

**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 & ANR.

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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, ASSISTANT GOVERNMENT PLEADER for the Respondent(s)
No. 1

MR MEHUL SHARAD SHAH(773) 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 : 29/01/2025

ORAL ORDER

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

Heard the learned counsels for the parties and perused the record.

2. We may note that there is no dispute about the fact that the occupants of the building known as Sardar Bhuvan Complex situated besides Sardar Statue on the Station road, Nadiad, have been occupying small shops (40 in numbers) for a long time and have been paying the lease rent to the then Nadiad Nagarpalika. The then Nadiad Nagarpalika has been converted into the Nadiad Municipal Corporation with effect from 01.01.2025. Mr. Mehul Shah, the learned advocate for the Corporation has provided a chart showing the date of expiry of the lease of the shops as also the

date upto which the rent had been paid by the occupants.

3. The appellants/original petitioners herein are 15 in number. It is the specific case of the petitioners in the writ petition that they had paid lease rent for occupying the shops by them upto the year 2022, and after the year 2022 the officers of the Nadiad Nagarpalika have refused to receive the rent. The contention in the writ petition is that the petitioners are running their small businesses from the shops-in-question which are the only source of their livelihood. They had paid rent to the then Nagarpalika apart from the municipal taxes.

4. In the year 2020, some repair and renovation work was carried out at the expense of the shop owners. Suddenly in the month of May, 2024 (28.05.2024) the original petitioners had received notice under Section 182 of the Gujarat Municipalities Act, 1963. The officers of the respondent No.2 came to the premises on 03.09.2024 and asked the petitioners to vacate the shops by 12 noon on 04.09.2024. This had led to the filing of the writ petition namely Special Civil Application No. 13063 of 2024, wherein the order dated 04.09.2024 was passed issuing notice and granting interim order directing the parties to maintain *status quo*.

5. The said writ petition was disposed of on 10.09.2024 wherein with the intervention of the Court, the then Nagarpalika was permitted to carry out the exercise of cleaning of the *kaans* (drain) subject to the condition that minimum damage would be caused

while undertaking the said exercise. It is an admitted fact of the matter that pursuant to the directions contained in the aforesaid decision dated 10.09.2024, the blockage for the drain has been cleared off.

6. Be that as it may, the impugned notices, subject matter of challenge before the learned single Judge in the writ petition, out of which the present appeal has arisen, were issued on 25.11.2024, wherein the petitioners have been directed to vacate the building-in-question on the premise that the building-in-question is in dilapidated condition, as it was construed over the *kaans* (underground drain) and there is a report to that effect obtained from the expert namely BVM Engineering College. The copy of the report dated 10.10.2024 is appended at page No. '125' of the paper book.

7. The conclusion drawn in the report dated 10.10.2024 at page No. '138' are:-

"1. The report is prepared based on the visual observation and non-destructive tests conducted on the site. No structural drawings and/or details were made available.

2. The building is almost 61 years old. There is no any footing found for the building. The building is directly supported on the top slab of the Kans (i.e. underground sewage drain).

3. There is no specific foundation provided for the building. The bottom part of the top slab of the Kans is deteriorated due to direct contact with Sewage. The bottom reinforcement of the top slab of Kans is seen to be exposed at few locations. It was informed by the authorities that a similar building on the same Kans was existing (in the close proximity of this building), which had collapsed due to deterioration of top slab of Kans.

4. The building load transfer mechanism is such that the entire-load is carried by the top slab of the existing Kans. No structural details of the Kans are available. The tests carried out on the said slab conclude that the condition of the slab is poor, deteriorated, reinforcement corroded etc. Detailed investigation about the load carrying capacity of this slab was not possible since the bottom portion of the slab was not approachable.

5. Based on the results obtained from Rebound hammer test, the compressive strength is Indicated to be good for majority of locations (Approx. 70%), but the rebound hammer results are indicative of surface hardness only and can be considered only when confirmed by corresponding Ultrasonic pulse velocity (UPV) test results. Rebound hammer values are found to be very good even on plaster surfaces on brick masonry walls.

6. Based on the results obtained from Ultrasonic pulse velocity (UPV) test, it is observed that, at majority of the locations (Approx. 60%) results are found to be poor, and Approx. 20% results are found to be doubtful and hence it appears that the quality of concrete is deteriorated.

7. The test results of UPV and Rebound hammer indicate the value at specific locations only and overall quality of the structure is assessed accordingly.

8. Based on the results obtained from the compression test of the core samples (collected from the site), it is found that the compressive strength is less than the minimum requirement of structural concrete. It is also observed that the density of concrete is less which is probably due to higher sand content.

Based on the investigations, it is summarized that the most crucial element is Kans for the stability of the entire building. If it is found to be inadequate (corroded top slab of Kans which in turn, is supported on brick wall of Kans), there is no significance of checking the stability of building. Further, the super structure elements are also found to be deteriorated."

8. From a perusal of the report, it is evident that the building is 61 years old. There is no foundation of the building. The building is directly supported on the top slab of the *kaans* (underground sewage drain). As per the report of the expert, the bottom part of

the top slab of the *kaans* is deteriorated due to direct contact with sewage. The bottom of reinforcement of the top slab of *kaans* is seen to be exposed at few locations. The building load transfer mechanism is such that the entire load is carried by the top slab of the existing *kaans* and no structural details of the *kaans* are available. The test carried out by the expert on the said slab shows that the condition of the slab is poor, deteriorated, reinforcement corroded etc.. It is opined by the expert in the report that the detailed investigation about the load carrying capacity of the slab was not possible since the bottom portion of the slab was not approachable. Based on the said investigation, it was concluded in the report 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*. There is, thus, no significance of checking of the stability of the building and pre-structural elements are also found to be deteriorated.

9. In light of the above report, at least, it is evident that the building-in-question has been constructed over an underground drainage on the RCC slab without any foundation, which is now corroded. For the doubts raised in the report with regard to the structural stability on the building-in-question, it is not possible for us to draw any exception to the opinion as drawn by the then Nagarpalika and now the Municipal Corporation that the building is required to be demolished so as to clear the drain and to avoid unfortunate incident, which may result in loss of life of someone.

10. In the affidavit dated 7th September, 2024 filed on behalf of the then Nagarpalika in the previous writ petition namely Special Civil Application No. 13063 of 2024 (filed by the petitioners herein), it was categorically stated that the Nagarpalika was intending to clear the *kaans* which is around 10 kms. in length; 16 ft. in width and 8 ft. deep and is passing through the city of Nadiad from Canal to Shedhi River. The present building consists of 20 shops on the ground floor and 20 shops on the 1st floor, which were given on lease in 1962. The shops are in dilapidated condition and a resolution was, therefore, passed on 30.12.2022 to take appropriate action. It is also stated in the said affidavit that the natural water at the time of monsoon is flowing from this "kaans". The shops-in-question are situated near the station as well as near the bus stand on the Station road, Nadiad and the *kaans* under the shops is the main catchment area of water. Around 9 lakes are also connected with this *kaans* and approximately 75% natural water of the city of Nadiad is flowing from this *kaans*. It is also stated that every shop is having a manhole on the floor area and covered with iron lead and it was agreed by the shop owners that they will put up the cement sheets or wooden flooring to cover the manhole as the manhole is accessible as it is required to be cleaned by the Nagarpalika regularly.

11. It is further stated therein that against this all the ground floor shops have been covered the iron led/cover with RCC slab and hence for the last eight years, the Nagarpalika was not in a position

to clean the *kaans*. On account of the water logging in the city, the then Nagarpalika had requested the shop owners to dug out the floor and to find out the manhole. While doing so it was noticed that the *kaans* situated below 20 shops was full of siltation (i.e full of mud and other garbage) and out of 8 ft. deep, the water flow was through only 1 ft., deep as the remaining 7 ft. was covered due to siltation. On a warfooting, the *kaans* was required to be cleared through manhole situated in the shops, hence Notice dated 03.09.2024 was served to the shop owners with a request to permit the Nagarpalika to enter into the shops to clean the manhole, which had resulted into filling of the previous petition. It is also stated in the said affidavit that looking to the present position of heavy rainfall in the city of Nadiad, it is necessary for the Nagarpalika to clear the *kaans* situated under the shops.

12. We may now go through the affidavit dated 14th December, 2024 filed in the present petition by the Chief Officer of the Nagarpalika, wherein it is categorically stated that there was doubt about the structural stability of the building situated over the *kaans* and hence, the expert report was called for, which clearly concludes that the building is in dilapidated condition. It is sought to be submitted by the learned counsel appearing for the Municipal Corporation that in the similar situation, several other shops constructed on the *kaans* have been fallen down in the past, and the incident also resulted in mishap leading to death of one person, however, there is no material on record to substantiate the same.

13. Be that at it may, it is more than evident from the report of the expert that the building is in dilapidated condition and it is the reason for issuance of notice to the occupants asking them to vacate the building-in-question.

14. However, the fact remains that the occupants of the building-in-question namely the petitioners herein (15 in number) have been occupying the shops-in-question for a long time and they have paid the lease rent to the then Nagarpalika till the year 2022. No dispute has been raised before us about the occupation of the petitioners herein on payment of lease rent to the Nagarpalika. In our considered opinion, the petitioners cannot be said to be unauthorised occupants of the building-in-question. But the building-in-question cannot be allowed to remain as such and it is required to be demolished because of the serious issues about its structural stability, for the safety of the occupants. The balance is, therefore, required to be strucked by us.

15. Taking note of the above, we required the learned counsel for the respondent Corporation to find out from the Corporation a solution for rehabilitation/re-settlement/providing alternative accommodation to the shops owners/the petitioners herein, who are running their business from the shops existing in the building-in-question, which are their only source of livelihood. On this proposal of the Court, Mr. Nirav Thakkar, the learned counsel for the petitioners expressed a positive response. He would also submit that at some point of time, talks were held between the then

Nagarpalika and the occupants of the building-in-question, but it could not reach to a fruitful resolution, however, the petitioners are ready and willing to enter into dialog.

16. We, therefore, require the current Commissioner of the Nadiad Municipal Corporation to hold a meeting with all the occupants of the building-in-question by giving them due notice so as to find out a solution to the existing problems. We hope and trust that the occupants of the building-in-question will understand the current position of the building and participate with a positive attitude in the meeting to be conducted by the Commissioner.

17. The result of the meeting shall be brought before this court on the next date fixed.

18. We post the matter on 19.02.2025.

19. Till the next date of listing, no coercive measure shall be taken against the appellants herein.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

C.M. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: CHANDRAKANT MAHADEV JOSHI(HC01073), Principal Pvt. Secretary, at High Court of Gujarat on 31/01/2025 11:36:09