

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 564 of 2025****With****R/SPECIAL CIVIL APPLICATION NO. 566 of 2025**=====
RAJESHBHAI SHAMJIBHAI CHAVADA & ORS.**Versus****UNION OF INDIA & ORS.**
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Appearance:

MR BM MANGUKIYA(437) for the Petitioner(s) No. 1,2,3,4

MS BELA A PRAJAPATI(1946) for the Petitioner(s) No. 1,2,3,4

MR MAYANK CHAVDA AGP for the Respondent(s) No. 2,3

MR KSHITIJ M AMIN(7572) for the Respondent(s) No. 1

MR NISHANT LALAKIYA(5511) for the Respondent(s) No. 4

MR MUNJAAL M BHATT(8283) for the Respondent(s) No. 5
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CORAM: HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**Date : 17/02/2025****ORAL ORDER****1. RULE.****2.** Tag Special Civil Application No.566 of 2025 with Special Civil Application No.564 of 2025.**3.** By the Special Civil Application No.564 of 2025, the petitioners have prayed for declaring that the Gujarat Town Planning & Urban Development Act, 1976 (hereinafter after referred to as "Town Planning Act", for short) has ceased to be in operation from 01.06.1994 and therefore, the Town Planning Scheme framed by the State Government being Town Planning Scheme No.4, Raiya, Rajkot City, is ultra vires and unenforceable and inexecutable. By way of interim relief, the petitioners are seeking to restrain the respondents from implementing the Town Planning Scheme and subsequently, from evicting the petitioners from their residential premises. By the

Special Civil Application No.566 of 2025, the petitioners have prayed for quashing of the order passed by the Collector transferring final plot Nos.164, 426, 437, 450, 458, 459 of the Town Planing Scheme No.4, Raiya to the Municipal Commissioner, Rajkot Municipal Corporation and to quash the Rehabilitation Policy PPP-2013 on the ground that the State Government lacks power and competence to frame such scheme and further to quash the concession agreement entered into by and between the Rajkot Municipal Corporation and the respondent No.6. Since the reliefs prayed for are interconnected, both the writ petitions are taken up together and the learned counsels are heard on the prayer for interim relief as prayed for by the petitioners.

4. Heard the learned counsels at length on the prayer for interim relief pending the present writ petitions and perused the documents on record.

5. The learned counsel Mr. B. M. Mangukiya appearing for the petitioners submits that the State Government has constituted Rajkot Urban Development Authority ("RUDA" for share of brevity) in exercise of powers conferred under Section 22 of the Town Planning Act. The activities of the town planing include permission to construct, reconstruct, develop or redevelop the lands within the area of RUDA. The learned counsel submits that under Article 243P of the Constitution of India and clause C thereof defines the Metropolitan Area. Further, Clause 243W mandates that there shall be a legislation by a State Legislature endowing the powers on the Municipalities in relation to the subject enumerated in Schedule 12 of the Constitution of India and more particularly, Entry Nos.1 and 2 of Schedule 12 which deals with the Urban Town Planing including

Town Planing and Regulation of land use and constructions of buildings. The learned counsel for the petitioners submits that the aforementioned Articles read with Article 243ZE provide for constitution of metropolitan planning committee for every metropolitan area. The learned counsel submits that the Constitutional Amendments have been brought into force from 01.06.1994. Inconsistencies in the prevailing statutes have been permitted to be continued for a period of one year from the date of amendment and therefore, any statute, which is inconsistent with Article 243W read with entry Nos.1 and 2 of Schedule 12 and/or Article 243ZE, becomes inoperative from 01.06.1994. The learned counsel, therefore, submits that the sanctioning of the Town Planing Scheme after 01.06.1994 under the Town Planing Act is inconsistent with the above mentioned Articles, as the powers are required to be exercised by the Metropolitan Planning Committee or the Municipalities, whereas in the present case, it is RUDA constituted under the Town Planning Act, which has exercised the powers. The learned counsel further submits that the Draft Town Planning Scheme No.4, Raiya, Rajkot has been sanctioned as preliminary scheme in exercise of powers conferred upon the State Government under Section 65 of the Town Planning Act on 29.09.1993 and the said scheme has been finally sanctioned by the notification dated 12.07.1995. While sanctioning the Town Planing Scheme, the plots in question have been allotted by the Town Planning Officer to the State Government when declaring the same as slum area. He submits that the petitioners are sought to be evicted by the order passed under Section 65 of the Town Planing Act read with Rule 33 of the Rules in exercise of powers conferred under Section 68 of the Act. He submits that since all these powers have been exercised before 01.06.1994, the said actions are *ex facie ultra vires*. He,

therefore, submits that the petitioners are entitled for interim relief as prayed for in the present writ petitions. He submits that the State Legislation has exceeded the mandate contained in part IXA of the Constitution of India.

5.1 The learned counsel Mr. B. M. Mangukiya further submits that the slum area has been declared by the Rajkot Municipal Corporation in its general body meeting when the same has to be exercised by the prescribed authority under the Act. He submits that in the present case, no report has been received by the prescribed authority as contemplated under the Act so as to frame the policy in the present case and therefore, the policy being wrongly framed in the present case cannot be sustained in law. The learned counsel submits that even the declaration of the final plots as a slum area is without any power and competence. The allotment of the land by the Collector to the Commissioner and the declaration of the slum area by the Municipal Corporation are in breach of the provisions of Act. The learned counsel further submits that the petitioners are to be rehabilitated in the same place under the rehabilitation policy, but, in the present case, the same is not being followed.

6. Per contra, the learned senior counsel Mr. M. R. Bhatt appearing on behalf of the respondent No.6 submits that the submission of the petitioners that the Town Planning Act is inapplicable is thoroughly misconceived. The learned senior counsel submits that the petitioners are encroachers on the Government land. The land in question is government waste land and belongs to the Government. Due to large scale encroachment, the State Government decided to develop the land under the Slum

Rehabilitation Scheme and accordingly, the project has been undertaken in line with the Slum Rehabilitation Act and the State Policy thereunder. The area came to be declared as slum area by the prescribed authority and after such declaration, the tender came to be issued by the prescribed authority. Due procedure came to be followed. The learned senior counsel submits that once the Town Planning Scheme was finally sanctioned by the State Government, the respondent had absolute authority to exercise the powers under Section 68 of the Town Planning Act. He submits that the petitioners were issued eviction notices and the principles of natural justice were complied with. The petitioners were granted personal hearing and thereafter, the final order dated 08.01.2025 came to be passed in consonance with the judgment of the Hon'ble Supreme Court and this Court and in accordance with the Act. The learned senior counsel further submits that as on date, only three petitioners out of 341 slum dwellers have not vacated the premises. He submits that under the Redevelopment Scheme, all 341 slum dwellers including the petitioners will be paid monthly rent and will be rehabilitated by putting them in the new residential premises as per their entitlement under the Slum Rehabilitation Act. He submits that the petitioners have been granted all the benefits as have been paid to other 338 slum dwellers who have vacated the premises. He submits that the petitioners herein are making a demand much more than the benefits available under the Scheme and it is not permissible. He submits that in an earlier round of litigation being Special Civil Application No.1739 of 2024, this Court, vide order dated 09.12.2024, rejected the challenge to the notices issued under Section 68 read with Rule 33 of the Town Planning Act. He submits that this is a second round of litigation raising similar contentions and challenging the validity of the Act, which is nothing

but an abuse of process of law. He submits that the present writ petitions are an afterthought since in the order dated 09.12.2024 passed in Special Civil Application No.1739 of 2024, this Court observed that the petitioners have not challenged the Town Planning Scheme, but have only challenged the notices for implementation of the scheme. He submits that the present writ petitions are also hit by the principles of res judicata as all the contentions raised in the present writ petitions were available to the petitioners in the earlier round of litigation, but the same were never raised earlier. Lastly, the learned senior counsel contends that the petitioners are encroachers on government waste land and they can only be considered as occupiers and when majority of 338 slum dwellers out of 341 slum dwellers have already consented and vacated the land in question, the petitioners herein cannot be granted any interim relief. He, therefore, prays that the petitioners are not entitled to any interim relief.

7. The learned counsel Mr. Nishant Lalakiya appearing on behalf of the respondents Nos.4 and 5 Rajkot Municipal Corporation submits that the petitioners have failed to establish the prima facie case in their favour. He submits that the petitioners have not substantiated any claim of irreparable loss or injury. He submits that in the earlier round of litigation being Special Civil Application No.1379 of 2024, the petitioners failed to raise all the grounds and after dismissal of the proceedings, they cannot be permitted to re-agitate the same relief on a different ground by filing up the lacuna in the earlier petition. He submits that the present writ petitions are abuse of process of law. The learned counsel further submits that the petitioners have no locus standi to challenge the sanctioned town planning scheme as they are not the owners of the land in

question. He submits that mere possession does not confer any right to question the legality and validity of the Town Planning Scheme, which is a statutory scheme. The petitioners are encroachers on the subject land. The learned counsel further submits that out of 341 occupants, except the petitioners, all the other occupants have entered into the settlement with the respondent No.6 under the provisions of the Slum Rehabilitation Scheme. He submits that the petitioners are obstructing the said settlement and development process. He submits that the action of the petitioners are detrimental to the welfare of all slum dwellers, who were occupying the subject land. The petitioners are also entitled to all the admissible benefits. The petitioners are only prioritizing their personal interest over the public interest of rest of the slum dwellers. In respect of the contentions raised by the petitioners that the Town Planning Scheme was inoperative in view of the constitutional provisions, the learned counsel submits that the same are misconceived. He submits that the designation of metropolitan area is effective from the date of such notification, thereby affirming the validity of the Town Planning Scheme under Article 243-P(c) of the Constitution of India. The learned counsel further submits that no irreparable harm will be suffered by the petitioners in case the interim relief is refused. Further, there is no balance of convenience in favour of the petitioners as the petitioners only intend to disrupt the ongoing process which is in larger public interest. He, therefore, submits that the prayer for interim relief be rejected.

8. Considered the submissions in detail.

9. In the present case, admittedly, the petitioners are occupants of the government waste land which has been declared as slum area under the Slum Redevelopment Act and sought to be redeveloped under the Town Planning Scheme. As per the Slum Rehabilitation Policy PPP-2013, the area in occupation of the petitioners along with 338 slum dwellers was delineated as rehabilitation zone by notifying the area as slum area under the Town Planning Act. It is decided to rehabilitate the slum dwellers including the petitioners herein since the land in question became part of the Town Planning Scheme No.4. After following due procedure, the State Government decided to award the contract to the respondent No.6 and accordingly, the development agreement came to be executed. Thereafter, all the occupants in the notified slum area have been served with the notices to vacate the premises for redevelopment. Admittedly, the petitioners herein were also served with the said notices under Section 68 read with Rule 33 of the Town Planning Act. The petitioners herein challenged the said notices by filing Special Civil Application No.1379 of 2024 in this Court. Vide order dated 09.12.2024, this Court was pleased to reject the said writ petition on the ground that the scheme has not been challenged by the petitioners. Further, it was observed that the petitioners are in occupation of the government waste land which is notified as slum area and not being the owner thereof, they cannot stall the project for rehabilitation when all the slum dwellers have vacated the area in question except the petitioners herein. It was held that the Town Planning Scheme had been sanctioned and had become the part of the Act and the petitioners have not challenged the Town Planning Scheme. Accordingly, the said writ petition came to be dismissed. Now, by the present writ petitions, the petitioners have challenged the Town Planning Act being ultra vires of part IXA

of the Constitution of India. The reliefs prayed for are in effect similar to the reliefs prayed for in the SCA No.1379 of 2024. No circumstance has been brought on record by the learned counsel for the petitioners to show that in view of any subsequent development, the petitioners herein are constrained to challenge the Town Planning Act. Prima facie, it seems that the observation of this Court in the order dated 09.12.2024 in Special Civil Application No.1379 of 2024 that the petitioners have not challenged the Town Planning Scheme since it had become the part of the Act, is the basis for filing the present writ petitions so as to fill up the lacuna in the earlier proceedings. The said order has become final since it has not been challenged by the petitioners.

10. The petitioners herein have challenged the validity of the Act. It is trite law that there is presumption to the validity of the Act as passed by the State Legislature till contrary is proved. In the present case, the learned counsel for the petitioners has prima facie failed to substantiate for the contentions raised by relying upon any material particulars being brought on record. It is not in dispute that the construction of rehabilitation scheme is going on and all the three petitioners are not vacating the subject land. Further, the petitioners are entitled to new residential premises under the Scheme. It is also not in dispute that 338 slum dwellers have already vacated the subject land for redevelopment. The petitioners are in occupation of government waste land in a notified slum area and not being the owner of the same, they cannot prioritize their interest over the public interest of other slum dwellers. Further, no irreparable harm, loss or grave prejudice will be caused to the petitioners in case the interim relief is not granted since the petitioners are entitled to all admissible benefits under the Slum

Rehabilitation Scheme.

11. For the aforesaid reasons, the interim relief as prayed for is refused pending the adjudication of the present writ petitions.

(ANIRUDDHA P. MAYEE, J.)

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