

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16256 of 2021**

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DHARMENDRA RAVIPRATAP RAJAK

Versus

STATE OF GUJARAT

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Appearance:

MR.NANDISH H THACKAR(7008) for the Petitioner(s) No.

1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,3
0,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,5
1,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,7
2,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,87,88,89,9,90

MR. G H VIRK(7392) for the Respondent(s) No. 2

MR. ISHAN JOSHI, AGP for the Respondent(s) No. 1

MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No. 2

MR. SHYAMAL K BHIMANI(8233) for the Respondent(s) No. 3

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 27/01/2022

ORAL ORDER

1. By way of the present writ-application under Article-226 of the Constitution of India, the writ-applicants herein seek to challenge the action of undertaking the work of Redevelopment of the 'Soneriya Block', situated on T.P. Scheme No. 11, Final Plot No. 170 at Rakhiyal, Bapunagar, Ahmedabad, in view of the fact that the respondent no.2 not providing the detailed information and audience to the writ-applicants and not deciding the representations made by the writ-applicants. It is further the

grievance of the writ-applicants that the redevelopment process in respect of the above-referred scheme is without following the due process of law, as contemplated in the Redevelopment of Public Housing Scheme, 2016 (hereinafter referred to as 'the Redevelopment Scheme' for the sake of brevity). The prayers as prayed for the writ-application are stated thus:

“(A) YOUR LORDSHIPS be pleased to issue appropriate writ, direction or order of this quashing and setting aside the "Final Notice" dated 11.10.2021 issued by the respondent no.2 as the said action is arbitrary, illegal, and without following the due process of law, in the interest of justice;

(B) YOUR LORDSHIPS may be pleased to declare and hold that the Redevelopment Process adapted by the respondent no.2 at the "Soneriya Block" situated at TP Scheme No. 11 and FP No. 170, Rakhial, Ahmedabad, to be illegal, as the same is in violation of the Redevelopment of Public Housing Policy, 2016, in the interest of justice;

(C) YOUR LORDSHIPS be pleased to pass an order directing the respondents to provide the entire record of the Redevelopment process carried out by the respondent no.2 and 3 or in the alternative, be pleased to call for the entire records from the respondents for the scrutiny of this Hon'ble Court, in the interest of justice;

(D) YOUR LORDSHIPS be pleased to direct the respondents to maintain status quo with regard to the entire process, pending the admission, hearing and final disposal of the present petition;

(E) YOUR LORDSHIPS be pleased to grant

such other and further reliefs, as the deemed fit, in the interest of justice.”

2. The brief facts germane to adjudication of the present writ-application are stated thus:

2.1. The writ-applicants are the owners and occupants of the respective units situated in the aforesaid area known as ‘Soneriya Block’. The writ-applicants are owners of the said unit as per the resolutions passed by the respondent no.2 in the year 1984 as well as 2001, wherein, the ownership rights were transferred to the respective occupants. These units were constructed on the land belonging to the respondent no.2 being TP Scheme No. 11 and Final Plot No. 170 at Rakhiyal-Asarwa at Ahmedabad. It is stated that there are about 760 dwelling units and 18 shops in the said area.

2.2. The writ-applicants came to be served with Notice under Section 268 of the BPMC Act (for short ‘the Act’) on 22.01.2021. The writ-applicants were informed about the redevelopment project undertaken by the respondent no.2 and work order issued to the respondent no.3. The writ-applicants tried to gather the information and ultimately one of the writ-applicants

preferred an application under Right to Information Act on 08.04.2021 with regard to the redevelopment process, however, the said application was never answered. The main grievance of the writ-applicants is that, if the writ-applicants were made part of the entire process, then the respondent no.2 should not have withhold such information which ultimately has to be given to the beneficiaries. It is further stated that the writ-applicants made representation dated 27.08.2021 to the respondent no.2, which is not answered by the respondent no.2. It is further stated that the respondent no.2 initiated the work of demolition and already 5 blocks are already demolished till date.

2.3. It is the grievance of the writ-applicants that the final notice issued by the respondent no.2 – AMC dated 11.10.2021 is without provision of law and it is in the form of an ultimatum and the writ-applicants are asked to vacate the premises, failing which the writ-applicants will not be given the benefits of the redevelopment process. The respondent no.2 being a public agency, is bound to provide the requisite documents to the writ-applicants and non-providing of such documents, create a grave suspicion in the mind of the writ-applicants.

2.4. The summation of the grievance of the writ-applicants can be said to be the impugned action on the part of the respondents of not providing the information and documents, etc. and issued a final notice dated 14.10.2021 and in view thereof, the writ-applicants is constrained to approach this Court with the aforesaid reliefs.

SUBMISSIONS ON BEHALF OF WRIT-APPLICANTS:

3.1. Mr. Nandish H. Thackar, the learned counsel appearing for the writ-applicants, at the outset submitted that the writ-applicants are not opposing the redevelopment being carried-out by the respondents in the aforesaid scheme, viz. 'Soneriya Block'. The writ-applicants are the persons who are economically and socially backward and most of them are living below the poverty line. It is undisputed fact that as per the resolution of the Ahmedabad Municipal Corporation, the writ-applicants are the owners of the units which are constructed on the Corporation's land. The writ-applicants have approached this Court in view of the fact that the consents of the writ-applicants were taken under the garb of false promise and with an undertaking that the Redevelopment Policy, 2016 shall be followed, and accordingly, the writ-applicants will get the benefits of the said Scheme/Policy. The main grievance as

submitted by Mr. Nandish Thacker, the learned counsel is that the Policy, 2016 is not being implemented by the Corporation in its true spirit, and therefore, submitted that the process adapted is illegal.

3.2. Mr. Nandish Thacker, the learned counsel has submitted that the writ-applicants are aggrieved by; (a) size of the units are not given as per the Policy, 2016; (b) there are several irregularities in the implementation of the Project as per the Policy; (c) there is a failure to quantify the amount of maintenance to be born by the writ-applicants as per the Policy, 2016; (d) the representations as well as grievance of the writ-applicants are not answered by the respondents and (e) Fake promises given by the respondent no.3 before obtaining the consent.

3.3. Mr. Thacker, the learned counsel lastly submitted that the respondents be directed to adhere to the Redevelopment of Public Housing Policy, 2016 as well as the terms of the tender executed between the respondent Corporation and respondent private Developer and further direct the respondents to resolve the issues of the writ-applicants as contended before this Court in accordance with law and in consonance with the Policy, 2016.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.2 – AHMEDABAD

MUNICIPAL CORPORATION:

4.1. Mr. G.H. Virk, the learned counsel appearing for the respondent no.2- Ahmedabad Municipal Corporation submitted that ‘Soneriya Block’ quarters is a group of 30 buildings, each of which is 2 or 3 storeyed, and 42 shops built more than 50 years ago, forming Plot No. 170 in town Planning Scheme No. 11 (Village: Rakhiyal, Tal.: Maninagar, Dist.: Ahmedabad). The land on which Soneriya Block is constructed is owned by the respondent Ahmedabad Municipal Corporation.

4.2. Mr. Virk, the learned counsel submitted that Soneriya Block being civil structures more than 50 years old and having been subjected to repeated illegal modifications to the structural integrity of the buildings, over and above the wear and tear expected in civil structures with passage of time, is in a dilapidated and extremely precarious conditions.

4.3. Mr. Virk, the learned counsel submitted that the Government of Gujarat through the Urban Development and Urban Housing Department introduced the policy in the public interest

with the intention of revamping the urban landscape of cities in Gujarat State, and with the specific intent of providing safe, hygienic and sustainable residential accommodation to residents of slums or public housing projects.

4.4. Mr. Virk, the learned counsel further relied upon the salient features of the Redevelopment of Public Housing Scheme Guidelines, 2016 and also in consonance with the facts of the present case, the following is relevant:

- The policy defines ‘dilapidated condition’ at Clause No. 2.1(b) (pg. 43), as “such houses which show signs of decay or breaking down and require major repairs and are far from being in condition that can be restored or repaired are considered dilapidated”.
- The photographs produced at Page. 86-104 of AMC’s affidavit established that Soneriya Block is indeed dilapidated.
- Clause No. 2.3 (Pg. 43) of the Policy stipulates that Public Housing Scheme older than 20 years or in dilapidated condition are eligible for redevelopment.
- The post-redevelopment benefits that will be available to residents including the present writ-applicants are identified at Clause-3.1, 3.2 and 5.2 of the Policy (pg. 44, 45 and 47).

- As per Clause-4.1 (b) of the Policy (pg. 45), the AMC, being the concerned public agency can initiate the process of redevelopment.
- In terms of Clause-4.2(a) of the Policy (pg.46), a minimum of 60% of members of a society are required to offer consent for redevelopment. It is pertinent to note that, in the present case, the consent of more than 90% members was available prior to the filing of the present writ-application and even after the consent rate has increased to around 93%.
- In terms of Clause-5.1 of the Policy (pg.46-47), the beneficiaries shall receive transit accommodation and allowance during the redevelopment period. It is undisputed that in the present case, such accommodation and allowance is being provided to the beneficiaries, and no grievance in this regard has been raised in the present proceedings also.

4.5. Mr. Virk, the learned counsel submitted that the process of redevelopment initiated by the AMC is being carried out strictly in accordance with the provisions of the Policy and there is complete compliance of the said Policy on the part of the respondent- AMC. The AMC has specifically explained how the redevelopment policy will benefits the residents of Soneriya Block including the present

writ-applicants and the various other benefits and amenities which they will receive as a part of the redeveloped infrastructure. Mr. Virk, the learned counsel therefore submitted that redevelopment process is being carried out strictly in accordance with the Policy.

4.6. Mr. Virk, the learned counsel submitted the writ-applicants have not disclosed the fact that 72 out of 90 writ-applicants had themselves accorded the written consents and agreement to redevelopment (pg. 196-253). Mr. Virk, further submitted that the redevelopment process was commenced in the year 2017 and has been ongoing for almost 3 years. The writ-applicants have approached this Court at the time when the scheme is almost on the verge of completion and only after the physical exercise of demolition for redevelopment commenced. Mr. Virk, further submitted that the buildings are unsafe for human habitation and deserve to be vacated immediately for the purpose of redevelopment without any further delay.

4.7. Mr. Virk, the learned counsel assured this Court that the process of redevelopment with regard to the present scheme will be carried-on strictly in accordance with the Policy. Mr. Virk, submitted that the respondent no.2 be permitted to continue with

the redevelopment, in view of the fact that each day the redevelopment work is delayed, there is loss of lakhs of rupees; in addition to inconvenience which is caused to the families who have accepted the redevelopment and are residing in alternative accommodations. The writ-applicants are utilizing the litigation to bargain a preferential position in the post-redevelopment structures.

4.8. Mr. Virk, the learned counsel lastly submitted that the redevelopment process undertaken by the respondent no.2 is for the benefit of the writ-applicants and similarly placed persons and that is in the interest of the writ-applicants to cooperate with the said process of redevelopment. The exercise of redevelopment is undertaken by the respondent no.2 in the larger interest of the public. He submitted that, this Court may not exercise its extraordinary jurisdiction and dismissed the writ-application.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.3 – NILA INFRASTRUCTURE LTD.:

5.1. Mr. Shyamal K. Bhimani, the learned counsel appearing for the respondent no.3 submitted that, the respondent no.2 – AMC conducted a survey to deduce the occupants willing to undergo for

redevelopment of Soneria Blocks and 60% of the occupants had expressed willingness for redevelopment (as also the threshold limit under the policy for Redevelopment of Public Housing Scheme, 2016) of the existing public housing scheme in October-2018. The respondent no.2 invited the tender for the said project and consequentially, the respondent no.3 emerged as a successful bidder and the tender came to be awarded to the respondent no.3. The respondent no.3 engaged in an elaborative, exhaustive, participative and consultative exercise of obtaining specific (case to case) consent of respective unit holders in addition to the general consensus of the occupants for redevelopment which led to floating of the aforesaid tender.

5.2. Mr. Bhimani, the learned counsel submitted that before undertaking the proposed redevelopment, the respondent no.3 at its own cost had put up hoardings in conspicuous place in vernacular language making aware the occupants of the proposed redevelopment proposal alongwith the overall redevelopment layout plan of the entire Soneriya Blocks and typical floor unit plan of the construction / redevelopment. The respondent no.3 conducts a six-step consultative and participative procedure before taking up any unit for redevelopment. The said process is explained in para-11 of

the affidavit-in-reply filed by the respondent no.3.

5.3. Mr. Bhimani, the learned counsel submitted that only 60% consent of the existing occupants is required for the redevelopment as per the Policy, however, in the present case, a thumping majority of people have agreed for the redevelopment of the housing block and a minuscule number of writ-applicants have either partially participated in the process or have not participated in the redevelopment, with a mala-fide intention. Even in respect of the present applicants, 72 out of 90 have accepted the redevelopment process.

5.4. Mr. Bhimani, the learned counsel submitted that mass participation of the residents / occupants itself suggest that the procedure adopted by the respondent no.3 is a fair procedure, and therefore, the averments made against the respondent no.3 by the writ-applicants is arbitrary and false. He relied upon the documentary proof of massive participation (pg. 353-366) as produced alongwith the affidavit. Mr. Bhimani, the learned counsel submitted that the respondent no.3 is incurring heavy losses on daily basis on account of pendency of the writ-application at the behest of such erring writ-applicants whose only attempt is to

scuttle and strangle the redevelopment process at an advance stage of 5 blocks being already demolished to harass the respondent no.3 and extract illegal, illegitimate bargains which the writ-applicants are otherwise not entitled to.

5.5. Mr. Bhimani, the learned counsel lastly submitted that the present writ-application being devoid of merits, this Hon'ble Court may not exercise the discretion and may kindly be dismissed the same.

6. Heard Mr. Nandish H. Thackar, the learned counsel appearing for the writ-applicants, Mr. Ishan Joshi, the learned Assistant Government Pleader appearing for the respondent no.1, Mr. G.H. Virk, the learned counsel appearing for the respondent no.2 and Mr. Shyamal K. Bhimani, the learned counsel appearing for the respondent no.3.

ANALYSIS:

7. Before proceeding, at the outset, the subject matter with regard to the present writ-application is reduced to a narrow compass, in view of the submissions made by Mr. Nandish Thackar, the learned counsel appearing for the writ-applicants as stated

above. The redevelopment scheme with respect to the Soneriya Block situated at T.P. Scheme No. 11, Final Plot No. 170 at Rakhiyal, Bapunagar, Ahmedabad came to be declared in accordance with the Redevelopment Scheme, 2016. This Court has perused the said policy, entire record and affidavit in reply filed by the respective respondents duly produced on record. It is pertinent to note that 93% of the occupants have given their consent for redevelopment and are occupying the alternative residential arrangement as supplied by the respondent no.3. It is only at the behest of few persons, such as the writ-applicants that redevelopment work is stalled. Even the writ-applicants have specifically conceded that they are not opposing the scheme, but they seek reassurance from the respondents that the redevelopment scheme would be in accordance with the policy as stated. In view of above, no further adjudication is required.

8. This Court has perused the documents produced by the respondent no.2 – AMC, which read thus:

Particulars	Page No.
Part Plan and Zoning Certificate of the land in question, evidencing the land is owned by AMC	82-85
Photographs showing the poor and dilapidated	86-104

condition of Soneriya Block	
Illegal construction by petitioners in their Units	105-110
Notices issued by AMC from time to time in view of the poor and dilapidated condition of Soneriya Block	111-119
Representations made by residents of Soneriya Block, requesting AMC to take up the Block for redevelopment	120-137
Print Media clipping of a fatal accident at Soneriya Block on account of falling of slab	138-139
Illustrative consent letters provided by residents of Soneriya Block during April-June 2017, agreeing to redevelopment	140-181
Letter received from AMC's consultant regarding requisite consent of residents of Soneriya Block	182-193
Representation for redevelopment of Soneriya Block received from the local elected representative	194-195
Consents of 72 of the 90 Petitioners before this Hon'ble Court	196-253
Documents evidencing the arm-twisting tactics of the Petitioners and the menace of illegal construction	254-275
Rajachhithi (Commencement Letter) received for the Redevelopment	276
Illustrative consents of more than 90% of the residents of Soneriya Block	277-309

9. The respondent no.3 i.e. the private respondent who has been awarded the work of redevelopment of Soneriya Block has also assured that the redevelopment policy is strictly followed and it will be followed in its true spirit but for some of the writ-applicants, there is no complaint with regard to the work undertaken by the respondent no.3.

10. In view of this Court, the work undertaken by the respondent nos.2 and 3 is for the benefits of the unit holders and the scheme has been formulated to benefit the said section of the society. The object is in the interest of the public at large and the said object cannot be defeated at the behest of few persons. While the respondent no.2 has floated the scheme, the respondent no.3 is given the task to give the effect to the said scheme. The time frame in which the project could have been completed is also delayed, at the behest of few persons. It cannot be said that the aforesaid scheme is in any way discriminatory. No fundamental or legal rights of the writ-applicants can be have to have been infringed by any action on the part of the respondent authorities.

11. The government in order to achieve the below-mentioned objects have provided for framing the present scheme:

*‘(I). To upgrade existing housing stock;
(II). Create additional affordable housing stock wherever possible;
(III). To utilize available land in optimal manner;
and
(IV). To improve neighborhood at no or minimal cost to the Government.’*

Some inconvenience to individual dwellers cannot be given any primacy and public interest as well as public benefit has to be taken into consideration:

12. The public interest will always have precedence over a private interest of the parties, more particularly, when the said is in the public at large and in the present case, at the behest of few writ-applicants, the entire project cannot be put to a standstill. The project had already been stalled in view of the pendency of the writ-application and in view of this Court, no further delay be caused in proceeding further with the redevelopment scheme of Soneriya block. More so, the redevelopment scheme is on-going since 2017 and more than 90% occupants have already given their consent for the redevelopment process.

13. In view of this Court, no interference is called for,

more particularly, since the writ-applicants have limited their prayers to ensure effective implementation of the redevelopment of Soneriya block and the respondents have on affidavits and on their own statements stated that the respondents shall undertake the redevelopment process of the scheme in accordance with the policy itself. The respondents shall adhere to the statements made in the affidavits before this Court and make sure that the beneficiaries are not put to any inconvenience during the redevelopment process and are not deprived of any benefits and amenities, as assured.

14. With the aforesaid directions to the respondents, the present writ-application stands disposed of.

Pradhyuman

(VAIBHAVI D. NANAVATI,J)