

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4216 of 2023

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HANSABEN RATUBHAI PRAJAPATI

Versus

STATE OF GUJARAT

=====

Appearance:

CHIRAG A PRAJAPATI(8468) for the Petitioner(s) No.

1,10,11,12,13,14,2,3,4,5,6,7,8,9

KARTIKKUMAR K JOSHI(8042) for the Petitioner(s) No.

1,10,11,12,13,14,2,3,4,5,6,7,8,9

for the Respondent(s) No. 3

MS. JEENAL ACHARYA, AGP for the Respondent(s) No. 1

MR. M.R. BHATT, LEARNED SENIOR COUNSEL ASSISTED BY
AKASH N SHAH(10130) for the Respondent(s) No. 4

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

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

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 11/04/2023

ORAL ORDER

1. By way of the present petition, the petitioners herein have challenged the action of the redevelopment of the houses / flats situated at premises being 132, M.I.G., (o/o. 384 MIG), Surya Apartment, Part-3, Sola Road, Ahmedabad and also prayed for quashing and setting aside the order dated 06.02.2023 passed

by the Competent Officer in Case No. 103/2022 (duly produced at Annexure-A) and has also prayed to restrain the respondents from declaring or proceeding in any manner for redevelopment of the subject premises without the consent of the petitioners.

2. By way of the present petition, the petitioners herein have prayed for the following reliefs:

“a. Your Lordships may be pleased to admit and allow this Petition.

b. YOUR LORDSHIPS may be pleased to issue a writ of mandamus or any other writ or directions quashing and setting aside the action of the redevelopment of the houses/flat situated at premises being 132, M.I.G., (o/o. 384 MIG), Surya Apartment Vibhag-3, Sola Road, Ahmedabad as well as be pleased to quashed and set aside order dated 06.02.2023 passed by Competent Officer in case no. 103/2022 annexed at annexure-A and further be pleased to restrain the respondents from declaring or proceeding in any manner for redevelopment of the subject premises without the consent of the petitioners;

c. YOUR LORDSHIPS may be pleased to direct the respondents to clarify the scheme to be implemented with respect to houses of the petitioners on Revenue Survey Survey No. 141, 179, 180/2, T.P. no. 29, F.P. no. 356, 357, 358 Gujarat Housing Board at Wadaj.;

d. Pending the Petition, YOUR LORDSHIPS may be pleased to stay the implementation of the scheme and any other consequential proceedings including the eviction proceedings with respect to houses of the petitioners on Revenue Survey No. 141, 179, 180/2, T.P. no. 29, F.P. no. 356, 357, 358 Gujarat Housing Board at Wadaj.;

e. Grant Ad interim relief in terms of para 'd' above;

f. That any other and/or further relief that may be deemed fit in the facts and circumstances of the present petition may please be granted, in the interest of justice.”

3. The brief facts leading to the filing of the present petition reads thus:

3.1. The petitioners have challenged the action of the respondent authorities in announcing and proceeding with the scheme of redevelopment of the premises, where the petitioners are legally residing since many years and without taking their consent, which is pre-requisite for any redevelopment scheme, the same being not duly done, then the entire action falls foul on the basis of non-compliance of principles of natural justice. The action of the respondent authority in institution of compulsory redevelopment scheme, without there being any law for providing the same, the said exercise being de-hors the provision of law and without jurisdiction, be deserved to be set aside.

3.2. The petitioners are the owners and occupiers of the premises / the Scheme in question. The premises mentioned

herein including the residence situated at 132, M.I.G., Surya Apartment, Part-3, Sola Road, Ahmedabad (hereinafter referred to as 'the said Scheme/ the said premises in question' for short), the petitioners are individual house holders in the said scheme which was laid down and constructed by the Gujarat Housing Board (hereinafter referred to as 'the GHB' for short) in the year 1986. The said Scheme has been constructed on Survey No. 141, 179, 180/2, Town Planning Scheme No. 29, Final Plot No. 356, 357, 358, Gujarat Housing Board at Wadaj, Ahmedabad. In the said scheme in all 132 houses. The petitioners herein came into occupation of the said premises on their execution of conveyance deeds in accordance with the provisions of the Gujarat Housing Board, 1961 r/w. GHB (disposal of Property) Regulations, 1974. Copy of the said sale deeds is duly produced at Annexure-B.

3.3. As per the said deeds, the leasehold rights have been transferred to the petitioners till the year 2075. The petitioners are aggrieved, in view of the fact that, having inquired with the respondent Corporation and also with the officials of the respondent- Gujarat Housing Board (GHB), no clarification is

given with regard to the development scheme, proposed to be implemented in the premises of the petitioners.

3.4. The petitioners also apprehend that other occupiers were also objecting to the said Scheme, as there is no clarification with regard to the scheme introduced in the subject premises / Scheme.

3.5. It is also the case of the petitioners that entire Scheme of redevelopment has been announced behind the back of the petitioners. It is the case of the petitioners that the Gujarat Housing Board (GHB) have sold the residential flats to the petitioners under 132 MIG Scheme, and therefore, the impugned redevelopment scheme is a resolution passed by the State Government. The petitioners herein are deprived to the right to property by virtue of administrative decision.

3.6. It is the case of the petitioners that, the provisions of the Scheme are arbitrary in nature and invest discriminatory powers in the competent authority. The flats occupied by the petitioners are not in dilapidated condition and without any risk

and the said flats are usable by the petitioners. The petitioners herein have declined to give their consent for redevelopment of their houses / flats. The authorities have not sought consent, as described in the statute. It is further stated that, though the policy may be useful for totally dilapidated houses, it hardly works, where the flats are totally in usable conditions and they do not pose any danger to the inhabitants. The aforesaid scheme floated by the respondent authority is in absence of any survey, whether the construction is in dilapidated condition or not. The said redevelopment Scheme is under the Redevelopment of Public Housing Scheme Guidelines, 2016 (hereinafter referred to as 'the Redevelopment Guideline, 2016' for short), is duly produced at Annexure-D.

3.7. Being aggrieved by the aforesaid and the communication duly produced at Annexure-A dated 06.02.2023, wherein, the respondent no.3 has passed an order under the provision of Section 60 (amended Section 60(A)(2) of the Gujarat Housing Board Act, wherein, the occupants / owners of 132 M.I.G., Surya Apartment, Part-3, Sola, Ahmedabad are directed

to vacate the said subject property within a period of 30 days. The said order dated 06.02.2023 is duly produced at Annexure-A, (pg.17-19). The relevant para of the order dated 06.02.2023 reads thus:

- “2. During the first date of hearing, Executive Engineer, Ahmedabad and present occupant Shri Samirbhai Natvarlal Shah remained present. During course of hearing, they made oral and written submissions in the matter, wherein Executive Engineer, Ahmedabad was directed to submit appropriate reply in the matter. The matter was adjourned to 04/01/2023 when representative of Executive Engineer, Ahmedabad and present occupant Shri Samirbhai Natvarlal Shah remained present. As representative of Executive Engineer, Ahmedabad submitted regarding non-receipt of reply, it was directed to the representative of Executive Engineer, Ahmedabad to expedite submission of reply before next date of hearing and to remain present personally on the next date of hearing on 18/01/2023, when representative of Executive Engineer, Ahmedabad and present occupant Shri Samirbhai Natvarlal Shah remained present, wherein as the reply received by them, was not appropriate, oral/written submission was made again. According to the said submission, they have no objection to the re-development. However, proper understanding or factual information has not been given regarding re-development scheme. Accordingly, written submission was made and this office requested the Executive Engineer, Ahmedabad to provide necessary information /understanding regarding re-development policy of the government at his level to the aggrieved members of Association and Developers. Hence, the Executive Engineer, Ahmedabad has convened meeting and gave understanding to them accordingly.*
- 3. Considering the evidence adduced by the Executive Engineer, Ahmedabad, the property i.e. 132, M.I.G., Surya Apartment located at Sola road, Ahmedabad belongs to Gujarat Housing Board. Re-development policy of the government as announced in Gujarat Housing Board Act-1961 (Amended Act) and under the provisions of Gujarat Public Premises (Eviction*

of Unauthorized occupants) Act, 1972, it appears from record that occupant of the aforesaid building has obtained illegal /unauthorized possession thereof. Hence, it has come on record that the case is under Sub Section-1 of Section-4 of Gujarat Public Premises (Eviction of Unauthorized occupants) Act, 1972. Thus, following order is passed subject to the aforesaid facts on record.

Order

By virtue of powers conferred to this Office under the provision of Section-60(a)(2) of Gujarat Housing Board (Amended Act) Act by adding a new Section-60(a) to Section-60 of Gujarat Housing Board Act-1961 announced in re-development policy of the Government and under Sub-Section-1 of Section-5 of Gujarat Public Premises (Eviction of Unauthorized occupants) Act, 1972, it is ordered to vacate the possession of the said residence within 30 (thirty) days from the date of receipt of this order and the Executive Engineer, Gujarat Housing Board, Ahmedabad is directed to take possession of the vacant residence to conduct further proceedings in this regard.

This order was passed today i.e. on 6th February, 2023.”

4. Heard Mr. Chirag Prajapati, learned advocate appearing for the petitioners, Mr. G.H. Virk, learned advocate appearing for the respondent no. 2 – Gujarat Housing Board (GHB) and Mr. Manish Bhatt, learned senior counsel assisted by Mr. Akash Shah, learned advocate appearing for the respondent no.4- Katira Construction Limited and Ms. Jeenal Acharya, learned Assistant Government Pleader appearing for the respondent – State.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

5.1. Mr. Chirag Prajapati, learned advocate appearing for the petitioners has placed reliance on the averments made in the petition and vehemently submitted that the action of the redevelopment qua 132 M.I.G., Surya Apartment, Part-3 (the said scheme/ subject premises) is without express consent of all the concerned, and therefore, the same being de-hors of the provision of the Redevelopment Guideline, 2016. It was submitted that the action on the part of the respondents for declaration of such scheme without there being any notice to the petitioners, who are the owners and occupiers of the subject premises / said Scheme, being in clear violation of the principles of natural justice and the said action of the respondent authorities is required to be restrained on the aforesaid count.

5.2. It was also submitted that the Redevelopment scheme first provides an opportunity to the owners and occupiers to redevelop their premises and only on failure of such action, the said Scheme can be implemented. On the aforesaid ground also, it was submitted that the entire action deserves to be quashed and set aside.

5.3. It was submitted that the impugned order dated 06.02.2023 has been passed by the competent officer, without there being any name or designation of the officer concerned. The said officer is to be appointed in consonance with Section 2(a), 2(p) of the Real Estate (Regulation and Development) Act, 2016. It was submitted that the petitioners herein are holding the leasehold rights on the land as owner and in complete possession of their respective houses granted by the competent authority under the conveyance, and hence, any such action cannot override the said leasehold rights in any manner directly or indirectly and the said action initiated by the respondent authorities deserved to be quashed and set aside.

5.4. It was submitted that, as per Rule-18 of the Gujarat Ownership Flats (Amendment) Rules, 2019, more particularly, sub-rule 18(1)(b) the flat / building occupied by the petitioners is not declared dilapidated, ruinous or dangerous in any way to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof by the concerned authority and no such expert reports have been

provided by the respondent authority and in absence of such report, the action initiated by the respondent authority of redevelopment is required to be quashed and set aside.

5.5. It was submitted that the action taken by the respondent authority is without clarifying the entire scheme to the petitioners about the proposed houses that are to be allotted to them and it is not open for the petitioners to vacate their houses and handover the same to the respondents on the belief that the Scheme shall be beneficial, and hence, no action can be permitted against the authorities, in absence of transparency of procedure.

5.6. It was submitted that, the authority needs to take permission of 75% members only, ignoring rest of 25% members for inviting objections / opinion or suggestions itself is against the principle of natural justice.

5.7. It was submitted that amended Section 60(1)(2) of the Gujarat Housing Board Act provides that occupier / owner must have provide the alternate accommodation and in the facts of the

present case, the authorities have neither paid the advance rent nor provided the alternate accommodation, and therefore, the said action taken by the respondent authority is required to be set aside.

5.8. The officers of the respondent authorities have recorded the contentions of the petitioners shortly that the petitioners have not provided the basic information of redevelopment and factual aspect of the redevelopment is totally materially important in question.

5.9. Placing reliance on the aforesaid facts, it was submitted that, the impugned order dated 06.02.2023 passed by the competent officer by communication / order in Case No. 103/2022 (Annexure-A) be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2 – GUJARAT HOUSING BOARD:

6.1. Heard Mr. G.H.Virk, learned advocate appearing for the respondent no. 2 – Gujarat Housing Board.

6.2. Mr. Virk, learned advocate submitted that the present

petition is filed by 14 individuals, i.e. a minority comprising of 9-10%, out of total number of 132 beneficiaries. It was submitted by Mr. Virk, learned advocate that consequently, when 90-91% of the beneficiaries have consented to the redevelopment, the said redevelopment may not be permitted to stall at the instance of minority members.

6.3. It was submitted that the subject premises / said scheme, which is the subject matter of the present petition, is part of the larger – Surya Apartment, Middle Income Group (M.I.G.), housing project of GHB, which was constructed in the year 1986, i.e. 37 years ago, at Sola Road, Ahmedabad, which has in all 132 beneficiaries. The affairs of the said Scheme / subject premises are controlled by Surya Apartment, Part-3 Association (the Association), comprising of all the members of the society.

6.4. It was submitted that, on 07.12.2019, the Association itself address a letter to GHB, requesting GHB to initiate the process of redevelopment, in view of a resolution of the Association to the said effect, passed on 01.12.2019, which is

duly produced at Annexure-R-1.

6.5. It was submitted that, consequently, after necessary approvals were received by GHB, an advertisement for redevelopment of Surya Apartment, Part-3 was published in October, 2021, which is duly produced at Annexure-R-2. After appreciation of the bids received, a Letter of Acceptance dated 07.02.2022 was issued by the GHB to the successful bidder – respondent no.4 herein – Katira Construction Limited. It was submitted that consent of 118, out of 132 beneficiaries were received by GHB, at the relevant point of time, in and around October, 2019, the said consent is duly produced at Annexure-R-3.

6.6. It was submitted that the redevelopment of the said Scheme is being carried-out strictly in accordance with the Redevelopment Guidelines, 2016 issued by the Government of Gujarat. Pursuant to the tripartite agreement dated 12.08.2022 executed between the Association, GHB and the respondent no.4 – Developer, copy of the same is duly produced at Annexure-R-4. In the post-redevelopment structure, each of 132 beneficiaries

including 14 petitioners would receive new, state of the art housing accommodation.

6.7. It was submitted that, 14 petitioners herein are residing on ground floor and first floor and all the petitioners have carried-out illegal construction in their dwelling units. The petitioners have extended their residential dwelling units' construction and have established commercial shops within the boundary /margin area of the Society. In view thereof, the petitioners are endeavouring to delay and stall the redevelopment process to arm-twist GHB, and, consequently, secure preferential treatment as a precondition to their consent for the redevelopment process.

6.8. It was submitted that there are only 12 petitioners (inasmuch as family units are concerned). The petitioner nos. 8 and 10 and petitioner nos. 13 and 14 are part of a single family unit. The details of the petitioners herein are relied upon by Mr. Virk, learned advocate as stated in Para-17-c (at page-111-112).

6.9. It was submitted by Mr. Virk, learned advocate that

except 12-14 petitioners, only 5 other units are occupied by residents and from these 5 units also, 3 families are in advanced stages of vacating their respective units. All other beneficiaries have already vacated their units and are enjoying transit allowance (as and by way of rent) from the respondent no.4 – the developer. It was submitted that a critical aspect of the matter, which has been suppressed by the petitioners is that as and by way of broadly identical letters dated 01.03.2023, the petitioner Nos. 1 to 12 have individually requested the Respondent – GHB to grant an additional period of 30 (thirty) days, purportedly to vacate their units. It was also submitted that, additionally, in the said letters, the petitioner Nos. 1 to 12 have also raised a baseless demand of additional amount as a precondition for vacating their units. The aforesaid communications are duly produced at Annexure-R-6.

6.10. It was submitted that, if the redevelopment exercise is stalled, it would grave and irreparable prejudice and injury, not only the respondent -GHB, but more particularly, the other beneficiaries of redevelopment. The present petition is therefore

filed in bad faith. It was submitted that the housing units in question were developed for providing residential accommodation to deserving sections of the society and the housing scheme in question is a public interest scheme.

6.11. It was also submitted that the petitioners herein have utilized their housing units for commercial purposes and have illegally effected extension / enlargements of the residential units, which would come to an abrupt end, if the redevelopment were to be proceeded with, and it is with such vested interest, the present petition has been preferred.

6.12. It was submitted that the redevelopment projects are designed to ensure that deserving sections of the society are provided up-to-date, redeveloped residential units and dilapidated, old structures, which are unsafe and have often led to mishaps and accidents, are demolished. The true beneficiary of redevelopment projects are the genuine beneficiaries who stay in the housing units, as also the State, which is able to provide modern housing facilities to the larger citizens. In most cases, at no added cost to the State and its instrumentality / executing

agencies such as GHB and the developing agency is put to strict conditions to ensure that state of the art redeveloped units are created at the end of the redevelopment exercise. It was submitted that, structures within Surya Apartment, Part-3 are more than 37 years old, and have never been maintained during their prolonged life.

6.13. Placing reliance on the aforesaid submissions, it was submitted that the present petition deserves to be dismissed in limine.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.4:

7.1. Mr. M.R. Bhatt, learned senior counsel assisted by Mr. Akash Shah, learned advocate appearing for the respondent no.4 – Katira Construction Limited adopted the submissions advanced by Mr. Virk, learned advocate appearing for the GHB and placing reliance on the same, it was submitted that out of 132 units in M.I.G., Surya Apartment, Part-3 comprising out of 11 blocks and out of 14 petitioners herein, 12 petitioners are owners / occupiers of 14 units, who are objecting to the said

redevelopment scheme. 118 units have consented to the said redevelopment, out of which, 115 unit holders have vacated the premises. It was submitted that the respondent no.4 herein has paid Rs.27,000/- towards rent deposit + Rs.13,500/- towards advance rent i.e. Rs.40,500/- + Rs.10,000/ for shifting charges. In all total Rs.50,500/- were given to the individual unit holder and thereafter, Rs.13,500/- per month towards rent also be paid. It was submitted that the aforesaid is uniformly given to the aforesaid unit holders and the same is undisputed. Except the present petitioners who with ulterior motive are trying to see to it that the Scheme does not see the light of the day.

7.2. Reliance was placed on the redevelopment scheme which is duly produced by the petitioners herein (Page-81, Annexure-D), tripartite agreement came to be executed between the respondent no.2- GHB, Surya Apartment Part-3 Association and the respondent no.4 – Katira Construction Limited and controverting the submissions advanced by the learned advocate for the petitioners, it was submitted that the said agreement was signed by the authorized representative of the petitioners’

Association being Chairman, Secretary and Treasurer. Reliance was also placed on the photographs produced at page-142 to show that the aforesaid premises are in dilapidated conditions. Reliance was also placed on the communication by the petitioners' Association seeking redevelopment which is duly produced at Page-116, Annexure-R-1, which is on the letterhead of the petitioners' Association, having been duly signed by the members who were present in the said meeting, which was held by the Association and the Resolution passed by the Association dated 07.12.2019.

7.3. Placing reliance on the aforesaid submissions, Mr. Bhatt, learned senior counsel vehemently submitted that all the information as prayed by the petitioners, has already been submitted by the respondent authority by communication dated 18.03.2023, which is duly produced at Page-188, which was submitted by the respondent no.4 to the respondent no.2-authority, which includes all the information as required by the petitioners herein and accordingly prayed to reject the present petition in limine.

ANALYSIS:

8. Having heard the learned advocates appearing for the respective parties, by way of the present petition, the petitioners herein have challenged the impugned communication / order dated 06.02.2023 passed by the Competent Officer in Case No. 103/2022/89. It is contended inter-alia that, the said communication / order suffers from the vice of non-compliance of the principles of natural justice and that due procedure of the Redevelopment Scheme of Surya Apartment, Part-3 is not followed in its right spirit.

9. The Scheme situated at 132, M.I.G., Surya Apartment, Part-3, Sola Road, Ahmedabad, was laid down and constructed by the Gujarat Housing Board (GHB) in the year 1986. Under the said scheme, houses have been constructed on Survey No. 141, 179, 180/2, Town Planning Scheme No. 29, Final Plot No. 356, 357, 358, Gujarat Housing Board at Wadaj, Ahmedabad. The scheme has in all 132 houses. Out of said 132 houses, 115 members have, through the Association of the petitioner society/ Flat by communication dated 07.12.20219 (which is produced at

page-115) as referred above, prayed for redevelopment, and submitted that the Association is agreeable and consenting to the redevelopment scheme floated by Gujarat Housing Board (GHB) being the Redevelopment Guidelines, 2016. The said letter duly produced at page-115 is the consent of 75% of the members, as stated by the Association in the said communication. It is also stated in the said communication that more than 75% members have consented. Resultantly, majority of the members having consented. The said letter also stated that the said Scheme / said premises in question came into force before 32 years, and therefore, it is included in 384 M.I.G. Scheme, and therefore, consent came to be accorded, accompanied by the signatures of the members, who were present, while passing the said resolution. The said resolution is duly produced at page-180 duly stamped / signed by the office bearers of the petitioner Association.

10. Consequent to the aforesaid, the respondent authority issued an advertisement for redevelopment of Surya Apartment, Part-3, which came to be published in October, 2021 (pg.128,

Annexure-R-2). The bids came to be received, pursuant to the said advertisement and letter of acceptance came to be issued on 07.02.2022 by the respondent authority to the successful bidder i.e. respondent no.4 herein- Katira Construction Limited. The consent of 118 beneficiaries, out of 132 beneficiaries, were received by the respondent authority, at the relevant point of time, in the year October, 2019. The redevelopment of Surya Apartment, Part-3, is in accordance with the Redevelopment of Public Housing Scheme Guidelines, 2016 issued by the Government of Gujarat. The aforesaid Scheme of Redevelopment of Public Housing Scheme Guidelines, 2016 will govern to the facts of the present case.

11. The tripartite agreement dated 12.08.2022 came to be executed between the Association, the respondent no.2 – GHB and respondent no.4 – Katira Construction Limited. The said agreement is duly produced at page-131 (Annexure-R-4). This Court has considered the said agreement, which is duly signed by the Authorized Officers. In the post-redevelopment structure, each of 132 beneficiaries, including the present petitioners, would

receive new, state of the art housing accommodation. The said information with regard to the grievance raised by the petitioners herein that the petitioners were not provided with the requisite information, as prayed for, is duly supplied to the petitioners herein on 18.03.2023 by the respondent no.2 – GHB. The same being addressed to Shri Samirbhai Shah – petitioner no. 5. This Court has perused the documents, which were supplied to the petitioners herein by the aforesaid communication dated 18.03.2023. The said information which is duly supplied by the respondent no.4 to the respondent no.2 authority, relevant para reads thus:

- “2. We state furnishing information with reference to “A” in this regard that instead of Surya Apartment Section-3, new buildings are to be built in redevelopment, wherein total five towers i.e “A”, “B”, “C”, “D” and “E” including 151 2 B.H.K. residential units and 100 3 B.H.K. units of different sizes totalling 251 units will be built. Apart from this, total 54 shops shall be built on the ground floor and on the first floor. This survey will be as per the rules and guidelines of GDCR and Ahmedabad Municipal Corporation.*
- 3. With reference to “B” submitted by you, we state that arrangement for four wheeler and two wheeler for residential units and shops shall be made on the ground floor and in two basements subject to the rules of Ahmedabad Municipal Corporation.*
- 4. In respect of issue No. “C” of the said subject, we state that the same will be subject to instructions and rules of the “Gujarat Fire Prevention and Life Major (Amendment) Rules, 2021”.*

5. *In respect of issue No. "D" submitted by you, we state that lifts will be allotted as per the condition under the Gujarat Lift and Escalator Rules-2001. Two lifts of a standard company will be provided in each block.*
6. *In respect of issue No. "E" asked by you, we state that the registration certificate, which is required to be obtained for Surya Apartment Vibhag-3, would be obtained after the plan is passed by the Ahmedabad Municipal Corporation. Hence, the same will be processed in due course and RERA certificate will be obtained as per rules, which may be noted by you.*
7. *In respect of issue No. "F" of the said subject, it is stated that in order to complete the process of redevelopment within the time limit and demolition of the present houses of Surya Vibhag-3, more than 75 % of the agreed members have vacated and handed over their blocks. As part of the said process, all the work has been completed in co-ordination with House Owners' Association and Gujarat Housing Board and permission is not required to be obtained from Ahmedabad Municipal Corporation in this regard.*
8. *In respect of issue No. "G", we state that the association would decide as to how much maintenance amount is to be collected considering the total expenses for use of all infrastructural facilities to be provided in the upcoming new scheme. The amount of maintenance will be spent considering the present expenses and at the time of forming the new association.*
9. *In respect of issue No. "H" in this regard, we state that the list of agreed members to the demands made with regard to Special Civil Application No.4216/2023 is enclosed herewith.*
10. *In respect of issue No. "I" asked by you, we state that the written explanation to page No.121 to 126 is pertaining to resolution for redevelopment of Association of Surya Vibhag-3. The said resolution is in respect of the signatures of the members, who had given their consent for the said proposal at the relevant point of time.*
11. *In respect of issue No. "I" asked by you, we state that as per the guidelines of GDCR and Ahmedabad Municipal Corporation, as compared to residential houses, commercial units will be constructed as per rules.*

We have stated all the above facts on the basis of available information and explained all of you accordingly and we will be eager to give information as and when required in future.

Ahmedabad

Date: 17/03/2023

Yours faithfully,
For Katira Constructions Ltd.
Sd/- (illegible)
Authorized Signatory

Encl. : (1) Copy of the Plan
(2) List of agreed members”

12.1. The same is supported by the requisite documents/
plans and consent of the list of the consenting members.

POSITION OF LAW:

13. At this stage, it is apposite to refer to the oral
judgment dated 24.01.2023 passed by this Court in Letters Patent
Appeal No. 290 of 2022, relevant Para-7 to 12 reads thus:

“7. Having heard the learned advocates appearing for the parties and on perusal of case papers, we are of the considered view that project of redevelopment has taken place or in other words, commenced only after the consent extended by majority of the members namely 680 members and undisputedly during pendency of present proceedings, remaining 80 have also given their consent. Thus, in-principle, all the flat owners have agreed for redevelopment of the existing flats. While entertaining this appeal, the Cognate Bench vide order dated 03.03.2022, had made it explicitly clear that no stay against removing the existing structure was being considered or granted and had directed all the appellants to vacate the premises on or before 09.03.2022 and accordingly they have vacated the flats in their occupation and shifted their residence to different places for which they are being paid transit allowances by the Developer.

8. In that view of the matter, the re-development project

has already commenced and is said to be progressing. When this is the factual situation, appellants herein are contending that there is no resolution by the Association, which would empower the Developer to proceed with redevelopment work. The said contention has been considered by the learned Single Judge and has rightly brushed aside the same, inasmuch as, consent of majority of the members have been obtained, which is also reflected in the order of the learned Single Judge.

9. *Section 41-A of the Gujarat Ownership Flats Act, 1973 enables the re-development of a building. For the purposes of convenience and immediate reference, we extract the said provision and it reads:*

“41A. Re-development of flats and apartment. –

Notwithstanding anything contained in this Act, any work in relation to the re-development of a building can be carried out on such terms and conditions as may be prescribed, after obtaining the consent of not less than 75 per cent. of the flats owners of such building:

Provided that, in respect of such building, -

- (i) a period of twenty – five years must have been completed, from the date of issuance of permission for development by the concerned Authority; or*
- (ii) the concerned Authority has declared that such building is in ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof.*

Explanation. - For the purpose of this section, the expression “redevelopment” shall be the meaning as assigned to it in relevant Development Control Regulations.”

10. *The aforesaid provision was inserted by the Gujarat Act No. 5 of 2019 w.e.f. 21.05.2019. In this background, the annual general body meeting was convened by the society on 16.06.2019 to discuss about the applicability of amended provision.*

11. *In view of the fact that all 672 flat-owners having given their consent, this would meet the requirement of Section 41-A and belie the contention raised before the learned Single Judge,*

wherein hue and cry was raised before the non-approval of the development project by resolution of the Association. Said contention is no more available for the appellants to urge before this Court also, inasmuch as, consent having been given by all the owners of the flats and as such said contention falls to ground. Infact, appellants have also given their consent and in view of development permission (raja-chitthi) having been issued by the Municipal Corporation on 21.08.2020, the construction work has commenced and is said to be progressing.

12. The main grievance of the appellants being the construction being carried out is contrary to scheme namely the redevelopment of Public Housing Scheme Guidelines, 2016, issued by the Urban Development Department. Said contention can only be said to be premature and without any basis. We say so for the simple reason that guidelines prescribed redevelopment of existing Public Housing Scheme reads as under : -

“3.1 Redevelopment of Existing Public Housing Scheme :

- a. Under redevelopment scheme, the owners of the dwelling units may be allotted dwelling units with carpet area higher than the existing one.*
- b. The maximum carpet area of the dwelling units may be as follows:*

I. For Dwelling -1 (Detached dwelling unit):

The maximum aggregate carpet area may be 140% of existing approved carpet area of the dwelling unit or 30 sq. mtr. carpet area whichever is higher,

II. For Dwelling -2 (Semi-detached dwelling unit, Row House, Tenement): The maximum aggregate carpet area may be 140% of existing approved carpet area of the dwelling unit or 30 sq. mtr. carpet area whichever is higher,

III. For Dwelling-3 (Apartment, Hostel) : The maximum aggregate carpet area may be 140% of existing approved carpet area of the dwelling unit or dwelling unit of 30 sq. mtr. carpet area whichever is higher,

IV. For any non-residential category, maximum aggregate carpet area may be 125% of the existing approved carpet area.”

14. The following facts emerge for consideration of this Court:

(a) Surya Apartment, Part-3, Middle Income Group (M.I.G.) comprises in all 132 beneficiaries.

(b) The captioned petition is filed by only 14 individuals (i.e. a minority comprising of 9-10%) out of a total number of 132 beneficiaries.

(c) Surya Apartment, Part-3, which is the subject matter of the present petition, is a part of the larger - 'Surya Apartment', Middle Income Group (M.I.G.) housing project of GHB- Gujarat Housing Board, which was constructed in the year 1986, i.e. 37 years ago at Sola Road, Ahmedabad. The affairs of the Surya Apartment, Part-3 are controlled by Surya Apartment, Part-3, Association, comprising of all the members of the society.

(d) On 07.12.2019, the Association itself addressed a letter to the Gujarat Housing Board (GHB), requesting the GHB to initiate the process of redevelopment, in view of resolution of the Association to the said effect, passed on 01.12.2019 (Annexure-R-

1).

(e) The necessary approvals were received by the GHB, thereafter, an advertisement for, inter-alia, the redevelopment of Surya Apartment, Part-3 was published in October, 2021 (Annexure-R-2).

(f) After appreciation of the bid received, a Letter of Acceptance dated 07.02.2022 was issued by the GHB to the successful bidder – respondent no.4 – Katira Construction Limited.

(g) The consent of 118 beneficiaries, out of 132 beneficiaries were received by the GHB, at the relevant point of time, in and around October, 2019 (Annexure-R-3).

(h) Tripartite agreement dated 12.08.2022 was executed between the Association, GHB and the respondent no.4 – Developer (Annexure-R-4).

(i) Post redevelopment structure, each of 132 beneficiaries, including the present 14 petitioners would receive new, state of the art housing accommodation.

(j) The present status of the present petitioners reads thus:

Peti-tioner No.	Name of Petitioner	Block No.	Unit No.	Present status
1	Hansaben R. Prajapati	152	1815	Ground floor – illegal construction – lease deed not executed with GHB
2	Narendra V. Raval	163	1948	Ground floor – illegal construction of 2 shops
3	Hasumati ben A. Patel	162	1934	Ground floor – illegal construction of 3 shops and other structures
4	Sandip K. Rabari	162	1937	First floor – illegal construction – the Petitioner himself is not residing in this Unit
5	Samir N. Shah	183	2189	First floor – illegal construction
6	Pragaram U. Prajapati	183	2190	First floor – illegal construction
7	Mukesh J. Chaudhar y	163	1947	Ground floor – illegal construction (shops) – the Petitioner himself is not residing in this Unit
8	Ushaben H. Patel	183	2192	First floor Petitioner Nos. 8 and 10 are Wife and Husband, and have appeared as separate petitioners
9	Vinod D. Patel	163	1952	First floor – illegal construction
10	Hasmukh P. Patel	183	2191	First floor – illegal construction Petitioner Nos. 8 and 10 are Wife and Husband, and have appeared as separate petitioners
11	Subhadra ben K.	182	2180	First floor – illegal construction

Peti-tioner No.	Name of Petitioner	Block No.	Unit No.	Present status
	Purohit			
12	Kantilal S. Dataniya	183	2186	Ground floor – illegal construction (3 shops and additional structures)
13	Ravajibha i K. Parmar	183	2187	Both, ground floor – illegal construction Petitioner Nos. 13 and 14 are Husband and Wife, respectively
14	Kamlaben R. Parmar	183	2188	

(k) From the aforesaid, it emerges that the petitioners are residing on the ground floor and first floor and it appears from the aforesaid table as referred above, that the petitioners have resorted to illegal construction within their dwelling units, which remains uncontroverted.

(l) The aforesaid Scheme, wherein, redevelopment is to be carried-out, is a Scheme of the year 1986 i.e. more than 32 years old and the redevelopment would be in the interest of the residents.

(m) Considering the fact that, effectively there are only 12 petitioners, petitioner nos. 8 and 10 and petitioner nos. 13 and 14 are part of a single family unit. All the petitioners reside only in 5 blocks out of the total 11 blocks within Surya Apartment,

Part-3.

(n) In block No. 152, out of a total 12 units in the said block, there is only one petitioner.

(o) In block No. 163, out of a total 12 units in the said block, there are only 3 petitioners.

(p) In block No. 183, there are only 7 petitioners (actually only 6 petitioners), since petitioner nos. 12 and 14 are forming part of the same family unit, effectively, in block No. 183, there are only 5 petitioners, out of total 12 units in the said block.

(q) In block No. 182, out of a total 12 units in the said block, there is only 1 petitioner.

(r) All the other beneficiaries have already vacated their units and are in receipt of transit allowance (as and by way of rent) from the respondent no.4 – Developer.

15. At this stage, it is apposite to refer to the order dated 07.03.2023, while issuing Notice, this Court passed the following order:

“1. Mr.Chirag Prajapati, learned advocate for the petitioners submitted that the whole redevelopment process has been

undertaken behind the back of the petitioners. It is submitted that various documents so also, the scheme were not made available to the petitioners and therefore, the applications were made, seeking information inasmuch as, the petitioners have all the right to know what they will be getting by way of redevelopment. On 04.10.2022, one of the petitioners has made a request to the executive engineer, specifically taking a stand that they are not opposing the redevelopment. All what they want is the information about the benefits and amenities, which shall be provided by the developer. In absence thereof, it would be difficult for the petitioners to raise any grievance. It is submitted that so far as the consent aspect is concerned, very interestingly, the consent of only those members have been taken, who were in favour of the redevelopment and not of the petitioners and since there was majority of the consent, the whole redevelopment work has been started. It is submitted that the petitioners, though have all the rights, have not been provided any information, which would be prejudiced to their rights of raising any objection against the redevelopment. It is submitted that it is not clear as to who is the competent authority, who has passed the order, considering the fact that the name is not mentioned.

2. On the other hand, Mr.G.H. Virk, learned advocate appearing on caveat has submitted that the present writ petition is nothing but, a malicious attempt inasmuch as, all the petitioners are the residents of the ground floor and first floor. Out of 132 residents, the objection is only by 14 and two of which, are the husband and wife and therefore, essentially, the objection can be said to be only by 12 unit holders. It is submitted that it is improper on the part of the petitioners to raise objection inasmuch, it was apropos the proposal made by the Surya Apartment (Part 3) Association that the whole process of redevelopment was initiated, resolution has been passed by the association and signed by almost 90% and minuscule has not signed. It is submitted that the objection is being raised by the petitioners possibly for the reason that they are the holders of the units situated at ground floor and had carried out the illegal construction and the units are being used for commercial purpose. It is submitted that it is difficult to fathom as to why, objection is being raised for, now the petitioners and the unit holders shall be getting larger area compared to the area which, presently, they are residing. Moreover, transit allowance to the tune of Rs.13,500/- per month is being given to the unit holders. 110 unit holders are already availing of the said benefit, except

the petitioners. It is submitted that if the petitioners are ready for the same, they also will be extended the same benefits; however, the petitioners are insisting for some further amount, which would be unjust and not in the interest of all the unit holders. It is submitted that the petitioners are not against the redevelopment and considering the request of the petitioners, the Board is ready and willing to extend them some more time to vacate the premises.

3. Mr.Prajapati, learned advocate states that he has already declared before this Court and also in the representations that the petitioners are not averse to the redevelopment, all what the petitioners want, are the documents and information of the benefits which will be made available to them by the developers and the Board.

4. Mr.Virk, learned advocate submitted that the details, otherwise, are available on the portal; however, the same shall be provided to the petitioners at the earliest i.e. by today itself.

5. Mr.Prajapati, learned advocate would like to take instructions. Request is made for an adjournment.

6. At his request, let the matter appear on 20.03.2023.”

16. Considering the facts as referred above and the position of law, this Court is inclined to pass the following order:

(I) The Redevelopment Guideline, 2016 as referred above, is issued taking into consideration the benefits to the unit holders and the same is formulated for the benefits of 132 M.I.G. Surya Apartment, which was laid down by the Gujarat Housing Board in the year 1986. At this stage the petitioners are objecting to

the redevelopment scheme, wherein, 75% members have already agreed and as submitted by Mr. Bhatt, learned senior counsel appearing for the respondent no.4 is also paid Rs.27,000/- towards rent deposit + Rs.13,500/- towards advance rent i.e. Rs.40,500/- + Rs.10,000/ for shifting charges. In all total Rs.50,500/- were paid to the individual unit holder and thereafter, Rs.13,500/- per month towards rent is also paid. The object of the Scheme, 2016 is in the interest of public at large and the said object is not be defeated at the behest of few persons. While the Scheme came to be floated by the respondent no.2 – GHB, the respondent no.4 is assigned the contract to give the effect to the said scheme. The project which is entrusted to the respondent no.4 to achieve the said result and the same not be delayed. It is not the case of the petitioners herein that the Scheme is discriminatory. The information as sought for was supplied to the petitioners during the present proceedings as perused from Pg. 188-202, the petitioners are objecting to the entire scheme, which is wholly unjustified. Further, no fundamental or legal rights of the petitioners can be said to have been infringed by any action on the part of the respondent

authorities. 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.’*

(II). The public interest will always have precedence over a private interest of the parties, more particularly, when the said is in the interest of public at large and in the present case, at the behest of few persons (14 petitioners), the entire project cannot be put to a standstill. The redevelopment scheme is ongoing since 2016 and 75% of the occupants have consented to the redevelopment process.

(III). Mr. Prajapati, learned advocate appearing for the petitioners declared before the Court and also in the representations that the petitioners herein are not averse to the redevelopment and all that the petitioners want, are the documents and information of the benefits which will be made available to them by the developers and the Board.

(IV). In the course of hearing, the petitioners herein changed their stance and argued vehemently for quashing of the impugned order / communication dated 06.02.2023. Considering the aforesaid statement made in the order dated 07.03.2023, the said information has already provided by the respondent authority to the present petitioners, as referred above, by communication dated 18.03.2023, which is duly forming part of the record (pg.188-202).

(V). On the aforesaid ground, interest of justice would be served, if the Redevelopment of Public Housing Scheme Guidelines, 2016 be implemented in its true spirit, without any obstruction.

In view of above, this Court is not inclined to exercise extraordinary jurisdiction under Article 226 of the Constitution of India and the present petition stands dismissed, accordingly.

(VAIBHAVI D. NANAVATI,J)

Pradhyuman

