Reserved On : 16/04/2026
Pronounced On : 22/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5539 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

==========

Approved for Reporting	Yes	No
	✔	

==========

UNNATI JASMIN SHAH & ORS.
Versus
MUNICIPAL CORPORATION & ANR.

==========

Appearance:
MR APURVA VAKIL, SR. ADVOCATE WITH MR DM SHAH(5989) for the Petitioner(s) No. 1,2,3,4
MR MAULIN RAVAL, SR. ADVOCATE WITH MR GAURANG A VAGHELA(8340) for the Respondent(s) No. 1
MR. JAIMIN R DAVE(7022) for the Respondent(s) No. 2
MS HIRVA R DAVE(10742) for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 1
RAVAL& TRIVEDI ASSOCIATES(9262) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

CAV JUDGMENT

1. By way of the present petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 19th March, 2018 passed under Section 8(4) of the Gujarat Regularisation of Unauthorised Development Act,

2011, whereby the order dated 12th October, 2015 passed under Section 6(3) of the said Act regularising the unauthorised construction came to be cancelled. The petitioners have also assailed the consequential notice dated 2nd April, 2018 issued under Section 260(1)(a) of the Bombay Provincial Municipal Corporation Act, 1949.

2. The brief facts giving rise to the present petition are as under:

2.1 The building known as "Swastik Complex" was constructed on land bearing Survey No.7449 of Town Planning Scheme No.4 situated at Rajpur-Hirpur, Sub-District Ahmedabad (Maninagar), District Ahmedabad, admeasuring approximately 749.21 square metres.

2.2 Respondent No.5 submitted an application to the Corporation seeking regularisation of the unauthorised construction under Section 5 of the Gujarat Regularisation of Unauthorised Development Act, 2011. The unauthorised development comprised construction admeasuring 83.16 square metres on the ground floor of Swastik Complex, as well as an unauthorised development admeasuring 24.95 square metres in an area originally earmarked for parking, both of

which were sought to be regularised.

2.3 Upon consideration of the application and after receipt of the requisite fees, the Corporation, by its order dated 12th October, 2015, regularised the aforesaid unauthorised development.

2.4 The petitioner and respondent Nos.2 to 4 thereafter purchased the property from respondent No.5 vide different sale deeds as follows:

> *(i) Sale Deed dated 14.10.2016 bearing Registration No. 9487 (copy at Annexure-E hereto) in favour of Respondent Nos.2, and 3. The subject matter of the said sale deed is the Shop Nos.2 admeasuring 37.75 sq. meters of Swastik Complex and undivided share of 40 in the land for a consideration of Rs.37,80,000/-.*
>
> *(ii) Sale Deed dated 14.10.2016 bearing Registration No. 9488 (copy at Annexure-F hereto) in favour of Respondent Nos.2, 3 and 4 and the Petitioner. The subject matter of the said sale deed is the cellar of Swastik Complex admeasuring 278 sq. meters and a undivided share of 100 sq. meters in the land for a consideration of Rs.2,08,50,000/-.*
>
> *(iii) Sale Deed dated 14.10.2016 bearing Registration No. 9491 (copy at Annexure-G hereto) in favour of Respondent Nos.2, and 3. The subject matter of the said sale deed is the Shop No.1 admeasuring 37.75 sq. meters of Swastik Complex and undivided share of 40 in the land for a consideration of Rs.37,80,000/-.*
>
> *(iv) Sale Deed dated 14.10.2016 bearing Registration No. 9492 (copy at Annexure-H hereto) in favour of Respondent No.4, and the Petitioner. The subject matter of the*

said sale deed is the Shop No.3 admeasuring 37.75 sq. meters of Swastik Complex and undivided share of 40 in the land for a consideration of Rs.37,80,000/-.

(v) Sale Deed dated 14.10.2016 bearing Registration No. 9493 (copy at Annexure-I hereto) in favour of Respondent No.3, and the Petitioner. The subject matter of the said sale deed is the Shop No.4 admeasuring 38 sq. meters of Swastik Complex and undivided share of 40 in the land for a consideration of Rs.37,80,000/-.

2.5 Thereafter, the petitioners along with respondent Nos.2 to 4 executed a common lease deed dated 10th February, 2017 in favour of Yes Bank Ltd. Pursuant thereto, it appears that Yes Bank Ltd. came into possession of Shop Nos.1, 2 and 3 in its capacity as the lessee under the said lease deed.

2.6 It is the case of the petitioners that several complaints concerning the unauthorised development carried out on the top floor as well as on the ground floor of Swastik Complex were submitted to the municipal authorities by way of letters dated 12th October, 2017, 13th October, 2017, 06th November, 2017, 28th November, 2017 and 17th January, 2018. However, instead of initiating appropriate action against the alleged unauthorised development, the competent authority, in exercise of powers under Section 8(4) of the Gujarat Regularisation of Unauthorised Development Act, 2011, passed the

impugned order in the name of respondent No.5, whereby the earlier order dated 12th October, 2015 granting regularisation was cancelled/ revoked.

2.7 Consequent upon the aforesaid order, the respondent-Corporation issued a notice dated 02nd April, 2018 under Section 260(1)(a) of the Gujarat Provincial Municipal Corporation Act in the name of respondent No.5 as well as the petitioners and respondent Nos.2 to 4.

3. Being aggrieved by and dissatisfied with the aforesaid, petitioners have approached this Court by way of this petition for the appropriate writ, direction or order.

4. Since the issue involved in the present petition is narrow in compass, with the consent and request of Learned Advocates appearing for the respective parties, the petition is taken up for final hearing at the admission stage.

5. Heard Learned Senior Advocate Mr.Apurva Vakil with Learned Advocate Mr.D.M. Shah for the petitioners, Learned Senior Advocate Mr.Maulin Raval with Learned Advocate Mr.Gaurang Vaghela for the respondent-Corporation, Learned Advocate Mr.Jaimin Dave for respondent No.2.

6. Learned Senior Advocate for the petitioner, while assailing the impugned order as well as consequential notice, has made following submissions:

6.1 It is submitted that the impugned order has been passed in flagrant violation of the principles of natural justice. The Corporation neither issued any notice to the petitioners nor afforded them an opportunity of being heard prior to passing the impugned order. In the absence of compliance with the fundamental requirements of *audi alteram partem*, the impugned order is unsustainable in law and deserves to be quashed and set aside.

6.2 It is further submitted that the impugned order has been passed in the name of respondent No.5, the erstwhile owner of the property, and not against the present petitioner, who had acquired ownership by virtue of a registered sale deed executed in the year 2016. Consequently, the impugned order has admittedly been passed without issuance of notice to, or affording an opportunity of hearing to, the person directly and adversely affected thereby.

6.3 It is submitted that the unauthorised construction in question was regularised by order

dated 12th October, 2015. After satisfying itself with regard to the legal status of the property, including the Non-Agricultural permission, sanctioned plan and the order of regularisation, the petitioner, acting *bona fide*, purchased the property in the year 2016. However, after an inordinate lapse of nearly three years, the regularisation order came to be revoked and/or cancelled in purported exercise of powers under Section 8(4) of the Act, 2011. It is, therefore, contended that such exercise of power after an unexplained delay of three years is impermissible in law, particularly when undertaken in breach of the principles of natural justice, and consequently the impugned order deserves to be quashed and set aside.

6.4 It is further submitted that the invocation of Section 8(4) of the Act, 2011 for the purpose of cancelling an order passed under Section 6(3) is wholly misconceived and without authority of law. Once an order of regularisation has been validly passed by the competent authority under Section 6(3), the same cannot subsequently be reviewed, modified or cancelled by resorting to the provisions contained in Section 8(4) of the Act.

6.5 It is also submitted that Section 8(4) merely contemplates action in relation to unauthorised development which has not been regularised or with respect to an order or decision taken under sub-section (2) of Section 5 on or after 28th March, 2011. The said provision does not confer any power of review or revision upon the authority in respect of an order passed under Section 6(3), whereby the unauthorised development has already been regularised.

6.6 By making above submissions, Learned Senior Advocate for the petitioners requested this Court to allow the petition as prayed for.

7. *Per contra,* Learned Senior Advocate for the respondent-Corporation, while supporting the impugned order, has made the following submissions:

7.1 Learned Senior Advocate appearing for the respondents, while not disputing the factual matrix and without filing any affidavit-in-reply, submitted that the impugned order passed under Section 8(4) of the Act cancelling/revoking the order of regularisation is legal, valid and fully justified, having been passed in accordance with the provisions of law.

7.2 It is submitted that upon inquiry, it was revealed that the construction which had been regularised by order dated 12th October, 2015 was carried out after the prescribed cut-off date. In such circumstances, the exercise of powers under Section 8(4) of the Act is stated to be fully justified. Learned Senior Advocate further contended that Section 8(4) specifically incorporates the deemed cut-off date of 28th March, 2011 and mandates that no unauthorised construction carried out on or after the said date is eligible for regularisation. Consequently, where it is found that the construction was raised after the prescribed cut-off date, the competent authority is empowered to cancel the order of regularisation by invoking the provisions of Section 8(4) of the Act.

7.3 By making the above submissions, Learned Senior Advocate for the respondent-Corporation requested this Court to dismiss the petition.

8. I have heard Learned Advocates for the respective parties and have gone through the materials produced on record. No other and/or further submissions have been canvassed by Learned Advocates for the respective parties except what are stated hereinabove.

9. Having heard the learned advocates appearing for the respective parties and upon consideration of the material available on record, the short question that arises for determination before this Court is whether the competent authority, in exercise of powers under Section 8(4) of the Gujarat Regularisation of Unauthorised Development Act, 2011, is empowered to cancel or revoke an order of regularisation passed under Section 6(3) of the said Act.

10. So as to decide the aforesaid question, in my considered opinion, relevant provisions of the Act, 2011 deserve to be considered.

> *"**5. Notice and application for unauthorized development.** – (1) At any time prior to the 28th March, 2011 a notice issued to an owner or occupier or any order issued or decision taken under the relevant law requiring such owner or occupier to remove or pull down or alter unauthorised development carried out shall be deemed to have stood suspended unless and until such notice, order or decision stands revived under sub-section (2) of section 6 :*
>
> *Provided that such provision shall not be applicable in case of development carried on land in respect of matters provided in subsection (1) of section 8.*
>
> *(2) Notwithstanding anything contained in the relevant law or in the order issued or the decision taken under the relevant law, directing removal, pulling down or alteration of unauthorised development, or discontinuance of any use of land or building, the designated authority shall either suo moto or otherwise, within six months from the commencement of this Act, or within such period as may be extended by the State Government by order in writing, serve on the owner or occupier a notice in the manner as may be*

prescribed and direct him to furnish such particulars and documents as the designated authority deem necessary:

Provided that any applicant who has been served with the notice under the relevant laws as provided in sub-section (1), or not may make an application in the manner as may be prescribed to the designated authority for regularisation of any unauthorised development within the period of six months from the commencement of this Act, or within such period as may be extended by the State Government by an order in writing :

Provided further that in case where more than one owner or occupiers are availing the facility of unauthorised development in part or whole, all such owners or occupiers shall make an application jointly to the designated authority :

Provided also that the designated authority may after making such inquiry as it thinks fit, if satisfied, allow the lesser number of owners or occupiers to make an application.

(3) The occupier or owner or, as the case may be, the occupiers or owners shall reply in response to the notice served on him or them under sub-section (2) within a period of one month of such notice and in such manner as may be prescribed.

6. Grant or refusal to regularize unauthorized development. *– (1) On receipt of the reply to the notice or the application made by the applicant under section 5, the designated authority shall, within a period of eighteen months or such period as may be extended by the State Government by an order in writing, scrutinize the same and after making such inquiry as it may deem fit, is of the opinion that the unauthorised development can be regularised, shall pass an order requiring the applicant to pay fees, if any, payable under the relevant laws and the fees payable under this Act for regularisation of unauthorised development.*

(2) The applicant shall pay the fees as required under sub-section (1) within a period of one month from the date of the order, failing which the notice or order or decision as referred to in sub-section (1) of section 5, shall stand revived and in a case where no notice under the relevant law has been given as provided in sub-section (1) of section 5, the

application shall stand refused.

(3) On payment of fees as provided under sub-section (2), the designated authority shall pass an order regularizing the unauthorised development, wholly or partly, with or without conditions, in the form and manner as may be prescribed.

(4) If, on scrutiny of the reply to the notice or the application of the applicant and after making such inquiry, as he deems fit, the designated authority is of the opinion that the unauthorised development cannot be regularised, it shall pass an order, within eighteen months of such reply to notice or application, refusing to regularise such unauthorised development, stating the grounds therefore, in the prescribed form and manner as may be prescribed.

8. Circumstances in which unauthorized development shall not be regularized. *- (1) An unauthorised development shall not be regularised in a case where unauthorised development is carried out on any of the following lands, namely:-*

(a) land belonging to Government, local authority or statutory body;

(b) land acquired or allotted by the Government, local authority or statutory body for a specific purpose;

(c) land under alignment of roads indicated in development plan or a town planning scheme or under alignment of a public road;

(d) land designated or reserved under a development plan or a town planning scheme;
(e) lands till regularised as provided in section 9;

(f) water courses and water bodies like tank beds, river beds, natural drainage and such other places;

(g) areas earmarked for the purpose of obnoxious and hazardous industrial development.

(2) An unauthorised development shall not be regularised if it is inconsistent with –

(a) fire safety measures under the relevant law, or

(b) structural stability requirements as per the GDCR:

Provided that subject to other provisions of this Act, on presentation of a certificate from the authority, as may be prescribed, with regard to the compliance of the provisions of clause (a) or (b) or both, as the case may be, the designated authority may regularise the unauthorised development.

(3) Notwithstanding anything contained in clause (a) of sub-section (2), the designated authority may for the purpose of regularisation of unauthorised development, direct the applicant for making of provisions in the unauthorised development as follows, namely: -

(a) In the case of buildings with 100 per cent built-up area with no space for water storage tank and installation of fire pumps and no provision of alternate means of escape or no provision for fixed fire-fighting installations, the designated authority may, in consultation with the Chief Fire Officer of the municipal corporation, area development authority or, as the case may be, the urban development authority direct the applicant to provide such fire safety measures as may be specified in the direction within a period of three months from the date of such direction.

(b) In the case of buildings where no space is available within the complex in which they are situated for the construction of underground water storage tanks and installation of fire pumps but adequate means of escapes are available, the designated authority may direct the applicant to provide common underground water storage tank and fire pumps in such complex at suitable location within a period of three months from the date of direction.

(4) Any unauthorised development carried out or an order issued or decision taken for the matters specified in sub-section (2) of section 5, on or after the 28th March, 2011 shall not be regularized."

11. A conjoint reading of Sections 5 and 6 of the Act, 2011 reveals that any person who has

been served with a notice, order or decision directing the removal, demolition or alteration of an unauthorised development or requiring discontinuance of the use of any land or building is entitled to seek regularisation of such unauthorised development by making an application under Section 6(1). Equally, a person who has not been served with any such notice, order or decision is also entitled to invoke Section 6(1) and apply for regularisation of the unauthorised development.

Section 6(1) further contemplates that the Designated Authority shall, within a period of eighteen months or such extended period as may be prescribed by the State Government, scrutinise the application and, after conducting such inquiry as it deems fit, determine whether the unauthorised development is capable of being regularised. Upon arriving at a conclusion in favour of regularisation, the Designated Authority is required to pass an order directing the applicant to deposit the fees prescribed under the Act.

In terms of Section 6(2), where an applicant who has been served with a notice, order or decision referred to in Section 5(1)

fails to deposit the prescribed fees within the stipulated period, such notice, order or decision shall stand revived. In the case of an applicant who has not been served with any such notice, order or decision, failure to deposit the requisite fees would result in the application for regularisation being treated as refused.

Upon payment of the prescribed fees, the Designated Authority is obligated to pass an appropriate order under Section 6(3) regularising the unauthorised development. Conversely, where upon scrutiny and inquiry the Designated Authority forms an opinion that the unauthorised development is not eligible for regularisation, Section 6(4) mandates that the application be rejected by a reasoned order assigning the grounds for such refusal.

11.1 Section 8 of the Act, 2011 enumerates the categories of unauthorised development which are not amenable to regularisation. Consequently, while undertaking the scrutiny and inquiry contemplated under Section 6(1), the Designated Authority is required to examine the application in the light of the restrictions and disqualifications embodied in Section 8. In other words, the factors and prohibitions contained in

Section 8 are required to be kept in view before the Designated Authority arrives at a decision either to grant regularisation under Section 6(3) or to reject the application under Section 6(4).

Sub-section (4) of Section 8 specifically provides that any unauthorised development carried out, or any order issued or decision taken in respect of the matters specified in sub-section (2) of Section 5, on or after 28th March, 2011 shall not be regularised. Thus, the embargo contained in Section 8(4) constitutes a statutory consideration which the Designated Authority must necessarily bear in mind while exercising its jurisdiction under Section 6.

A plain and harmonious reading of Sections 6 and 8 makes it evident that Section 8 does not confer any independent or substantive power upon the Designated Authority to review, revise or recall an order already passed under Section 6(3) or Section 6(4). Rather, it merely prescribes the parameters and limitations governing the exercise of powers under Section 6. The power to adjudicate an application for regularisation is traceable to Section 6 alone, whereas Section 8 delineates the circumstances in which such regularisation is impermissible.

Accordingly, once the Designated Authority has passed an order either granting regularisation under Section 6(3) or rejecting the application under Section 6(4), the Act does not envisage any power of review or revision in favour of the Designated Authority. The only statutory remedy provided under the Act is the right of appeal available to an applicant whose application for regularisation has been rejected under Section 6(4).

12. In light of the aforesaid statutory scheme and legal position, if the undisputed facts of the present case are examined, it emerges that the order under Section 6(3) of the Act came to be passed on 12th October, 2015. It necessarily follows that, before passing the said order, the Designated Authority must have undertaken the inquiry contemplated under Section 6(1) and, in the course of such inquiry, duly considered the restrictions and prohibitions contained in Section 8 of the Act. The order under Section 6(3) having been passed upon such scrutiny, the subsequent invocation of Section 8(4) by the Designated Authority for cancelling or revoking the very order of regularisation is, in the considered opinion of this Court, wholly misconceived and dehors the powers conferred

under the Act.

The reason is not far to seek. As discussed hereinabove, Section 8 does not vest any independent or substantive power in the Designated Authority. It merely prescribes the classes of unauthorised developments that are ineligible for regularisation and sets out the statutory parameters to be borne in mind while exercising jurisdiction under Section 6. The embargo contained in Section 8 is therefore required to be considered at the stage of inquiry under Section 6(1), before the Designated Authority arrives at a decision either granting regularisation under Section 6(3) or rejecting the application under Section 6(4).

Once an order granting regularisation has been passed under Section 6(3), the Designated Authority cannot, in the absence of any express statutory provision, *suo motu* revoke or cancel the same by resorting to Section 8(4). Such an exercise would amount to assuming a power of review or recall which the legislature has consciously not conferred upon the authority. The impugned action of the respondents in revoking the order passed under Section 6(3) is, therefore, a clear instance of exercise of jurisdiction not vested in them by law.

Acceptance of such an interpretation would effectively amount to conferring upon the Designated Authority a power which finds no sanction in the statutory framework.

13. A perusal of the impugned order further indicates that the Designated Authority has, on the basis of certain material or evidence, arrived at a conclusion that the construction in question was carried out beyond the prescribed cut-off date. This Court is unable to discern the source of power under the Act which authorises the Designated Authority, after passing an order under Section 6(3), either to collect fresh evidence or to reassess and review the material that had already been considered while granting regularisation.

13.1 In the aforesaid circumstances, this Court is of the considered opinion that the action of the respondent authorities in cancelling and/or revoking the order of regularisation is wholly without jurisdiction and, therefore, legally unsustainable.

The question framed for determination is answered accordingly.

14. In view of the foregoing discussion, the

present petition deserves to succeed and is accordingly allowed. The impugned order dated 19th March, 2018 passed under Section 8(4) of the Act, as well as the consequential notice dated 02nd April, 2018 issued under Section 260(1)(a) of the Gujarat Provincial Municipal Corporation Act, are hereby quashed and set aside.

(NIRAL R. MEHTA,J)

ANUP