

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13196 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 13278 of 2021**

=====

MAHENDRA KUMAR SINGHAL AUTHORIZED REPRESENTATIVE THE
EVOLUTION SERVICE SOCIETY & 3 other(s)

Versus

JOINT DIRECTOR GENERAL, OFFICE OF DIRECTOR GENERAL OF CIVIL
AVIATION

=====

Appearance:

SPECIAL CIVIL APPLICATION NO. 13196 of 2021

MR MIHIR JOSHI, SENIOR ADVOCATE with KUNAN NAIK AND UTSAV P
PARIKH(8223) for the Petitioner(s) No. 1,2,3,4

VIVAN T SHAH(7947) for the Petitioner(s) No. 1,2,3,4
for the Respondent(s) No. 1

SPECIAL CIVIL APPLICATION NO. 13278 OF 2021

MR MIHIR THAKORE, SENIOR ADVOCATE WITH MR DIPEN DESAI for
the Petitioner(s) No. 1-35

=====

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 14/09/2021****ORAL ORDER**

1. Mr. Mihir Joshi, learned Senior Counsel appearing with Mr. Kunan Naik, learned Advocate with Mr. Vivan Shah and Mr. Utsav Parikh, learned Advocates for the petitioners, submitted that the petition arises out of the orders passed under the Aircraft (Demolition of obstructions caused by Buildings & Trees) Rules, 1994, ((hereinafter referred to as "the Rules"). While drawing the attention of this Court to the order dated 17.08.2021 passed by the Division Bench in Writ Petition (PIL) No. 63 of 2019, it is submitted that the Division Bench while referring to the remedy under Rule 6-A has observed that the course permissible to the builders is available and that it would not like to cut-short the remedy by

exercising its supervening, extraordinary plenary powers under Article 226 of the Constitution of India. It is submitted that the orders dated 06.08.2021, 09.08.2021 and 10.08.2021 passed under Rule 6, were not under challenge but were placed on record by the respondent therein and this Court, in para. no. 27 has granted the liberty to the builders to file an Appeal before the Appellate Authority with a limited right to the flat owners to support such Appeals. It is submitted that clearly, the members have no right if the builders do not file an Appeal, rendering the members remedy-less

2. It is next submitted that the buildings have been constructed after the plans were approved and after the issuance of the 'No Objection Certificate' (hereinafter referred to as "the NOC") by the Airport Authority. It is not the case of the Airport Authority that the NOC has been obtained fraudulently. Undisputedly, the buildings are on the land owned by the society and it nobody's case that there is an encroachment.

3. It is further submitted that even otherwise, the Joint Director General, vide communication dated 18.12.2020 has informed the Airport Authority of India Ltd. to the effect that the process of issuing Aviation NOC has undergone a complete transformation as the accuracy of locating any building/map/ geographical representation on actual land surface has increased manifold due

to utilization of latest technology and adapting thereto the process/ procedures in the system. It is also submitted that the Joint Director General was of the opinion that mismatch/variation of the geographical coordinates/ reference datum is attributed to the procedure which was used to issue the NOC at that time. It has been observed that it cannot be concluded that the owners of the identified obstacles have violated the conditions/ specifications of the NOC issued to them and that the anomaly i.r.o identification of obstacles have arisen due to the shortcomings of the process and system of issuing NOC which was prevailing at that time and therefore the resultant violation, if any, cannot be completely attributed to the owners.

4. It is further submitted that this Court in Special Civil Application No. 5829 of 2021 was kind enough to grant interim protection, wherein the subject matter was issuance of the obstacle notice requiring the petitioners therein to remove the offending construction. It is also submitted that the said protection has been extended from time to time and is still in currency.

5. While referring to the Compliance Affidavit dated 23.11.2020, and more particularly, para. 6, it is submitted that it is the stand of the authority of DGCA to the effect that the aerodrome operator of the Surat Airport has already displaced runway-22 by 615 meters after assessment of the obstacles on Approach surfaces at Surat

Airport, and that the information on the obstacles have been disseminated to all the stakeholders through their aerodrome manual and charts. Thus, with displaced threshold the issue of safety in respect of the obstacles in the approach, stands addressed and accordingly, there is no safety threat apparent on account of this issue at Surat Airport.

6. It is submitted by learned Senior Counsel that the right of the unit holders, has been restricted vide the order dated 17.08.2021 and therefore there is no remedy available to the unit holders to file an Appeal except to support the appeals filed by the developers. To the best of the information of the petitioners, the developers have not filed any Appeal, which otherwise was to be filed on or before 31.08.2021.

7. Learned Senior Counsel Mr. Mihir Thakore appearing with learned Advocate Mr. Dipen Desai for the petitioners in Special Civil Application No. 13278 of 2021, at the outset, submitted that so far as the petitioners are concerned, the petitioners were not in the proceedings before the Hon'ble Division Bench and were not heard. That the order dated 06.08.2021 has been passed wherein there is sheer non application of mind. The order also suffers from the violation of principles of natural justice. It is submitted that after the order dated 02.08.2021 was passed by this Court, there was a meeting held on 04.08.2021 amongst the officers of the

respondent-authority and the Airport Authority of India. On 06.08.2021, a letter has been addressed by the AAI and the respondent-authority on the basis of the meeting convened on 04.08.2021 and the letter dated 06.08.2021, has passed the order on the very same day. It is vehemently submitted that neither the information as regards the meeting nor the contents of the letter dated 06.08.2021 have been shared by the authority concerned before passing the order. Had it been known to the petitioners or the developers, they would have been in a position to bring it to the notice of the authority the opinion/communication dated 18.12.2020. It is also submitted that the authority vide communication dated 18.12.2020 has opined that no fault can be attributed to the owners inasmuch as the NOCs issued, had not been in violation of the conditions/specifications of the construction.

8. It is submitted that some of the petitioners are the members of service co-operative societies and it is settled that the service cooperative societies are not the owners of the societies, and therefore, ultimately, the unit holders would be the affected parties. It is also submitted that in absence of any appeal by the developers, the unit holders, would not be in a position to file any Appeal or support the same. Rule 6-A though provides for an Appeal by the aggrieved party, however, as per the observations made by the Division Bench in para. 27, the petitioners, would not

be in a position to file an appeal, rendering the petitioners remedy-less.

9. Considering the submissions made by the learned Counsel appearing for the respective petitioners so also the material available on record the following position emerges.

10. This Court vide the order dated 01.04.2021 in the case of ***Kanubhai Chandulala Shah versus Union of India*** passed in ***Special Civil Application No. 5829 of 2021*** has extended the protection which has been continued from time to time and is still in currency. Para. 3 of the said order reads as under:

“3. In view of the aforesaid submissions canvassed by learned advocate for the petitioner, issue Notice to the respondents returnable on 27.4.2021. Ad-interim relief in terms of paragraph 23(d) is granted till the next date of hearing. Direct service, to be served through R.P.A.D., at the cost of the petitioner is granted, in addition to the regular mode of service.”

11. Para. 6 of the Compliance Affidavit filed by the DGCA reads as under:

“6. It is further submitted that the respondent 2 (AAI), the aerodrome operator of Surat airport has already displaced runway-22 by 615 meters after assessment of obstacles on Approach surfaces at Surat airport. The information on obstacles have been disseminated to all stakeholders (airlines, non-scheduled aircraft operators etc.) through their aerodrome manual and charts (Enclosure-2). Thus, with displaced threshold the issue

of safety in respect of obstacles in approach path stands addressed and accordingly, there is no safety threat apparent on account of this issue at Surat Airport."

12. Pertinently, the hearing was conducted in the month of July, 2020 and after almost a period of one year somewhere in the month of August, 2021, the meeting was convened of the AAI, wherein the issue appears to have been discussed followed by the letter dated 06.08.2021; which is the basis on which the orders dated 06.08.2021, 09.08.2021 and 10.08.2021 have been passed. Moreover, *prima facie*, it appears that neither the contents of the meeting nor the copy of the letter dated 06.08.2021, which appears to be edifice for passing the orders, have been shared with the petitioners or the developers. Such action on the part of the respondent-authority, is in violation of principles of natural justice. The grievance is also raised by the petitioners that the right to file Appeal under Rule 6-A, is not available to them. According to the information available, the Appeals have not been filed by the developers, rendering the petitioners remedy-less.

13. In view of the aforesaid, issue **Notice** to the respondents returnable on 29.09.2021. In the meantime, the parties are directed to maintain status quo as it exists today. Direct service is permitted.

SINDHU NAIR

(SANGEETA K. VISHEN,J)