

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10113 of 2023****With****CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 10113 of 2023**

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SANJAY LALITBHAI RAICHURA & ORS.**Versus****RAJKOT MUNICIPAL CORPORATION & ORS.**

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Appearance:**MR BM MANGUKIYA(437) for the Petitioner(s) No.****1,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,3,4,5,6,7,8,9****MS BELA A PRAJAPATI(1946) for the Petitioner(s) No.****1,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,3,4,5,6,7,8,9****DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3,5****MR BHARAT T RAO(697) for the Respondent(s) No. 4,6****MR HRIDAY BUCH(2372) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 22/06/2026****ORAL ORDER**

1. By way of this petition, the petitioners have sought for following reliefs:

“48(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and to hold and declare that the action of the respondents of demolition of the properties of the petitioners is ex-facie illegal and ultravires;

(B) Be pleased to issue a writ of mandamus or a writ

in the nature of mandamus or any other appropriate writ, order or direction and to hold and declare that the respondent – City Engineer and his seniors and subordinates, as the case may be, with Mr.Jagdish Dobaria – respondent No.5 be held personally liable for the wrongful loss caused to the petitioners and direct them to reconstruct the premises of the petitioners in the same manner as it stood prior to demolition and hand over the possession within time bound period.

(C) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and to hold and declare that the action of the respondent – City Engineer and others to hand over possession of the vacant land after demolition of the premises of the petitioners to the respondent No.s4 and 5 is wholly illegal and ultra vires;

(C) Pending admission and final disposal of the present petition, be pleased to direct the respondents to take immediate steps to reconstruct the premises of the petitioners in its original shape and hand over the same to the petitioners without time bound period;

(D) During pendency and final hearing of this petition, this Hon'ble Court be pleased to restrain the respondents, their agents and servants to take any steps towards the redevelopment of the said scheme in pursuance of the illegal possession given to the respondent Nos.4 and 5 by the City Engineer and others; and direct them to maintain status-quo of the land as it stands today.”

2. Heard learned advocate Mr. B.M.Mangukiya for the petitioners, learned advocate Mr. Nishant Lalakiya for learned advocate MR. Hriday Buch for respondent No.1 and learned advocate Mr. Daxesh Patel for learned advocate Mr. B.T.Rao for respondent Nos.4 and 6.

3. Learned advocate Mr. Lalakiya submits that the present petition may not be entertained by this Court, more particularly, learned advocate draws the attention of this Court to a decision which is annexed with the writ petition, being order dated 27.12.2019 in Special Civil Application No.12374 of 2018. Learned advocate would submit that some of the present petitioners mainly petitioner Nos. 1, 2, 5, 7, 12, 14, 18 and 22 had approached this Court, with the very self same prayers that is having challenged the scheme of redevelopment before this Court vide the petition referred to herein above and vide the order referred herein above, this Court has rejected the said petition. Learned advocate would submit that in so far as the said petitioners are concerned, the said order, would act as *res judicata* against maintainability of a fresh petition.

4. Learned advocate would submit that as such, in so far as the rest of the petitioners are concerned, the order, would cover the judgment of the learned Co-ordinate Bench, would cover the issues raised herein also. Learned advocate would submit that having

regard to such a position, this Court may not entertain the present petition. Learned advocate would also submit that the petitioners herein, have misused the legal process inasmuch as, the petitioners including some of the petitioners herein, having approached this Court by preferring Special Civil Application No.12374 of 2018 and learned Coordinate Bench having rejected the said writ petition, vide order dated 27.12.2019, had preferred an Letters Patent Appeal being LPA No.112 of 2020 and whereas, the said LPA came to be dismissed for non-prosecution vide order dated 18.04.2022. Learned advocate would submit that thereafter, the petitioners – appellants, had preferred MCA No.2 of 2022 in the said LPA for restoring the LPA and whereas, the said MCA, also came to be dismissed for want of prosecution vide order dated 17.02.2023. Learned advocate would submit that since the order has become final inter party and whereas since the issues raised in the present petition have been considered by the learned Coordinate Bench in the said decision, on two grounds that is the order acting as *res judicata* and the order being binding on this Court, this Court may not entertain the writ petition.

5. As against the same, learned advocate Mr.Mangukiya would submit that undoubtedly some of the petitioners herein were petitioners in the said writ petition and whereas learned advocate would try and submit that since some of the issues, which were relevant to decide the cause, had not been urged before the learned

Coordinate Bench, therefore, the petitioners had again approached this Court by way of this writ petition, *inter alia*, urging those new points.

6. Learned advocate Mr. Mangukiya also, could not state as to whether the Letters Patent Appeal was restored or whether any application is filed before the Hon'ble Apex Court challenging the decision of dismissing the Letters Patent Appeal and / or the Misc. Civil Application for restoration, for non-prosecution.

7. Considering such a position, to this Court it would appear that nothing further is required to be done by this Court. The reason for the same being that the fact of the judgment dated 27.12.2019 passed by the learned Coordinate Bench of this Court (Hon'ble Mr. Justice Vipul M. Pancholi – as his Lordship then was), was preferred *inter alia* by some of the petitioners, who are part of the present writ petition. It also appears that there is no dispute as regards, the reliefs which had been prayed for, being substantially the same, as are being prayed in the present writ petition.

8. Considering such a position, this Court is inclined to accept the submissions made by learned advocate Mr. Lalakiya that judgment dated 27.12.2019 in Special Civil Application No.12374 of 2018, would bar, the present petition, insofar as such of the writ petitioners are concerned, more particularly, since the same would

act as *res judicata*. Further more, since it appears that there is no dispute as regards the cause of action, which had been raised in the present petition and which had been raised before the learned Coordinate Bench, in Special Civil Application No.12374 of 2018, being identical to this Court it would appear that the decision of the learned Coordinate Bench, would be binding on this Court, and as observed herein above nothing further is required to be done by this Court except for noting that for the reasons stated by the learned Coordinate Bench in judgment dated 27.12.2019 and for the reasons given herein above, the present petition is disposed of as rejected. Notice discharged.

9. Consequentially, Civil Application also stands disposed of.

(NIKHIL S. KARIEL,J)

NAIR SMITA V./01-SB