

VISHWAS SUDHANSHU BHAMBURKAR Versus UNION OF INDIA

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (DIRECTION) NO. 1 of 2021
In
R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2020
In R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2021
In
R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 3 of 2020
In
R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 3 of 2021
In
R/WRIT PETITION (PIL) NO. 63 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 4 of 2020
In
R/WRIT PETITION (PIL) NO. 63 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019
With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019

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With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8470 of 2021

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Appearance:

PARTY IN PERSON(5000) for the Applicant(s) No. 1

MR DEVANG VYAS(2794) for the Opponent(s) No. 1

MR DHAVAL G NANAVATI(2578) for the Opponent(s) No. 3

MR. BHADRISH S RAJU(6676) for the Opponent(s) No. 2

MR MIHIR JOSHI with MR KUNAN NAIK
 for the Applicant in **Special Civil Application No.7399 of 2019 and Special Civil Application No.7404 of 2019**

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CORAM:HONOURABLE DR. JUSTICE VINEET KOTHARI
and
HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

Date : 17/08/2021

ORAL ORDER
(PER : HONOURABLE DR. JUSTICE VINEET KOTHARI)

1. In pursuance of our last Order dated **02.08.2021** in the present PIL Petition, two Affidavits have been filed in the Court today when Gujarat High Court has resumed physical hearing from today only, after pandemic period.

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(i) One Mr Dinesh Chand Sharma, Joint Director General of the DGCA, Head Quarters, New Delhi, has filed his Affidavit dated **10.08.2021** alongwith the Documents (Paper-book Page Nos.806 to 896) and;

(ii) Mr. Dharmesh B. Mistry, Town Planner, Town Development Department, Surat Municipal Corporation, has filed his Affidavit dated **10.08.2021** with certain Documents (Paper-book Page Nos.764 to 805).

2. The said Affidavits are taken on record.

3. The copies of these Affidavits are supplied to other learned Counsel appearing in the matter, including the Government Counsel, Mr. Antani.

4. Alongwith the Affidavit of Mr. Dinesh Chand Sharma, Joint Director General, copies of 27 Final Orders passed on **06.08.2021**, **09.08.2021** and **10.08.2021** for demolition, after giving an opportunity of hearing to the concerned Builders, have been passed under **Rule 6** of the **Aircraft (Demolition of Obstructions Caused By Buildings and Trees etc.) Rules 1994 (hereinafter referred to as '1994 Rules')** by the same authority, Mr. Dinesh Chand Sharma, Joint Director General. The 27 Builders, who have constructed Buildings in violation of the said Rules of 1994 and have raised constructions beyond permissible limits are named hereinbelow;

1. **DRB Ravani Developers,**
Cellestial Dreams,
Canal Road, Bhartana,
Surat-395007, Gujarat.

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2. **M/s Raghuvir Developers,**
Owner of Crystal Palace Co-Op, Housing Society,
B/h, Florence Apartment,
Vesu, Abhava Road,
Surat 395007, Gujarat.
3. **Florence Co. op Society,**
A Building Ground Floor,
Nandini-1, VIP Road, Char Rasta
Abhva Road, Surat-395007
4. **Horizon Project,**
VIP Road, E3 Block, Vesu,
Surat 395007, Gujarat.
5. **Jash Residency,**
Vesu, Rundh,
Surat-394518, Gujarat.
6. **Jolly Residency,**
Vesu,
Surat 395007, Gujarat.
7. **Rashik Villa,**
Ward 2, Vesu,
Surat-394518, Gujarat.
8. **M/s Raghuvir Developers,**
Developer of Salasar Palace,
Near Vastugram,
NM Mavani Road, Vesu,
Surat 394518, Gujarat.

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9. **Samarth Enclave,**
VIP Road, Vesu,
Surat-395007, Gujarat.
10. **Sarjan Apartment,**
VIP Road, Ward 2,
Vesu, Magdalla,
Surat-395007, Gujarat.
11. **Shreeji Residency,**
Vesu,
Surat 395007, Gujarat.
12. **Shrungar Residency,**
Behind Nandini 01
Near Shyam Palace,
Vesu, Surat-395007.
13. **Om Icon Co-Op Housing Society,**
VIP Road, Vesu,
Surat-395007, Gujarat.
14. **Shyam Palace,**
VIP Road, Vesu,
Surat – 394518, Gujarat.
15. **Star Galaxy Co-Op Housing Society,**
VIP Road, Vesu,
Surat-395007, Gujarat.
16. **The Evolution,**
Opp. Nandani-3, Near 7 Heavens,
VIP Road, Vesu,
Surat-395007, Gujarat.
17. **Gokul Platinum,**
Vesu, Magdalla,
Surat-394518, Gujarat.

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18. **Green Fortune,**
Vesu, Magdalla,
Surat-394518, Gujarat.
19. **Happy Glorious,**
Vesu, Magdalla,
Surat-394518, Gujarat.
20. **7 Heaven Apartment,**
Opp. Nandini 3, VIP Road, Vesu,
Surat – 395007, Gujarat.
21. **Empire Regency,**
TP-6, FP-39, VIP Road, Vesu,
Near Star Galaxy, E3 Block,
Vesu,
Surat-395007, Gujarat.
22. **Aagam Crossroad Co-Op Housing Soc.,**
Vesu, Magdalla,
Surat 394518, Gujarat.
23. **Fionna Apartment,**
Vesu,
Surat 394518, Gujarat.
24. **Ravi Ratnam Apartment,**
Udhana Magdalla Road,
Near Someshwar Square, Vesu,
Surat-395007, Gujarat.
25. **Swastik Vihar Apartment,**
Someshwar Enclave, Vesu,
Surat-395007, Gujarat.
26. **L & T Apartment,**
Surat Bypass, Samarth Park Society,
Gail Colony, Vesu,
Surat-394518, Gujarat.

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27. **Happy Residency,
Vesu,
Surat 394518, Gujarat.**

5. The learned Counsel at bar also submitted before us that after the process of granting opportunity of hearing and holding survey or even joint surveys by the concerned Authorities, finally they have identified the aforesaid 27 buildings /constructions, which are in violation of the Rules and are safety hazards under the said 1994 Rules framed under the **Aircraft Act, 1934** (*hereinafter referred to as 'the Act'*) read with the **Airport Authority of India Act, 1994** .

6. We are presently not concerned with the extent of deviations and violations on the part of these 27 Builders, as now they have been found to be violators under the law by the competent Authority after giving them full opportunity of hearing and as a matter of fact lengthy process of hearings have taken place, including virtual hearings during Covid period from March 2020 till August, 2021.

7. The Rule 6-A of the 1994 Rules still provides for a further remedy of Appeal to the concerned Builder, which Authority may either confirm or modify or reject the final Order under **Rule 6** and once such order under **Rule 6** is confirmed or modified under **Rule 6A**, such final Order is bound to be complied with by the concerned Builder. Under **Rule 7 (2)** of the Rules, which further provides that the owner of such building, who is adversely affected or his building is demolished under these Rules can claim compensation in accordance with the provisions contained in Section 9-B of the Act. The responsibility or obligation to undertake the demolition under 1994 Rules is with the

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concerned District Collector, who can take the necessary logistic support is to be provided by the concerned Municipal Corporation.

8. Further Affidavit is filed by Surat Municipal Corporation of Mr. Dharmesh B. Mistry, Town Planner, Town Development Department, Surat Municipal Corporation and not by the Commissioner of Surat Municipal Corporation, whose name was informed to the Court that Mr. B.N. Panni, IAS. We view this lapse also on the part of Surat Municipal Corporation very seriously as the Commissioner has ventured not to respond to this Court by filing his own Affidavit and delegated this to a lower Officer, without seeking leave of this Court.

9. With the Affidavit of the Town Planner, Mr. Dharmesh B. Mistry, some copies of Notices of **10.08.2021** addressed to the concerned Builders are also annexed and a copy of the Court Order passed in **Special Civil Application No.7399 of 2019, Vikas Satischandra Modi Vs. Surat Municipal Corporation** by the Coordinate Bench headed by Hon'ble the Chief Justice are also annexed.

10. Three following Special Civil Applications are also on our board today, namely,

(i) **Special Civil Application No.7399 of 2019 by Vikas Satischandra Modi Vs. Surat Municipal Corporation,**

(ii) **Special Civil Application No.7404 of 2019 by Purav Virendra Shah Vs. Surat Municipal Corporation** and;

(iii) **Special Civil Application No.8470 of 2021** filed by the same

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Petitioner, **Vishwas Sudhanshu Bhamburkar Vs. Airport Authority of India.**

11. Besides the aforesaid 27 Builders against whom the Orders under Rule 6 have been passed by the Joint Director General, Mr. Dinesh Chand Sharma, the learned Counsel for the Airport Authority, Mr. Bhadrish Raju has brought to our notice that two more Builders have been notified of their violations

(i) **M/s. Samprati Palace, Near SUDA Bhavan, Vesu, Surat** vide **Letter No. AAI/SURAT/NO C_Survey/2020** dated **25.03.2021** in which top elevation of structure found more than as available in issued NOC and the building surveyed during random survey by Aerodrome Safeguarding Team certain violations have been found and in

(ii) **M/s. Kanubhai C. Shah, Opp. Bhartimaip School, Big Bazar lane, Vesu, Surat** the **Letter No. AAI/SURAT/NO/C/2021/5707-12** dated **21.01.2021** has been sent to the said Builder who has replied to the same on **08.02.2021**.

12. The said Builder, M/s Kanubhai C. Shah, seems to have filed **Special Civil Application No.5829 of 2021** before the learned Single Judge of this Court and it is stated at Bar that the learned Single Judge has granted a stay on obstacle notice till next day of hearing. However, neither the copy of the stay Order is placed for our perusal, nor the said Special Civil Application is so far tagged to this PIL No. 63 of 2019, Vishwas Sudhanshu Bhamburkar Vs. Union of India.

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13. We direct the Registry to tag this **Special Civil Application No.5829 of 2021** to this **PIL No.63 of 2019** immediately, with the approval of Hon'ble Chief Justice.

14. Learned Government Counsel, Mr. Antani, submitted that he is yet to receive full instructions from the **District Collector, Surat (Mr. Ayush Oak, IAS)** and he has conveyed the message to him to immediately contact him for filing response to this Court.

15. Mr. Devang Vyas, learned Assistant Solicitor General, has submitted that his Affidavit clarifies all the action taken on the part of the concerned DGCA Authority, namely, Joint Director General and now the final adjudication Orders under Rule 6 of the 1994 Rules have been passed against 27 Builders, the copies of which are already placed on record dated **10.08.2021**.

16. Mr. Dhaval Nanavati, learned Counsel appearing for Surat Municipal Corporation, has submitted that as soon as they receive the appropriate instructions from the District Collector, Surat, they will provide all logistic support and action support to the District Collector for proceeding further for demolition in accordance with the 1994 Rules.

17. The petitioner also present in person reiterated his submissions and also urged that besides taking note of the height violations, the lateral violations have not so far being taken note of by the concerned Authority of the Surat Municipal Corporation, which also

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deserves to be taken into account as the longitude and the latitudes of the sites in question have not been properly matched by the concerned Authorities and even those offending constructions have to be demolished to that extent under 1994 Rules.

18. Mr. Mihir Joshi, Senior Counsel briefed by Mr. Kunan Naik, learned Counsel appearing on behalf of two Builders Petitioners of **Special Civil Application No.7399 of 2019** and **Special Civil Application No.7404 of 2019**, has submitted that not only these Petitioners but the other Builders may also be permitted to avail their remedy of Appeal under Rule 6-A as indicated in the impugned Orders under Rule 6 dated **06.08.2021**, **09.08.2021** and **10.08.2021**. However, he submitted that he is not at all defending the public safety compromise, if any, and larger public interest to that extent has to prevail but a practical and proper solution should be found out at this stage. The submission made by Mr. Mihir Joshi, is fair enough but we are at loss to appreciate and understand the time lag and long time period for which the said violations of constructions beyond permissible heights and even lateral deviations have been permitted by the concerned Authorities causing serious hazard to the Air Safety at Surat Airport.

19. The compliance with the principles of natural justice giving an opportunity of hearing to the concerned parties /violators has been taking place for now last four years from 2015 even though the present PIL Petition was filed in the beginning of 2019 and Covid lockdown and Corona period started from March, 2020 only for one year prior to Corona lockdown also there was enough period with the Authorities

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concerned to take appropriate action for demolition under 1994 Rules and during the period of Corona also all Departments and even Courts were working on virtual platforms and therefore a long period of time lag in the name of giving notices and opportunity of hearing is not a justifiable excuse for such a long period in the light of public safety under Aircraft Regulations, being severely compromised at Surat Airport.

20. We were informed by the learned Counsel Mr. Bhadrish S. Raju that Air Strip Runway Length to the extent of 615 Meters was reduced and the other side expansion of Air Strip is not even possible because there are Oil and Gas Pipe Lines passing there, which will not permit the expansion of Air Strip or Runway on the other side. Therefore, he submitted that the demolition of the Buildings to the extent beyond the permissible limits, which may not cause safety hazard to the Air Traffic is the only way out and that is the only solution provided in the 1994 Rules also.

21. We need not go into the history and background of the NOCs and approval of maps given for whatever reasons but they were certainly not proper to say the least at the relevant point of time, because the Rules of 1994 permit even demolition of those construction, which even though might have been constructed with the approvals of the concerned Authorities at the relevant point of time. It is finally the assessment of the competent Authorities and adjudication under the 1994 Rules only, which has to decide finally as to whether and to what extent the demolition work has to be undertaken to permit a proper Air Safety for landing and taking off of the Aircrafts at the Surat Airport in the State

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of Gujarat.

22. It need not be over emphasized that even though presently the Air Traffic at Surat Airport may not be very huge but Surat is a very developed City of the State of Gujarat and the future expansion and increase of Air Traffic with even larger Air Crafts coming and going out of this Airport has to be taken in account.

23. Therefore, a remedy now at this stage under Rule 6-A of course permissible and allowed to the concerned Builders, 27 named above, is available and we would not like to cut-short that remedy by exercising our supervening, extraordinary plenary powers under Article 226 of the Constitution of India in the present PIL Jurisdiction but we definitely expect and enjoin even upon that Appellate Authority, namely, Director General of Civil Aviation to undertake that process as expeditiously as possible.

Rule 6-A is quoted below for ready reference;

“6-A Appeal against the final order – If any person is aggrieved by the final order passed under Rule 6, he may prefer an appeal to Director General of Civil Aviation within sixty days of the date of the order and the Director General shall after hearing the concerned parties, desirous of being heard, either confirm or modify or reject the final order.”

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24. We do not find any outer time limit for deciding the Appeal under Rule 6-A of 1994 Rules for Director General of Civil Aviation, and therefore, we pass the following directions for expeditious disposal of these Appeals;

25. Since the impugned Orders have been passed under Rule 6 only on **06.08.2021**, **09.08.2021** and **10.08.2021**, such Appeals may not have been even filed by the affected parties as of today i.e. **17.08.2021**.

26. In the circumstances of the case, we curtail the period of filing of Appeals from 60 days to two weeks as admittedly the affected Builders have already been served with these Orders. So these Appeals may be filed on or before **31.08.2021** by the concerned parties, if they want to file Appeal against these Orders. For this purpose, besides the Orders served upon the parties, the DGCA is directed to issue public notice in the two English daily and at least one newspaper in vernacular Gujarati, Gujarat Samachar, local edition of Surat that such Appeals have to be filed on or before **31.08.2021** serving a copy of the Memo of Appeal in advance to the adjudicatory authority, namely, Joint Director General in his office. The DGCA may extend this period of two weeks for a further period of two weeks only on recording the reasons therefor in writing.

27. Besides the aforesaid Builders, we also permit the flat owners, the residents of the flats only those whose flats may come in the range of offending constructions and liable for demolition to join the lis

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before the Director General through their concerned Builder. The individual flat owners will not have any such right to file individual separate Appeals against the said impugned Orders dated **06.08.2021**, **09.08.2021** and **10.08.2021** and they may support the case of the concerned Builders before the said DGCA, Delhi

28. The concerned Authority, namely, DGCA, may provide an opportunity of hearing to the Appellants /Builders or their authorized representatives and the other side namely the adjudicating authority or its authorized representative and then pass appropriate Orders under Rule 6-A of 1994 Rules as expeditiously as possible but not beyond the period of six weeks from the date of filing of the Appeals.

29. The copies of such final Orders with their communication to the concerned District Collector, Surat will be filed in the form of Compliance Report in this Court on or before 30.11.2021 by Mr. Devang Vyas, ASG. We expect that a meticulous and punctual compliance of these time frames will be made by all the Authorities jointly and severally.

30. We have noted from the tenor of these two Affidavits filed today before us and oral arguments that somewhat an effort is being made by the concerned Authorities to act not in tandem or in mutual cooperation but as if they were working in different silos or water tight compartments. We cannot appreciate this and therefore we direct that all the concerned Authorities will act in tandem and in full cooperation in the larger public interest for achieving the objective of 1994 Rules in its

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true letter and spirit. The communication gaps and tendency to pass the buck will have to be avoided and will be viewed seriously by this Court for the obvious reasons of public safety in Air Traffic and nobody can be allowed to compromise with the public safety concerns of this Court on the anvil of Constitutional spirit behind Articles 14 and 21 of the Constitution of India.

31. The summary of today's Order will be published both by DGCA and Surat Municipal Corporation in the aforesaid Newspapers within a week from today so that no grievance of so called non-compliance of principles of natural justice is claimed at a later point of time by any affected parties.

32. If the compliance of the aforesaid directions is not made by the concerned Authorities on the given time frames, we direct that on the next date of hearing, the following Officers, who alone will file Affidavits from now onwards in this Court giving their respective updated Status Reports on each date of hearing will also remain present in the Court on each day of hearing and they may even be asked on the next date to make cash security deposits from their personal resources to ensure meticulous and punctual compliances on their parts.

(i) Mr. Ayush Oak, IAS, District Collector, Surat

(ii) Mr. B.N. Panni, IAS, Commissioner, Surat Municipal Corporation

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(iv) Mr. Dinesh Chand Sharma, Joint Director General or his authorized next Senior Official in the Office of Joint Director General from Delhi.

28. Since we have given time up to 30.11.2021 for the aforesaid compliances, let the matter be now listed before the Court on **Thursday, 02.12.2021.**

33. If any Writ Petition is filed against the Orders passed by the appellate authority under Rule 6A of 1994 Rules, they will be tagged with the present PIL No.63 of 2019, which is being dealt with by this Court in the first instance, subject to approval by the Hon'ble Chief Justice.

34. The interim Orders, if any, in Special Civil Application, which are tagged with this PIL will continue only till the next date and will remain subject to further orders passed by this Court in the lead case, **PIL No.63 of 2019.**

Put up on **02.12.2021.**

(DR. VINEET KOTHARI, J.)

(UMESH A. TRIVEDI, J.)

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