

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14400 of 2013****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2026****In R/SPECIAL CIVIL APPLICATION NO. 14400 of 2013****With****CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2026****In R/SPECIAL CIVIL APPLICATION NO. 14400 of 2013****With****CIVIL APPLICATION (FOR AMENDMENT) NO. 3 of 2026****In R/SPECIAL CIVIL APPLICATION NO. 14400 of 2013**=====
MOTABEN APALDAS ASNANI & ORS.**Versus****STATE OF GUJARAT & ORS.**
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Appearance:

MR DIGANT B KAKKAD(6523) for the Petitioner(s) No. 1,2,3,4

MR MASOOM K SHAH, ADVOCATE WITH MR. VIPUL S.REVADARIYA,
ADVOCATE (6516) for the Petitioner(s) No. 1,2,3,4MR. KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR. VINAY B.VISHEN,
AGP for the Respondent(s) No. 1MR. MAULIN RAVAL,ADVOCATE WITH MR. GAURANG VAGHELA,
ADVOCATE FOR M/S RJ RAWAL ASSOC.(1987) for the Respondent(s) No.

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MS SHIVYA A DESAI(5478) for the Respondent(s) No. 2

RC JANI & ASSOCIATE(6436) for the Respondent(s) No. 3

RULE SERVED for the Respondent(s) No. 4
=====**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY**Date : 25/03/2026****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)****ORDER IN CIVIL APPLICATION NO. 1 & 2 OF 2026**

1. The Delay Condonation Application filed along with the Substitution Application to bring on record the heirs and legal representatives of deceased applicant Nos.1 and 4 have been served upon the respective advocates appearing on

behalf of the respective respondents. No objection has been raised to the delay condonation application as also the substitution application. The delay in filing the substitution application has been explained to the satisfaction of the Court. The delay condonation application is allowed.

2. We may note that the description of heirs and legal representatives of the deceased applicants has been given in Paragraph Nos. '2 & 4' of the substitution application namely Civil Application No.01 of 2026. Both the Civil Application (for condonation of delay) No.02 of 2026 and Civil Application (for Joining Party) No.01 of 2026 are, accordingly, allowed.

3. The Office shall make necessary incorporations in the description of array of parties as against the name of the applicant Nos.1 & 4 incorporating the names of heirs and legal representatives of appellant Nos.1 & 4 as described in Paragraph '2 & 4' of Civil Application No.01 of 2026, within the period of three weeks from today.

ORDER IN CIVIL APPLICATION NO.3 OF 2026:-

1. The Civil Application No.3 of 2026 has been presented on 21.02.2026 wherein, the following reliefs are sought to be added in the prayer clause of the writ petition:-

"ab) Be pleased to declare the Gujarat Town Planning and Urban Development Act, 1976 as ultra vires the Constitution of India, 1950.

ac) Be pleased to declare the notification no. GHB-19-UDA-1177/646 (1)-Q2 and GHB/20/UDA-1177-646 (2)-Q both dated

30th January 1978, issued by the State of Gujarat, as ultra vires the Constitution of India, 1950.

ad) Be pleased to declare Section 51 of The Constitution (Forty Second Amendment) Act, 1976 as ultra vires the Constitution of India, 1950 and violative of the Doctrine of Basic Structure.

ae) Be pleased to declare Gujarat State Legislature (Delegation Of Powers) Act, 1976 (Act no. 44 of 1976) as ultra vires the Constitution of India, 1950"

2. As in the original petition, there is a challenge to the limited provision of Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the Act, 1976") and further by way of an amendment brought in the year 2014, the petitioner has sought declaration for quashing and setting aside of the office order passed by the Municipal Commissioner of Ahmedabad Municipal Corporation being contrary to the provisions of the Act, 1976, the petitioner cannot be permitted to add the prayers sought by way of an amendment brought in the year 2026, as it would change the entire nature of the dispute brought before us.

The Civil Application (For Amendment) No.3 of 2026 is accordingly rejected.

ORDER IN SPECIAL CIVIL APPLICATION NO. 14400 OF 2013 :-

1. The present petition has been initially filed in the month of September, 2013 with the following prayers:-

"(a) Be pleased to hold Section 67, 68 and 105 of The Gujarat

Town Planning and Urban Development Act and Rule 33 of the Gujarat Town Planning and Urban Development Rules as ultra vires the Constitution of India and declare it as null, void ab initio and non-est and quash and set aside the action taken by Respondent No.2 under the said Act as illegal, without authority of law, null.

b) Be pleased to set aside the action taken by Respondent No. 2 under the said Act as illegal, without authority of law, null.

(c) Be pleased to issue guidelines for the procedure required to be followed under section 67, 68 read with Rule 33 of the Gujarat Town Planning and Urban Development Act.

(d) Pending Admission, Hearing and Final disposal of this Petition, Respondent No. 2 be restrained to take further steps under pursuant to notices (Annexure A).

(e) Status quo as on today for the property at address mentioned in the Cause Title of the Petitioner be granted till final disposal of this present."

2. By means of an amendment brought under the order dated 04.09.2014 passed by this Court, the following prayer was added :-

"17(aa) Be pleased to declare the officer order 3709 dated 4th October 2012 by Municipal Commissioner of Ahmedabad Municipal Corporation as ultra vires The Constitution of India, 1950, The Gujarat Town Planning and Urban Development Act, 1976 (President's Act no. 27 of 1976) and Gujarat Provincial Municipalities Act, 1949 and further quash and set aside the same."

3. The present petition has been connected with the group of the writ petitions where the challenge is to the validity of the entire Gujarat Town Planning & Urban Development Act, 1976 on the ground that it cannot be saved under Article 357(2) of the Constitution of India, inasmuch as, the said

enactment was not in operation after the proclamation of emergency made under Article 356 of the Constitution of India had lapsed bringing an end to the President rule in the State of Gujarat on 24.12.1976.

4. The present petition is accordingly detached from the Bunch leading being Special Civil Application No.17302 of 2013 and it is listed to be heard separately.

(SUNITA AGARWAL, CJ)

BINA SHAH

(D.N.RAY,J)