarified that the shops of exactly the present shop-size at the dilapidated Sardar Shopping Complex would be prepared by the Corporation."

[4] It is further stated in paragraph '15' of the affidavit as under:-

"15) It was also apprised to the occupiers that they would have to pay rent that may be fixed by the Corporation and if they show willingness for this option, the Corporation will take necessary sanctions, as may be required and ensure expeditious rehabilitation. The occupiers/appellants did not provide any answer to the officers of the Corporation and informed the officers that they would respond to the proposal in writing. With this, the meeting dated 09.03.2025 stood adjourned."

[5] The further stand of the Municipal Commissioner in the affidavit is that the occupants have refused to accept the offer given by the Corporation to re-locate the shops in question near Kashibhai Park *vide* latter dated 13.03.2025 and have reiterated their demand to fill-up the *kaansh* over which the dilapidated structure stands and divert the *kaansh* and then build a strong foundation under the existing dilapidated structure. It is further stated in the affidavit of the Municipal Commissioner that the continued occupation of the dilapidated structures is not only dangerous for the occupiers who run their businesses within such structures knowingly, but also the visitors who would be visiting these shops without explicit knowledge of the unsafe nature of the construction. A prayer has been made that a

mutually acceptable alternative may be found and the Corporation be permitted to take steps in connection with the dilapidated structures.

[6] In reply to the affidavit filed by the Commissioner, Municipal Corporation, it is stated on behalf of the appellants that appellants understand the constraints felt by the Corporation and even the Corporation has appreciated the difficulties faced by the appellants and other shop owners. However, the place for rehabilitation offered to the appellants is not suitable.

[7] Apart from the said assertions, nothing much has been stated in the affidavit filed on behalf of the appellants. Be that as it may, in view of the categorical statement made by the Commissioner, Municipal Corporation in paragraph '14' of the affidavit as noted hereinabove, as per the offer given by the Corporation, semi-permanent structure can be placed by demolition of the existing structures of the shopping center near Kasibhai Park, wherein all the occupiers (40 in number) can be accommodated. It is clarified that the shops of exactly the

present shops size at the dilapidated Sardar Shopping Complex would be offered to the occupants by the Corporation.

[8] Mr. Gursharansingh H. Virk, learned counsel with Mr. Mehul Sharad Shah, learned counsel appearing for the Corporation made a statement upon instructions that the land over which the occupants of the shops in question are proposed to be accommodated by construction of a semi-permanent structure or shade, is a huge land and the Corporation proposes to construct a permanent structure containing adequate number of shops so as to allot shops to the occupants (40 as in number) of the building in question known as Sardar Shopping Complex, of the same size which they are currently occupying at the said dilapidated building.

[9] In view of the above statement made in the affidavit of the Municipal Commissioner and the learned advocate appearing on behalf of the Corporation upon instructions, Mr. Nirav C. Thakkar, learned advocate appearing for the appellants, upon instructions, would submit that appellants are ready and willing to accept the proposal of the Corporation to make an

arrangement for shifting of the shops of the dilapidated building known as Sardar Shopping Complex at the land suggested by the Corporation near Kasibhai Park by construction of semi-permanent structure as a stopgap arrangement. However, the Corporation would be required to construct a permanent structure to accommodate each of the occupants (40 in number) of the shops (46 in number) at the dilapidated Sardar Shopping Complex, by giving shop in a permanent structure as per the undertaking given by its officer.

[10] On a further query made by the Court, Mr. Virk, the learned counsel appearing for the Corporation would submit that approximately five months' time is required to put up a semi-permanent structure in order to shift the existing occupants at the alternative place offered by the Corporation. An undertaking is also given by the appellants herein (15 in number) through their counsel that they will not make any obstruction in the process of shifting of the shops in question to the alternative accommodation after the semi-permanent structure is built by the Corporation as per the undertaking

given by it. As regard the remaining occupants, who are not before us, they would be required to furnish their undertaking in the form of an affidavit before the Corporation and on furnishing of such undertaking, the Corporation would be required to take appropriate steps in accordance with the undertaking given by it, noted hereinabove. In case of failure of any of other occupants to give undertaking as per the directions hereinabove, it would be open for the Corporation to proceed in accordance with law.

[11] With the above observations and directions, without entering into the merits of the order passed by the learned Single Judge, we dispose of the present appeal on the settlement arrived between the parties.

[12] Connected civil application also stands disposed of.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

DHARMENDRA KUMAR

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KUMAR DHARMENDRA(HC01071), GOV, at High Court of Gujarat on 03/05/2025 15:24:40