IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 661 of 2020

In R/SPECIAL CIVIL APPLICATION NO. 9138 of 2020
With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 661 of 2020
With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 2 of 2020
In R/LETTERS PATENT APPEAL NO. 661 of 2020
With
R/LETTERS PATENT APPEAL NO. 766 of 2020
In
SPECIAL CIVIL APPLICATION NO. 9091 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 766 of 2020
In
SPECIAL CIVIL APPLICATION NO. 9091 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO
	CIRCULATE THIS JUDGEMENT IN THE SUBORDINATE JUDICIARY.	

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VORA ZAKIRHUSAIN VALIBHAI
Versus
STATE OF GUJARAT

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Appearance:
IN LETTERS PATENT APPEAL NO.661 OF 2020:
MR JEET J BHATT(6154) for the Appellant(s) No. 1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,5,6,7,8,9

MS MANISHA LAVKUMAR GOVERNMENT PLEADER WITH MR DHARMESH DEVNANI WITH MS AISHWARYA GUPTA, AGPs for the Respondent(s) No. 1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,113,114,115,116,117,118,119,12,120,121,122,123,124,125,126,127,128,129,13,130,131,132,133,134,135,136,137,138,139,14,140,141,142,143,144,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,87,88,89,9,90,91,92,93,94,95,96,97,98,99

IN LETTERS PATENT APPEAL NO.766 OF 2020:
MS DHARMISHTA RAVAL WITH MS.DILBUR CONTRACTOR(6388) for the Appellant(s)No.1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,7,8,9

MS MANISHA LAVKUMAR GOVERNMENT PLEADER WITH MR DHARMESH DEVNANI WITH MS AISHWARYA GUPTA, AGPs for the Respondent(s) No. 1,2,3,4

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 20/02/2021

CAV COMMON JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1 Since the issues raised in both the captioned appeals are the same and the challenge is also to a common interim order passed by a learned Single Judge of this Court, those were heard analogously and are being disposed of by this common judgement and order.

2 For the sake of convenience, we treat the Letters Patent Appeal

No.661 of 2020 as the lead matter.

3 This appeal under clause 15 of the Letters Patent is at the instance of the original writ applicants of the Special Civil Application No.9138 of 2020 and is directed against an interim order passed by a learned Single Judge of this Court dated 19th September 2020, by which the learned Single Judge rejected the Civil Application (for stay) and thereby declined to grant any relief against the demolition of the dwelling houses of the appellants.

4 The facts giving rise to this appeal may be summarised as under:

4.1 The appellants hail from a very poor strata of society. Over a period of time, they started occupying government land situated at the Sectors 13 and 14 respectively falling within the radius of the Gandhinagar Railway Station. The appellants constructed small kutchha and pukka houses on the said land and started residing over there. It appears that all this happened almost three decades back. In other words, they started residing at the subject land since 1990. It is the case of the appellants that they have documentary evidence in the form of valid Voter I.D., Birth Certificate, School Leaving Certificate, Bank Account Statement in support of their claim that they are residing at the place in question since 1990. The Executive Engineer, Capital Project Division, Gandhinagar issued demolition notices dated 17th July 2020. The appellants took up the issue with the State Government and requested for an alternative accommodation. The request for the alternative accommodation was declined on the ground that the appellants do not fulfill the necessary conditions as stipulated in the Government Resolution dated 3rd July 2003. One of the reasons for not granting the alternative accommodation, as assigned by the State Government, is that the appellants were not possessing valid identity

cards issued at the time of a survey conducted in the year 1999. In other words, the dwelling place had not been declared as a slum in the year 1999 so as to make the appellants eligible to avail the alternative accommodation in terms of the Government Resolution dated 3rd July 2003.

5 It appears that this is the second round of litigation. In the past, two writ applications were preferred in this High Court by the appellants being the Special Civil Application No.1544 of 2019 and Special Civil Application No.3587 of 2019 respectively. These two writ applications came to be disposed of by a learned Single Judge of this Court vide judgement and order dated 17th September 2019. While disposing of these two writ applications, this Court issued few directions to the State Government and the grievance of the appellants in the present litigation is that the demolition drive undertaken is in violation of the directions issued by this Court in the first round of litigation.

6 We take notice of the fact that before the two main writ applications could be taken up for hearing, the authorities concerned started demolishing the dwelling houses. This led to the filing of the two Civil Applications by the appellants for urgent interim orders restraining the authorities from proceeding further with the demolition of the dwelling houses. The Civil Applications were heard by a learned Single Judge of this Court and vide the common order dated 19th September 2020 rejected both the Civil Applications and thereby declined to grant any relief.

7 The two appeals have been preferred against the interim order passed by the learned Single Judge dated 19th September 2020 declining to stay the demolition. The two writ applications are still pending and yet to be adjudicated. In such circumstances, we thought fit to hear out

the two main matters itself as we noticed that the impugned interim order passed by the learned Single Judge was as good as rejecting the two writ applications. In such circumstances, we asked the learned counsel appearing for the respective parties to argue out the two main matters itself so that the entire litigation can be put to an end.

8 It may not be out of place to state that the day and date on which we heard this matter i.e. 5th October 2020 the demolition drive undertaken by the authorities had come to an end. By and large, all the dwelling houses stood demolished by that time.

9 In the main writ application i.e. the Special Civil Application No.9138 of 2020, the writ applicants have prayed for the following reliefs:

> *"A. Be pleased to admit this petition,*
>
> *B. Your Lordship may be pleased issue a writ of mandamus or any other appropriate writ, order or direction to quash and set-aside the Eviction/Demolition notice dt. 17.07.2020 issued by the respondent no.3 directing the petitioners to vacate their hutments from sector 13/14 slums in the city of Gandhinagar as being illegal and violative of Art-14, 16 and 21 of the Constitution of India and without authority prescribed under the law;*
>
> *C. Your Lordship may be pleased issue a writ of mandamus or any other appropriate writ, order or direction to quash and set-aside the communication letter dt. 25.06.2020 and 01.07.2020 issued by the respondent no.3 rejecting the claim of the petitioners for alternative accommodation as per the GR dt. 03.07.2003 as being arbitrary, discriminatory and without any application of mind and without considering the subsequent Government Resolution, Schemes and policies of the State Government.*
>
> *D. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to hold and declare that the respondent authorities cannot evict the petitioners from the slums of Sector 13/14 in the city of Gandhinagar without providing alternative accommodation in accordance with the GR dt. 18.07.2013 and the Regulations, 2010 and without complying with the directions issued in the*

judgment dt. 09.08.2010 by the Hon'ble High Court in SCA No.10768 of 2009 as well as the orders passed in SCA No.9855 of 2014 and SCA No.5041 of 2016 and SCA No.5042 of 2016;

E. Your Lordships may be leased to issue a writ of prohibition or any other appropriate or any other writ, order or direction prohibiting the respondents from demolishing the residence of the petitioners from the slums of Sector 13/14 in the city of Gandhinagar.

F. Your Lordships may be pleased issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent no.2 to act as per the mandate under Section 284 of the BPMC Act, 1948 and sanction plans for redevelopment of the petitioners slums most preferably in situ where they are staying at present as per the policies of the State Government.

G. Pending hearing and final disposal of this petition, be pleased to stay the implementation execution and operation of the communication notice dt. 17.07.2020 issued by the respondent seeking eviction of the petitioners from their residence at Sector 13/14 in the city of Gandhinagar.

H. Pending hearing and final disposal of this disposal, be pleased to direct the respondent authorities from not acting violation of the orders passed by this Hon'ble Court in the matters of residence of slum area in Sector 13/14 in the city of Gandhinagar.

I. Pending hearing and final disposal of this disposal, be pleased to direct the respondent authorities to consider the cases of the petitioners for alternative accommodation as per the policy of the State Government contained in GR dt. 18.07.2013 and the Regulations, 2010 as well as the directions given by the Hon'ble High Court in the various matters concerning the petitioners;

J. Be pleased to pass such other and further orders as may be deemed fit and proper."

10 In the connected writ application i.e. the Special Civil Application No.9091 of 2020, the writ applicants have prayed for the following reliefs:

"(A) This Hon'ble High Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the State Government to follow its Slum Redevelopment Policy, 2011 and provide the petitioners with an alternative accommodation.

(B) This Hon'ble Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent no.4 to not act upon the notices dated 17.07.2020.

(C) This Hon'ble High Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to recognize and regularize the residence of the petitioners on such terms and conditions as may be deemed appropriate;

(D) This Hon'ble High Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to consider the representations of the petitioners;

(E) This Hon'ble High Court may issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction, directing the respondents not to demolish the residence of the petitioners mentioned in the cause title;

(F) This Hon'ble High Court may issue ad-interim ex-parte order in terms of prayer (A), (B), (C), (D) & (E) above.

(G) For such other relief as this Hon'ble High Court may deem fit."

- **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANTS OF THE SPECIAL CIVIL APPLICATION NO.9138 OF 2020:**

11 Mr. Jeet Bhatt, the learned counsel appearing for the writ applicants has filed written submissions. The writ submissions are as under:

1. *"The Petitioners by preferring the SCA No. 9138 of 2020 have challenged the Demolition Notice dt. 17.07.2020 (pg 96 -102) issued to the petitioners by Executive Engineer, Capital Projects Division, Gandhinagar, on the ground that they are not entitled to alternative accommodation as they do not comply with all the conditions mentioned in the GR dt. 03.07.2003. The reason mentioned for not being eligible are either the petitioners are not having the Identity card issued at the time of conducting photography in the year 1999 (Pg- 144) or the petitioners were not residing at the slums in the year 1999 (Pg- 146).*

2. *The Petitioners challenged the said demolition notice dt. 17.07.2020 as*

being in violation to the order dt. 17.09.2019 passed in SCA no. 1544 of 2019, which was passed in the Petitioners matter and further challenged the decision of the Respondent authority in not providing alternative accommodation as per the prevalent policies of the State Government.

3. *The main grounds for challenge in the petition are as follows which will be dealt in detail below:*

- *The action of the respondent authorities in issuing the impugned demolition/eviction notice dt. 17.07.2020 is in violation to the spirit of the order dt. 17.09.2019 passed in SCA No. 1544 of 2019.*

- *The conduct of the Respondent authorities in insisting on fulfilling with the conditions mentioned in the GR dt. 03.07.2003 when the said conditions have been relaxed in the subsequent policies of the State Government is arbitrary and discriminatory.*

- *The action of the Respondent authorities in not relaxing the conditions of the GR dt. 03.07.2003 and not accommodating the petitioners for permanent residence is arbitrary and discriminatory and in violation to the directions issued by this Hon'ble Court.*

- *The action of the respondent authorities in not considering the case of the petitioners in accordance with the subsequent beneficial policies of the State Government is discriminatory and violative of the due process clause.*

- *The inaction on the part of the Gandhinagar Municipal Corporation in not taking any action under the Gujarat Slums Area (Improvement, Clearance and Redevelopment) Act, 1973 amounts to deprivation of the chance to get rehabilitated and amounts to violation of the fundamental rights of the petitioner.*

- *The inaction on the part of the Municipal Commissioner to act in accordance with the provisions contained under section 284 (E) and 284 (I) of the GPMC Act, 1949 as being arbitrary and discriminatory and issuance of the demolition/eviction notice without first attempting to provide for alternative accommodation either permanent or temporary is in violation to the due process of law guaranteed under the Constitution.*

- *Issuing Demolition/Eviction Notice to so many slum dwellers without considering all the options available with the State Government to provide either temporary or permanent*

residence is clearly an unjust, unreasonable, and unfair decision and therefore violates the due process clause and therefore deserves to be quashed and set-aside.

- *That all the petitioners were provided with this land in the year 2010 when they were displaced from the earlier land where they were living and similarly this time the Respondents could have provided some temporary arrangements if the Respondents wanted to use the said land for other purpose. The Petitioners have never insisted on being rehabilitated in-situ.*

- *The authority issuing the Demolition/Eviction notice dt. 17.07.2020 i.e. Executive Engineer, Capital Project Division is not authorized to issue such notice under any provisions of the law, regulation or resolution and therefore the right to life and liberty of the Petitioners are being taken away without following the procedure established by law and therefore violative of Art- 21 of the Constitution of India.*

- *The action of the respondents in mechanically rejecting the case of the petitioners as being ineligible without finding any other course of action or taking benevolent approach despite of being directed by this Hon'ble Court is in violation of the due process to be followed.*

- *The Regulations for the Rehabilitation and Redevelopment of Slums, 2010 and the GR dt. 18.07.2013 and the subsequent GR dt. 25.01.2017 and 17.09.2017 are applicable in the city of Gandhinagar and should be implemented before evicting the Petitioners.*

- *Pradhan Mantri Awas Yojana Housing for All (Urban) Scheme should be implemented in Gandhinagar to provide permanent residence to the Petitioners.*

- *Inaction of the Respondent authorities in not implementing the Policies of State Government for making Gujarat Slum Free State and Housing for All slum dwellers amounts to depriving the petitioners their fundamental right to shelter guaranteed under the Constitution of India.*

- *The action of evicting the petitioners is ineffective method and in violation of the Judgments of the Supreme Court of India and is violative of fundamental right to life of the petitioners as well as in violation to the International Covenants and International Law obligations of the State and against the mandate of the Constitution.*

- *The Petitioners are not claiming in-situ rehabilitation but till permanent residence is provided in accordance with the schemes and policies of the State Government the respondent authorities cannot simply throw the petitioners away and will have to make some interim arrangements.*

- *The Constitutional Courts should not take the narrower view of seeing the petitioners as encroachers upon government land and must protect the fundamental rights of so many families residing in the said slums since so many years. The Petitioners are not residing in slums out of choice but out of compulsion as they have no where else to go.*

4. *The Petitioners have been residing in Sector 13/14 Gokulpura Slums since last several years. That since late 80's and early 90's people from villages and nomadic tribes started coming to Gandhinagar to find work and started living in huts. That the petitioners built their huts in Sector 13/14 in Gandhinagar and found domestic and labour work to eke out their livelihoods. That on 27.11.2010 the Respondent authorities demolished around 352 slums in Sector 13/14 despite of stay granted by the High Court and thereafter as the slum dwellers preferred SCA No. 15216 of 2010 the Respondents provided them alternative place where the petitioners built their slums and are residing there at present. The List prepared on 27.11.2010 of 352 slum dwellers displaced/removed from original place and shifted to the present land was prepared by the Deputy Engineer, Capital Project Division, Gandhinagar and the Mamalatdar, Gandhinagar (Pg- 182-209). The petitioners were displaced despite of stay granted by this Hon'ble Court vide its order dt. 09.08.2010 in SCA No. 10786 of 2009 (Pg-178). This Hon'ble Court passed several interim orders in SCA N. 15216 of 2010 directing the respondents to provide for all basic amenities and the petitioners were allotted plots which were numbered, electricity connection as well as water facilities and toilets were provided by the Respondent Authorities (Pg-217). The Petitioners submits that the petitioners have been residing in the slums prior to 2010 however they were displaced from their original slums and given the said area to construct and live because of the petition filed in this Hon'ble Court being SCA No. 15216 of 2010. That therefore the respondents by showing the Google earth images of 2003 onwards to indicate that the petitioners have not been living in this area is misplaced and factually incorrect. Further the List prepared by the authority at Pg-182 is conclusive proof to indicate that all the petitioners have been living in slums prior to 1.12.2010 (which is the cut of date to become eligible slum dweller for alternative accommodation in GR dt. 18.07.2013). That the Google Earth images annexed by the Respondents are inaccurate and at the top where years are mentioned it shows "Write a description for your Map" and above that years are mentioned by typing it on the screen. The Petitioners*

seriously dispute the map of 2012 as the petitioners have checked on Google Earth and it does not have the image of the year 2012. The Petitioner have annexed the map of the area where the petitioners were staying prior to 27.11.2010 and the respondents themselves shifted the petitioners to the present site where they have been living since last 10 years.

5. *The Petitioners were thereafter issued demolition notice on 29.12.2018 on the ground that the petitioners are illegal encroachers on the said land and directed them to vacate the land within a period of 5 days or the huts would be demolished. The Petitioners had challenged the said decision by preferring the Special Civil Application No. 1544 of 2019 whereby this Hon'ble Court recorded all the previous Judgments and orders passed in favor of the Slum Dwellers of Sector 13/14 Gokulpura Slums passed since 2008 onwards. The two most important decisions in favor of the slum dwellers are Judgment dt. 09.08.2010 passed in SCA No. 10786 of 2009 (Pg-178) and detailed order dt. 03.03.2011 passed in SCA no. 15216 of 2010 (Pg- 220). The Ld. Single Judge in its order dt. 17.09.2019 finally holds that all the earlier directions issued by this Hon'ble Court has attained finality and such directions are sufficient to safeguard the interests of petitioners and are binding on the Respondent Authority to comply with the same. The Ld. Single Judge directed the Respondent authority to comply with the directions issued by this Hon'ble Court and further adopt a benevolent approach considering the nature of cause in accordance with law and requirement of scheme applicable. Para 10 is reproduced:*

> ***10.With the aforesaid direction already issued by this Court from time to time having finality in absence any thing to suggest to the contrary this Court is of the view that such directions are sufficient to safeguard the interest and binding for the respondent authority to comply with the same. As a result the Court does not deem it fit to propose any further direction in this regard except that the authority to comply with the directions issued by this Court and adopt a benevolent approach considering the nature of cause so that the petitioner's individual case be considered in accordance with law and requirement of the scheme applicable.***

6. *That as the said order directed the Respondents to comply with the earlier orders the Respondent Authority were duty bound to comply with the directions issued in three important decisions in the matter of slum dwellers of Sector 13/14, Gokulpura Slums i.e. Judgment dt. 09.08.2010 passed in SCA No. 10786 of 2009, the Detailed order dt. 03.03.2011 passed in SCA no. 15216 of 2010 and the Order dt. 01.07.2015 passed in SCA No. 9855 of 2014 (Pg- 266). The third aspect that was to be taken care of was to adopt a benevolent approach*

considering the cause of the petitioners' case. That the petitioners expected the Respondent authority to come out with some solution to the humane problem faced by the Petitioners and work out some way to provide shelter to the petitioners or would come out with some decision as per all the latest and prevailing Policies of the Central Government and the State Government which provides for having Slum Free Gujarat and Housing For All Schemes. The State policy regarding Mukhya Mantri Gruh Yojana, Pradhan Mantri Awas Yojana provides that State of Gujarat will be slum free and will provide housing for all slum dwellers living in Gujarat. There are large amounts of funds to be utilized for constructing housing schemes for slum dwellers which remain unutilized. Further the petitioners expected that the Respondent authorities would relax the conditions mentioned in the GR dt. 03.07.2003 and apply the eligibility criteria which has been relaxed by the subsequent State Government Resolutions and Policies.

7. *As per the Direction issued in SCA No. 15216 of 2010 the Respondent authorities were directed to construct the flats providing for alternative accommodation at two location i.e. (1) on the northern side of the GIDC, Vasahat and (2) near GEB Colony, Pethapur. The Respondent authority constructed flats only on one location and did not construct any flats on the land at GEB Colony Pethapur. Had the flats been constructed several slum dwellers could have been allotted the flats.*

8. *The Petitioners submits that in the GR dt. 03.07.2003 (pg- 150) the State Government has allotted 3,15,696 sq mtrs of land on 3 different locations for allotting 25 sq mtrs plot to around 2800 families living in slums in Gandhinagar as on 1999. The Petitioners submits when the decision was changed to provide flats on these earmarked lands in the year 2010 as per the Regulations of 2010, the Respondent Authorities could have accommodated much more families as they can construct several high storied buildings which can accommodate all the petitioners as well. The families residing in slums have increased since the last survey conducted in 1999. In 2020 the State cannot say that they will only cater to the needs of slum dwellers residing in slums in 1999 and none other despite of subsequent beneficial policies adopting more liberal approach.*

9. *The Petitioners submits that the Respondent Authorities constructed the Flats at GIDC Vasahat area in accordance with the Regulations of 2010. That when the Respondent Authority acted as per the said regulations, 2010 and as this Hon'ble Court directed the Respondents to act in accordance with the Regulations 2010 to provide alternative accommodation to the slum dwellers in Gandhinagar then the issue of notifying the slums area pales into insignificance and becomes a mere formality. The said act has to be done by the prescribed authority and if the prescribed authority fails to act then the petitioners cannot be put to*

suffer due to the inaction on the part of the respondent authorities when this Hon'ble Court has directed them to act in the interest of the slum dwellers and further to take benevolent approach. The Prescribed authority has not done anything even after the Order dt. 17.09.2019 passed in SCA No. 1544 of 2019.

10. *The State Government not just made the statement in the Judgment dt. 09.08.2010 passed in SCA No. 10786 of 2009 before this Hon'ble Court but also acted in accordance with the same and constructed around 800 flats wherein through draw system slum dwellers were allotted flats of around 25 sq mtrs in the year 2015. When the State Government constructed the flats in accordance with the said Regulations, 2010, they cannot be heard to say that the said Regulations are not applicable to the area in question as the said area is not declared as a Slum Area. Petitioners further submit that as per the GR dt. 22.01.2015 (Pg- 447 Rejoinder) the respondent authorities itself has allotted the flats to the slum dwellers in Gandhinagar as per the GR dt. 04.03.2010 of the Urban Housing and Urban Development Authority. That it is mentioned in the said GR that the decision has been taken by the Respondent no. 3 to apply the GR dt. 04.03.2010 of the Urban Housing and Urban Development Department and to provide the said flats. That when the decision has been taken to apply the revised policy of the Urban Housing and Urban Development Department then the respondents cannot be heard to say that the said Regulations and GR of Urban Housing and Urban Development Department are not applicable to the petitioners case.*

11. *The Petitioners submits that the GR dt. 13.07.2013 came to be published in pursuance to the GR dt. 04.03.2010 as the State Government is committed to make urban Gujarat a slum free state. The Mukhya Mantri GRUH Yojana was announced for rehabilitating 7 lakh families residing in Slums in Gujarat on priority basis. Under the said Policy if the Prescribed Authority is satisfied that if any area is a source of danger to the health, safety or morals of the inhabitants or its neighborhood, due to area being low lying, insanitary, squalid and over-crowded or if it is unfit for human habitation then such areas could be declared as "Slum Areas". The said policy is applicable to Slums situated on public lands. The Functions of the Slum Rehabilitation Authority are prescribed in para 3 of the said policy. It provides for resolving issues related to Slum Rehabilitation, formulating schemes and programs for slum rehabilitation and regulate its implementation, exercise powers, and perform function of prescribed authority for all urban areas of Gujarat State as and when required etc.*

12. *The Policy of 2013 provides that the Prescribed Authority consisting of 8 members will be constituted at city level jointly for Municipal Corporation and Urban Development Authority as well as for*

Municipalities and Area Development Authority for slum rehabilitation. The Powers, Functions and Responsibilities assigned to the Prescribed Authority are to (3.3.1.1) Review status of slums areas and land in urban areas, shortlist and examine slum dwellers facilities for slum rehabilitation; (3.3.1.3) To rehabilitate and redevelop slums; (3.3.1.4) To formulate schemes for in-situ rehabilitation of slum area; (3.3.1.5) Concerned prescribed authority will be given powers to declare identified slum areas to be slum free areas in exercise of powers conferred by sub-clause 56(1) of Gujarat Slum Areas Act, 1973; (3.3.1.6) To get slum Rehabilitation Scheme implemented; The Prescribed authority will prepare and submit detailed annual reports, giving full account of its activities, and the status of implementation as prescribed.

13. *The Petitioners submits that none of the activities are carried out by the said Authority in the city of Gandhinagar and the Prescribed Authority has never come to visit the said area and has not acted in accordance with the functions and responsibilities entrusted upon it. In reply to the RTI query of the petitioners the Respondent Municipal Corporation in its reply has no documents to show or no knowledge of anything done in pursuance to the policies of the State Government (Pg-451 Rejoinder). The Gandhinagar Municipal Corporation is under the obligation to act and declare the area as Slum Area entitled to be rehabilitated in accordance with the said policy. The Prescribed authority for the Gandhinagar Municipal Corporation area and the Urban Development Authorities are provided under the Notification dt. 30.08.2013 (Pg- 243). The Prescribed Authority consists of (1) Municipal Commissioner, (2) Deputy Municipal Commissioner, (3) Chairman Standing Committee, (4) District Collector, (5) Leading NGO, (6) Representative of CREDAI/NAREDCO having expertise in providing affordable housing, (7) Chairman, Development Authority, (8) Chief Executive Officer, Urban Development Authority, (9) Any other member co-opted by the authority.*

14. *The Government of Gujarat vide its GR dt. 10.06.2016 (Pg- 246) Constituted the State Level Appraisal Committee in pursuance to the mission of the Government of India to have "Housing for All by 2022" in order to address the housing requirement of Urban Poor including slum dwellers through the Slum Rehabilitation with Public Private Partnership using land as a resource etc. That pursuant to the GR dt. 18.07.2013 the Respondent State came out with another GR dt. 25.01.2017 (Pg- 251) wherein it is resolved that Slum areas situated on Government Lands to be transferred to Local Self-Governing Body for in-situ rehabilitation under the Mukhya Mantri Gruh Yojana and Pradhan Mantri Awas Yojana (Pg 420 Rejoinder). That all such policies are beneficial policies to benefit the downtrodden and the most backward community living in slums. That such policies are to be implemented and executed by the State Authorities as they are considered as part of*

the constitutional mandate under the directive principles of state policy and the state is under an obligation to act.

15. *The Petitioners submits that detailed policy for making Slum Free Gujarat has been laid down and despite that State Government is arguing that the said policies are not applicable to the slum dwellers of Gandhinagar and also because the area has not been notified as Slum Area. It is the duty and responsibility of the Prescribed Authority to decide whether the said area is required to be notified as Slum Area and whether the slum dwellers should be rehabilitated or not? However, the policy of the State Government is clearly in favor of the Petitioners who are living in slums since several years. Having not acted in accordance with the beneficial policy, the State Government should not be heard to say that because the said land is not notified the Petitioners are not entitled to rehabilitated. The Gandhinagar Municipal Corporation was constituted vide notification dt. 16.03.2010. That since 2010 it was the bounden duty of the Municipal Corporation to undertake the exercise of considering the slums area for rehabilitation. This Hon'ble Court in its judgment dt. 17.10.2014 passed in LPA No. 712 of 2010 and allied matters relating to slum dwellers of Ghatlodia Ahmedabad area directed the Corporation as well as the State Government.*

16. *The State Government cannot be heard to say that the said policy is not applicable in city of Gandhinagar which is an absolutely illegal stand of the Respondent as the said Policies have been framed under the name of the Governor under Art- 162 of the Constitution of India and applicable to the entire State of Gujarat. Further the Policies don't provide that they are not applicable in Gandhinagar and therefore such a stand of the State is illegal and discriminatory. The Slum Dwellers in Gandhinagar cannot be deprived of the beneficial policies of the State Government. Only because the said GR are issued by the Urban Development and Urban Housing Society, would not render it in-applicable to the city of Gandhinagar. The City of Gandhinagar has been declared as a larger urban area and therefore Municipal Corporation has been constituted which is constituted only in larger urban areas. Otherwise Municipality/Municipal Council or Nagar Panchayats are constituted in smaller urban areas and villages respectively as per Art-243 Q of the Constitution. That the GR dt. 18.07.2013 are applicable to all Municipal Corporations.*

17. *The Petitioners submits that rather then complying with the directions issued in SCA No. 1544 of 2019 in its letter and spirit the respondent authority without application of mind in cyclostyle manner issued rejection letters to the petitioners stating that they do not meet with the conditions mentioned in the GR dt. 03.07.2003. The main reason being that the petitioners do not have Identity Cards issued by the Collector or they were not present during videography/photography in the year*

1999. The Petitioners having submitted the Photo Identity Card issued and other documents to suggest that they are residing in the slums prior to 1999 yet the said documents were not considered by the Respondent Authorities. The Petitioners have produced the Photo Identity cards from page 135 to 142 which were submitted to the Respondent authorities and despite of having the ID card the respondent authority has rejected their claim under GR dt. 03.07.2003.

18. *The Respondents could have applied or adopted the GR dt. 18.07.2013 in order to relax the requirements to be eligible slum dwellers as provided at Para 4 of the said GR which provides that "the Slum Dwellers families that are living in slums on or before 1-12-2010 will be considered as beneficiaries. A list of beneficiaries will be prepared by implementing agencies based on any two of the following four identity proofs: Electricity Bill, Voter Identity Card, Slum Survey or Ration Card."*

19. *The condition of being a slum dweller as on 1999 having been relaxed subsequently by the State the respondent authorities could have considered this eligibility criteria and considered the case of the petitioners as all petitioners are residing in slums prior to 2010 and have all necessary documents to suggest the same. The Respondents cannot deprive the petitioners of the beneficial policies of the State Government.*

20. *The Petitioners submits that effectively providing right to shelter to the downtrodden and marginalized section of the state depends on the due process of law, good governance, and efficient implementation of the beneficial policies of the State Government. If Policies remain only on paper, then the slum dwellers will be deprived to live their life with dignity as guaranteed under the Constitution. Right to Shelter is part of right to life and personal liberty guaranteed under the Constitution. If the Respondent authorities, the Municipal Corporation or the State Authority without first considering the case for alternative accommodation either permanent or temporary and issues demolition notices, it would violate the due process of law as the decision cannot be said to have been taken in fair, just and reasonable manner. The authorities will have to show that they have considered the following and thereafter taken the decision to demolish/evict the slum dwellers to comply with the due process clause under the Constitution of India:*

(a) What the consequences of eviction might be?

(b) Whether the Corporation/Collector/authority could help in alleviating those dire consequences?

(c) Whether it is possible to redevelop the area occupied by the slum dwellers considering the policies and schemes of the State and Central Government?

(d) Whether it is possible to rehabilitate and accommodate the slum

dwellers at any other location near to their workplace after providing them with basic amenities?

(e) Whether it is possible to render the Slums relatively safe and conducive for health?

(f) Whether the Corporation/Collector/authority had any obligations to the slum dwellers in the prevailing circumstances?

(g) When and how the State authorities could or would fulfill the Constitutional obligations of providing right to adequate housing to the slum dwellers?

21. *Without considering these aspects if the Authorities carry out the demolition/eviction of slum dwellers it would violate the due process clause and it would result into deprivation of Article 21 of the Constitution of India as the decision would become unjust, unfair and unreasonable.*

22. *The Hon'ble High Court in its order dt.01.07.2015 passed in SCA No. 9855 of 2014 had directed the Respondents to relax some of the conditions prescribed under the GR dt. 03.07.2003 to accommodate the slum dwellers for the beneficial scheme of the State Government. The Respondent authorities have without complying with the direction issued in SCA No. 10786 of 2009 whereby the Regulations of 2010 were to be applied and the directions issued in SCA No 15216 of 2010 wherein flats were to be constructed at two locations which till date remains not complied and further direction to relax few conditions of GR dt. 03.07.2003 the respondents have not done so and have mechanically issued the letters rejecting the claim of the petitioners that they are not eligible for alternative accommodation as per GR dt. 03.07.2003. That the petitioners are challenging the said action of the respondents in issuing the said letters and thereafter issuing the demolition notice dt. 17.07.2020 without providing alternative accommodation either temporary or permanent to the petitioners.*

23. *The Petitioners submits that the demolition notice dt. 17.07.2020 is issued by the Executive Engineer, Capital Projects Division, Gandhinagar even the individual case of the petitioners were rejected by the said authority. The Petitioners challenge the authority of the said officer in issuing the demolition/eviction notice to the petitioners as being illegal and without any authority of law. The demolition/eviction of the petitioners would amount to violation of Art- 21 of the Constitution of India and can be done only in accordance with the procedure prescribed by law. The Respondents have not shown any law, regulation or resolution prescribing the Executive Engineer to issue the demolition/eviction notice and therefore the said action is without procedure established by law and therefore illegal and violative of Art-21 of the Constitution of India. The Law prescribes the procedure and the authority that is given the power to remove encroachment and evict*

summarily unauthorized occupants under the Land Revenue Code as well as under the GPMC Act, 1949 but those authorities have not acted or undertaken the exercise of powers conferred upon them. Therefore the demolition notice dt. 17.07.2020 issued by the Executive Engineer, Capital Project Division is non-est and without any authority and therefore on that ground alone deserves to be quashed and set-aside.

24. *The Petitioner submits that Right to Shelter is part of Right to Life and Liberty guaranteed under Article 21 of the Constitution of India. That eviction of the petitioners without providing any area to even put up the slums would completely violate the fundamental rights guaranteed under the Constitution.*

25. *Right to Shelter and adequate housing is recognized as a basic Human Right under the Universal Declaration of Human Rights of 1948. Under the Constitution of India the preamble highlights the guarantee of Social Justice, and of the right to dignity. A collective reading of the provisions relating to Equality, the freedom of movement, of residence anywhere in the country (Art- 19(1)(e), and the freedom to carry on ones trade or profession read with Art- 21 impliedly invalidates the denial of the rights of the underprivileged to the basic survival rights. It also enjoins the State to not adopt measures that would deprive them of such basic rights. Right to life is given the meaning of widest amplitude to cover variety of rights which go to constitute the meaningful right to life.*

26. *Right to food, Shelter and clothing has been recognized as the most minimal basic survival rights. It is a facet of inseparable meaningful right to life under Art- 21.*

27. *Prior to Olga Tellis Judgment of the Supreme Court, in 1984 the Andhra Pradesh High Court in the judgment of* ***Kurra Subba Rao Vs. Dist Collector*** *(Pg- 5 of Judgments- Relevant Para 9 to 24) dealing with the issue regarding Lands to be acquired by the State under Land Acquisition Act, 1894, for providing housing sites to SC, ST and other Economically Backward Classes, it dwelled upon the issue of Constitutional Goals and the Duty of State for the Housing needs of the Economically weaker sections of the Society and observed that the thrust of the Constitution is the establishment of an egalitarian socialist State. That the State is to provide facilities and opportunities to people below poverty line so as to eliminate inequality of Status. Social Justice is a fundamental right for the economically backward classes and the State being a welfare state is required to render Social Justice. It also discusses regarding the Urgency to improve Housing Conditions of the poor and the Judicial Recognition of the said issue (Para- 21). It observes regarding the need for invocation of urgency clause holding that the housing conditions of the poor constitutes, grave urgency and renders full justification for dispensing with the inquiry under Section 5-A of the*

Land Acquisition Act.

28. *In* ***Ramanna Vs. The Collector, West Godavari, 1977 (2) APLJ 289****, the Division Bench has observed as under at pg 308:*

> " ***After thirty years of Independence the plight of many who were poor and homeless at the time India attained Independence continue to be practically the same……. The situation at present is that there has been a great delay in the matter of providing housing accommodation to the poor and it is a matter of national shame that after a lapse of 30 years the conditions of the poor such as the Harijans and other weaker sections of the Society continue to be deplorable in the matter of providing housing accommodation, though the Constitution itself recognized the need*****".**

29. *The Constitution recognizes the duty of the State to provide necessary infrastructure with accelerated need for housing programs to make the fundamental rights of the economically backward classes to settle down in permanent residence a reality and the State is under constitutional obligation in a time bound manner to solve their housing problem on war footing.*

30. *Among the early Judgments of the Hon'ble Apex Court acknowledging the right to shelter as forming part of Right to Life under Art- 21 of the Constitution is the Judgment of* ***Olga Tellis Vs. Bombay Municipal Corporation, 1985 (3) SCC 545.*** *The Delhi High Court in the Judgment dt. 18.03.2019 of* ***Ajay Maken and Ors Vs. UOI & Ors 2019 Lawsuit (Del) 913*** *has attempted to explain and interpret the judgment of Olga Tellis (at Para 87). It was observed in Olga Tellis "****that, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life****". The Hon'ble Supreme Court acknowledged that the massive migration of the rural population to big cities was for the reason that they have no means of livelihood in the villages. The Apex Court has also observed and held as under:*

> "***persons in the position of petitioners live in slums and on pavements because they have small jobs to nurse in the city and there is nowhere else to live. Evidently, they choose a pavement or a slum in the vicinity of their place of work, the time otherwise taken in commuting and its cost being forbidding for their slender means. To lose the pavement or the slum is to lose the job. The conclusion, therefore in terms of the constitutional phraseology is that the eviction***

***of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life*".**

*31. The Court then drew two conclusions: one, that the right to life which is conferred by Article 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. The Court rejected the plea of BMC that no notice need be given because, there can be no effective answer to it. According to the Supreme Court, this betrayed "a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice". In discussing this aspect, the Supreme Court acknowledged "**eviction of the pavement or slum dweller not only means his removal from the house but the destruction of the house itself. And the destruction of a dwelling house is the end of all that one holds dear in life. Humbler the dwelling, greater the suffering and more intense the sense of loss**".*

*44. **Whether the State of Gujarat has complied with its Constitutional obligation to provide accommodation to the petitioners in the present case?***

I. *The GR dt. 03.07.2003 till date requires to be complied in its letter and spirit. The Survey which was carried out in 1999 provided that there were around 2800 families living in Slums in the city of Gandhinagar at that point in time. The petitioners submit that there were more families however the survey was carried out in haste and therefore many names were not included however as a matter of fact 2800 families were documented to be living in slums. It was decided to provide 25 sq mtrs of plots for which 3,15,696 sq mtrs of land was earmarked. That after several orders passed by the Hon'ble High Court as on date only one scheme providing 800 flats came to be constructed in the year 2015. The Petitioners submits that the survey of 1999 is outdated now and there are many more families living in slums and therefore the respondents will have to act as per the new policies to include more families to benefit out of the new policies.*

II. *Since 2003 onwards several Policies came into existence by the Central Government as well as by the State Government for slum rehabilitation programes which further narrowed down on the conditions imposed by the GR dt. 03.07.2003. The eligibility criteria are also narrowed down and all subsequent GR's aim to include more and more slum dwellers in its ambit to benefit most of the persons living in Slums. Considering the said policies, it appears that the State clearly wants to provide for shelter to the slum dwellers and cares for the fundamental rights of the slum dwellers. However, looking at the present case it clearly shows the poor state of implementation of the policies which are aimed at ameliorating*

the pathetic conditions of the slum dwellers. It is extremely unfortunate that generations after generations are living in slums in Gandhinagar and still waiting for their chance to get their house only as per the GR dt. 03.07.2003. The stand of the respondents that only GR dt. 03.07.2003 is applicable and no other policy is applicable is untenable in the eye of law.

III. *That as per the RTI reply of the GMC (Pg. 450 Rejoinder) it is apparent that the Respondent Gandhinagar Municipal Corporation has done nothing since its inception for providing housing schemes for the slum dwellers. Even the Slum Rehabilitation Committee as required under the Regulations, 2010 as well as the Prescribed Authority as per the Notification dt. 30.08.2013 (pg 243) is not constituted. That it shows the lackadaisical approach of the Corporation as well of the State Government in rehabilitating the Slum Dwellers in Gandhinagar. That the Municipal Commissioner has also done nothing under section 284 of the GPMC Act. The GMC is duty bound to undertake the exercise under Section 284 (I) of the GPMC, Act and build more such schemes for the slum dwellers in the city of Gandhinagar. The GMC must comply with all the policies of the State Government for rehabilitation of the Slum dwellers otherwise its existence is meaningless. Therefore it is clear that the GMC has till date not acted as per the Constitutional Mandate and therefore they have failed to comply with their obligations and therefore eviction of the petitioners would be violative of their Fundamental rights as the State has not complied with its Constitutional Mandate in the present case. That irrespective of who owns the land in Gandhinagar, when there are beneficial schemes of the State as well as Central Government they have to be implemented and the departments inter-se have to ensure that they are being implemented and the benefits are flowing to the Slum Dwellers. They cannot evade its implementation on flimsy grounds and they cannot hood wink the Hon'ble Court by stating that the GR of Urban Department are not applicable in Gandhinagar as Gandhinagar is a peculiar case.*

IV. *The State Government has miserably failed in complying with its Resolution dt.03.07.2003 and the subsequent GR dt. 4.03.2010 as well as the GR dt. 18.07.2013 which is evident as several orders passed by the Hon'ble High Court directing the State to comply with the GR dt. 03.07.2003 since 2008 onwards remains not compiled. Further GR dt. 4.03.2010 will be applicable in the present case as per the direction given by the Hon'ble High Court in its Judgment dt. 09.08.2010 in SCA No. 10768 of 2009 and therefore the State Government is bound by the directions and today they cannot be heard to say that the said GR is of Urban Department and not applicable to the R & B Department and particularly in the city of Gandhinagar. The GR dt. 18.07.2013 will also be applicable in the present case as the same applies to the entire State of Gujarat and*

therefore Gandhinagar cannot be left as an exception and the benefit which is flowing from the said GR has to be implemented in the slums of Gandhinagar as well. Therefore as per the GR dt. 18.07.2013 all slum dwellers residing in slums prior to the Cut-off date being 1.12.2010 will be eligible slum dwellers and entitled to rehabilitation. All petitioners are residing in slums prior to the said date and have the relevant documents like Election Card, Aadhar Card, Ration Card etc and therefore they can be considered as eligible slum dwellers as per the said GR.

V. *That since the GR dt. 18.07.2013 several other schemes and policies have been framed by the State and Central Government which is annexed from pg 226 onwards. That as per the GR dt. 10.06.2016 (Pg- 246) which provides that the Government of India has launched a comprehensive Mission "Housing for All by 2022" where the State will focus on the slum rehabilitation of slum dwellers. That to implement the said policy the Government of Gujarat has constituted the State Level Appraisal Committee which has to carry out the functions as prescribed. Further vide another GR dt. 25.01.2017 (Pg- 251) of the Revenue department all the Government lands occupied by the Slum Dwellers will have to be allotted to the Local Government for rehabilitation of the Slum Dwellers as per the GR dt. 18.07.2013. Further as per the GR dt. 01.03.2018 (Pg- 262) the standard operating procedure has been fixed and it provides how the Government land will be developed for providing in-site rehabilitation for the Slum Dwellers. That all the Policies of the State Government indicates that the State Government wants to rehabilitate the slum dwellers in accordance with its Constitutional Goal and Mandate however in respect to its implementation at Gandhinagar the State Government has not shown any progress for the rehabilitation of the slum dwellers. Further in order to apply the said policies if the slums were to be declared as notified slums then why has the State Government waited for such a long period of time. In implementing the GR dt. 03.07.2003 the State Government has not declared any slum area as notified slums yet provided alternative permanent residence, then why today they are insisting that without any notification the slums cannot be redeveloped and the slum dwellers cannot be rehabilitated as per the subsequent policies.*

VI. *The policies and programmes of the State and the Central Government must be reasonable both in their conception and their implementation. The formulation of a program is only the first stage in meeting the States Obligations. The programmes must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the States Obligations. The right to adequate housing is entrenched as a fundamental right the Constitution values human beings and want to ensure that they are afforded their basic human*

needs. Therefore, the State Government has miserably failed in undertaking the exercise of declaring the slums as notified slums under the Slums Act, 1973 and therefore they cannot be heard to say that the present slum in Sec 13/14 are not notified and therefore not entitled to rehabilitation.

VII. *The present case involves questions of Social Justice and therefore the petitioner's requests the Hon'ble Court not to get into technicalities regarding declaring the slums as notified, as the State is trying to deny the petitioners the benefits which they ought to have got long ago. Therefore the State Government in the facts of the present case has not acted in accordance with its Constitutional Mandate and therefore they cannot evict the petitioners without providing alternative accommodation either temporary or permanent.*

54. Suggestions to resolve the problem and difficulties:

I. *The petitioners do not wish to stay in slums forever and they have the fundamental right to reside and carry out their livelihood in the city of Gandhinagar. The petitioners have a legitimate expectation from the State Government that their situation will be considered by the State Government and they will be provided with adequate housing in the city of Gandhinagar. The respondents are under the constitutional obligation to provide for adequate housing to the petitioners. Without any concrete plans of rehabilitation the petitioners cannot be evicted in the present facts of the case as the eviction would lead to denial of their right to livelihood. Therefore the petition deserves to be allowed by granting the following reliefs as deem appropriate.*

II. *The Petitioners submits that if the Respondent authority wants to utilize the said land then the petitioners may be provided alternative area and be permitted to make their huts and provide all basic amenities required to live life with dignity. They may provide Electricity, Water, toilets, streetlights etc and transportation facilities and at least 25 sq mtrs plot per family as an interim measure and ultimately include them for permanent residence as per the GR dt. 13.07.2013 and relax the eligibility criteria and allot flats to all those petitioners who have been residing in slums prior to 1.12.2010.*

III. *The Hon'ble Court may kindly quash and set-aside the eviction notices dt. 17.07.2020 issued to the petitioners as the same does not provide for any alternative accommodation and*

further declare that the petitioners cannot be evicted without providing alternative housing accommodation that too in the nearby vicinity of their workplace;

IV. *The Hon'ble Court may kindly direct the State Government to implement the GR dt. 03.07.2003 and develop the 3,15,696 sq mtrs of land earmarked as per GR dt. 03.07.2003, as per its latest policies and programmes including the GR dt. 18.07.2013 (Public Private Partnership) and subsequent GR's which are more inclusive in nature and narrows down on the eligibility criteria's as set out in the first GR dt. 03.07.2003, so that the benefit of the Schemes can be extended to large number of slum dwellers in Gandhinagar.*

V. *The Hon'ble Court may kindly direct the State Government and its agencies to engage meaningfully with the petitioners and other slum dwellers. Meaningful engagement where Engagement should be a two-way process in which the authority and the slum dwellers would talk to each other meaningfully in order to achieve certain objectives. Engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process. It is precisely to ensure that the authority is able to engage meaningfully with the poor, vulnerable or illiterate people that the engagement process should preferably be managed by careful and sensitive people on its side.*

VI. *The Hon'ble Court may direct the Municipal Corporation to act in accordance with its Constitutional Mandate and also engage meaningfully with the slum dwellers in the city of Gandhinagar and as far as possible enact schemes as required under section 284 of the GPMC Act.*

VII. *Further the Corporation or the State Authority in any given case may be directed not to evict any slum dwellers without first determining:*

(h) What the consequences of eviction might be?

(i) Whether the Corporation/Collector/authority could help in alleviating those dire consequences?

(j) Whether it is possible to redevelop the area occupied by the slum dwellers in light of the policies and schemes of the State and Central Government?

(k) Whether it is possible to rehabilitate and accommodate the slum dwellers at any other location near to their workplace after providing them with basic amenities?

(l) Whether it is possible to render the Slums relatively safe and conducive for health?

(m) Whether the Corporation/Collector/authority had any obligations to the slum dwellers in the prevailing circumstances?

(n) When and how the State authorities could or would fulfill the Constitutional obligations of providing right to adequate housing to the slum dwellers?

VIII. *Only after undertaking such exercise the authorities must take informed decision whether to evict the slum dwellers or not.*

12 Mr. Bhatt, in support of his written submissions referred to above, has placed reliance on the following decisions:

[1] Ajay Maken & Ors Vs. Union of India [2019 LawSuit (Del) 913 at Para 88]

[2] Olga Tellis Vs. Bombay Municipal Corporation, [1985 (3) SCC 545]

[3] Sudama Singh & ors. Government of Delhi [2010 LawSuit (Del) 4309]

[4] AMC Vs. Nawab Khan Gulab Khan [(1997)11 SCC 121]

[5] LIC Vs. D. J Bahadur [(1981) 1 SCC 315]

[6] Senior Divisional Commercial Manager Vs. SRC caterers, [2016 (3) SCC 582]

- **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANTS OF THE SPECIAL CIVIL APPLICATION NO.9091 OF 2020:**

13 Ms. Dharmistha Raval, the learned counsel assisted by Ms. Dilbur Contractor, the learned counsel appearing for the writ applicants has also filed written submissions. The written submissions are as under:

> *"1 The appellants are poor people who have been residing in the Sector 13 and 14 of Gandhinagar since 19908 and have all documentary evidence like valid voter IDs, birth certificates, school leaving certificates, bank account statements to support their claim of residence since 19905; The appellants have by way of & draft amendment to the petition , which was granted by the learned Single Judge , have put on record an instance of the various documents submitted by one of the appellants to the authorities along with their representation for alternate accommodation. (Annexure-I Colly -Page 548 onwards, specific attn. to pgs 562 onwards) All appellants have such valid identification documents to show that they have been residing at Section 13, 14 , Gandhinagar , however in order to not make the record of the court bulky , the appellants have sought leave to produce and rely upon the documents of each appellant to show his residence since 19903. All the appellants have valid Identity Cards issued by the Election Commission of India and their names are also reflected in the voters list of 1995 showing their residential address as Sector 14, Gandhínagar. This fact has not been disputed by the State Government. In fact they have remained silent on the aspect of the appellants actually residing in Sector 14.*
>
> *2 The appellants are seeking alternate accommodation on the basis of the GR dated 3.7.2003 (Page-501) which had been introduced for the benefit of those hutment dwellers who were residing on government lands in Gandhinagar as on 30.11.1999. There are certain criteria laid down in the said notification. The appellants fulfill all the criteria except two criteria i.e (17 The appellants were not included in the videography done on 30.11.1999 and (ii) they do not possess the ID card issued by the Collector (which was issued on the basis of the videography).*
>
> *3 The grievance of the appellants , right from the start has been that the authorities had not completed the survey on 30.11.1999. The appellants through various correspondences on various occasions have pointed out to the State Government that the videography of all the hutment dwellers was not completed on 30.11.1999 and time and again*

the State Government was requested to complete the videography which was carried out only on one day and it was physically impossible to carry out videography of each and every hutment in a single day (Page 542).

4 The Appellants and the similarly situated persons had previously approached this Hon'ble High Court in 2014 vide Special Civil Application no.9855/2014 with a similar prayer for providing alternate accommodation pursuant to the policy of 3.7.2003 and that their representations are not being considered (Page 505). The Hon'ble High Court had directed the State Government to consider the representations and also explore the possibility in case the concerned occupier fails to satisfy 1 or 2 conditions of such resolution not effecting substantially the decision making process of the authority (pg 508). In spite of such a direction given by the Hon'ble High Court in 2014, the State Government did not individually consider the cases of the appellants in accordance with the order passed by the Hon'ble High Comt. The appellants and the similarly situated persons were thus once again compelled to approach this Hon'ble High Court by way of SCA 5041 of 2016. The Hon'ble High Court was pleased to dispose of the SCA vide order dated 4.4.2016 (Page 510). In the said order the Hon'ble High Court had reproduced the prayers of the Petitioners wherein it is evident that the petitioner had prayed that Hon'ble High Court direct the respondents to carry out survey and ascertain the residence of the petitioner and also to consider the representations of the Petitioners. The Hon'ble High Court directed the petitioners to once again make the representation along with all relevant documents and materials and the State Government was directed to consider the representations within six weeks and also explore the possibility of the allotment in case the hutment dwellers does not meet 1 or 2 conditions(pg 512).

5 The State Government instead of considering individually the representations of the Petitioners and the accompanied proofs of residences have been issuing eviction notices on various occasions. The Appellants' last made representations were rejected vide communication dated 25.6.2020 (Page 517) whereby the appellants were informed that as they were not included in the videography done on 30.11.1999 and as they have not produced ID Proof issued by the Collector they were not in compliance of the Circular dated 3.7.2003. All the appellants were issued identical 'ejection letters. The appellants have challenged the communication dated 25.6.2020 by way of an amendment by insertion of a new prayer clause 8 BB. In the draft amendment the appellants had specifically averred once again that the authorities have visited the hutments only for a day for the survey and the videography of all the hutments was not done and that the authorities had assured them that they would return to complete the survey, but they never came.

6 It is submitted that out of all the conditions provided for in the GR dated 3.7.2003 as per the respondents the only condition that the appellants do not meet is having their photos included in videography and having an ID Card issued by the Collector on basis of the videography.

7 The appellants are complying with all the other criteria and have the requisite residence proofs. The nonperformance of the State Government in completing the videography is a criteria which only the State Government can perform and the appellant cannot be deprived of the benefit of the circular of 3.7.2020 on the ground of non-performance of a condition by the Government.

8 The submission regarding videography is not an afterthought by the appellants. The direction issued by the Hon'ble High Court on various dates and on petitions substantiates the submission of appellant that they have been consistently re-iterating that the videography was not completed on 30. 1 1. 1999. In spite of above facts and submissions the Learned Single Judge has erroneously observed that there is abuse of process of law by the petitioners by filing the petition. The learned Single judge has also erred in concluding that the petitioners have made oral submissions Without written averments that all the appellants' applications have been rejected on the same ground that the videography was not carried out.

9 On behalf of petitioners it was specifically averred that no reliance is placed in the petition on the slum rehabilitation regulations. In spite of this categorical statement the Learned Single judge has recorded that the reliance is placed by the petitioners on the regulation.

10 It is a fact that the State Government have been trying to evict the petitioners without complying with the process of law and Petitioners' application for alternate allotment was rejected without considering the orders of the Hon'ble High Court in spirit. Even in the latest impugned decision dated 25.6.2020 passed by the authorities there is no reference to the fact whether they have complied with directions of the order of High Court to explore the possibility of making allotment in case the hutment dwellers do not comply with 1 or 2 conditions which does not substantially alter the decision making process.

11 The Petitioners are in possession of documents issued by the State Government themselves proving the fact that the appellants are residents of the said sector 14 prior to 1999. In spite of these facts the Learned Single Judge has observed that the appellants are re-opening and re-agitating the issue. There is no one observation regarding the nonperformance by the State Government or as to why State Government

is not believing the residence proofs submitted by the appellants.

12 The Ld. Judge has failed to consider that it is the most inopportune time to render hundreds of people homeless in the midst of a pandemic. The petitioners are daily wagers and as it is they are finding it difficult to make ends meet. The financial crisis has rendered them jobless and now they are being rendered rootless. It is impossible for such a huge number of people to find alternate accommodation and evicting them, without making provision for alternate accommodation will be hazardous for not only the families of these destitute but shall also be a lurking danger to the health and life of general public.

13 It is needless to reiterate that as proclaimed by the Preamble of our Constitution , India is a socialist and welfare state. It is the duty of the Government to provide affordable housing to its citizens. Today if people cannot afford cheap housing then whose failure it is?"

● **SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

14 Ms. Manisha Lavkumar, the learned Government Pleader assisted by Ms. Aishwarya Gupta, the learned A.G.P. appearing for the respondents has also filed written submissions. The written submissions are as under:

"Chronology of Date and Events:

Date	*Event*
	Gandhinagar is a capital project and the lands in Gandhinagar are strictly regulated.
23.12.1969	*Revenue Department issued Government Resolution to constitute a revenue village for city of Gandhinagar*
29.06.1988	*Road and Building Department issued government Resolution notifying the policy of alienation of lands within the city limits, restricting allotment of any land without auction proceedings the administration of lands in Gandhinagar is vested with Road and Building Department.*
03.07.2003	*Due to growing encroachment on government lands, Road and Building Department issued Government Resolution for allotment of alternate land, to hutmen living in various sectors of Gandhinagar since 30.11.1999 on fulfillment of 15 conditions.*
2008	*Various petitions were filed before Hon'ble Court by the slum*

	dwellers residing in Gandhinagar bearing SCA No.15216/2010, SCA No.7085/2008, SCA No.7955/2008 for rehabilitation.
03.03.2011	*Hon'ble Court passed order in SCA No.15216/2020 (Hon'ble Mr. Justice M. R. Shah) directing the respondent to put up construction for alternative accommodation and also decide the eligibility of hutmen dwellers of granting accommodation as per GR dated 03.07.2003.* *Note : approx. 800 found entitled, duly allotted.*
01.07.2015	*Hon'ble Court passed order in SCA No.9855 of 2014 (Hon'ble Mr. Justice K.J. Thaker) wherein Hon'ble Court directed the petitioners to make representation in support of their existence over the land in question and further directed respondent to consider the same in accordance with law.*
4.4.2016	*Similarly, order came to be passed in SCA No.5041/2016 and 5042/2016 wherein Hon'ble Court (Hon'ble Mr. Justice A.J. Desai) directed petitioners to make representations in support of their existence and directed respondent to decide the representation and explore the possibility even when the occupier fails to satisfy one or two conditions, not affecting substantially the decision making process.*
10.05.2018	*Hutments of village : Borji had filed SCA No.7352 of 2018 and allied matters wherein Hon'ble Court (Hon'ble Mr. Justice A.J. Shastri) had granted permission to the petitioners to approach the authorities with their grievance till 31.05.2018, as encroachment on Government land cannot be given long drawn protection.*
3.8.2018	*Aggrieved by the order dated 10.05.2018, Letters Patent Appeal was preferred wherein Hon'ble Division bench (Hon'ble the Chief Justice R. Subhash Reddy and Hon'ble Mr. Justice V.M. Pancholi) passed order in LPA No.630 of 2013 in SCA No.7352 of 2018 and allied matters holding that petitioner's possession is not backed by any valid title and furthermore they cannot claim rehabilitation under the scheme as the subject land is not under the Gujarat Slums (Improvement, Abolition and Rehabilitation) Act, 1973.*
	Meanwhile, notices were issued to all the persons who were petitioners in SCA No.5041/2016, 5042/2016 and SCA No.9855/2014 as well as to 188 persons who were not party to those proceedings.
17.9.2019	*188 petitioners approached the Hon'ble Court by filing SCA No.1544/2019 whereby Hon'ble Court passed order (Coram: Hon'ble A.Y. Kogje) relying upon orders passed in similar set*

	of petitions namely SCA No.9855/2014 and allied matters, directed to comply with order passed in previous writ petitions and directed to decide the representation in accordance with law and applicable scheme.
29.12.2018	*Consequential to orders passed in previous writ petitions, individual notices to all persons were issued by office of Executive Engineer and directed to submit the list of documents enlisted in the notice.*
	Representations of all persons including the petitioners of various writ petitions, were individually scrutinized by respondents in accordance with government resolution and directions give by the Hon'ble Court time to time. Out of 599 hutments, 128 hutments were found eligible and granted alternative accommodation.
25.6.2020 and 01.07.2020	*Collector, Gandhinagar passed order informing the petitioners that they do not fulfill the eligibility criteria in accordance with the GR dated 3.7.2003 and therefore cannot granted alternative accommodation.*
14.07.2020	*District Collector, Gandhinagar conducted draw of lots and alloted alternative accommodation to 128 hutments.*
17.7.2020	*Impugned Notices were issued to petitioners evict the land within 10 days.*
	SCA No.9091/2020 came to be filed challenging against the notice dated 17.7.2020 and order dated 25.6.2020 (by way of draft amendment).
	SCA No.9138/2020 came to be filed challenging the order dated 25.06.2020 and 1.07.2020 and notice dated 17.7.2020.

Contentions by petitioners:

i. That only two reasons are stated for rejection of allotment of alternative accommodation i.e. (i) petitioners were not included in survey done on 30.11.1999 and (ii) petitioners do not have photo identification card

ii. They are similarly situated petitioners in SCA N0.15216 of 2010, SCA NO.7085 of 2008 and 7955 of 2008 and hence seeks parity

iii. Hon'ble Court in SCA NO.5041/2016 and 5042/2016 in order dated 04.04.2016 directed authorities to explore possibilities of allotment in spite of non-fulfilment of certain conditions

iv. Petitioners are entitled to rehabilitation and alternative accommodation as per Government Policy dated 18.07.2013 of rehabilitation and Regulation, 2010.

v. The notices are issued without jurisdiction as Gandhinagar Municipal Corporation will be the appropriate authority to initiate procedure.

Response of the State:

A. Non-fulfilment of conditions of GR dated 03.07.2003

1. The Government Resolution dated 03.07.2003 enumerates 15 conditions for gram of alternative accommodation. The eligibility criteria more particularly enumerated in condition no. 1 to 5 are required to be fulfilled wherein petitioner could not comply with condition no .1 and 2 and therefore they are not entitled for alternate accommodation. Merely having identity card or alternatively name in the survey list cannot be considered as fulfillment of condition as both the conditions are mandatory and not optional.

2. The primary condition of residence as on 30.11.1999 and the identity proof issued by Collector are substantial conditions affecting the implementation of the scheme and hence no relaxation can be given.

3. The authorities have scrutinized representations of all 599 hutments individually and thereafter upon detailed verification of records, including the identity proofs submitted, passed order of granting allotment to 128 hutments.

4. Grant of alternative accommodation under GR dated 03.07.2003 is a policy decision of State government and no legal right can be accrued by the petitioners for seeking benefits under it.

5. It is admitted by the petitioners that none of them are having valid title over subject land.

B. Multiple rounds of litigation

1. Out of the 63 petitioners of SCA NO.9091 of 2020 and 187 petitioners of SCA NO.9138 of 2020, many petitioner have already approached the Hon'ble High Court by initiating various litigations and after the

directions in all writ petitions to consider the representations, the authorities have sought all the details vide its notice dated 29.12.2018 and thereafter reconsidering case of all hutments including the present petitioners, impugned order dated 25.06.2020 was passed. Ample opportunity have been granted to petitioners to produce requisite documents as per the policy.

2. It is not the case that all the representations of all hutments have been rejected. After, detailed verification, 128 hutments have been recognized eligible for alternative accommodation as they fulfill the condition of GR dated 03.07.2003.

3. the satellite maps for the year 2002 to 2020 demonstrates that the encroachment upon government land after the year 2013 has increased and clearly contradicts the stand of the petitioners (page 522-534)

4. even after the impugned order dated 25.06.2020, the petitioners have not vacated the government land and therefore the Collector is empowered to initiate eviction proceedings as per S.79A of the Gujarat Land Revenue Code.

5. The petitioners have been granted opportunity of bearing on multiple occasions and even thereafter have failed to fulfil the requisite the conditions therefore, they are not entitled for any relief.

6. The order of Ld. Single Judge dated 19.09.2020 has been substantially complied till today whereby around 20% of residents, including eligible hutments and encroachers, have vacated the subject land. Copy of the photographs vacating the subject land are annexed herewith the note.

C. Non applicability of Government Policies

1. The Regulation for Rehabilitation and Redevelopment of Slums , 2010 as well as the Gujarat Slum Rehabilitation Policy dated 18.7.2013 and Gujarat Affordable Housing Policy dated 15.1.2014 are issued pursuance to power exercised under S. 58(2)(d) of the Gujarat Slums (Improvement. Abolition and Rehabilitation) Act, 1973. The said Resolution and Regulation.2010 is not applicable as the subject land is governed by Road and Building Department as per government Resolution dated 29.06.1988. Furthermore the subject land is not declared as "Slum" under Gujarat Slums (Improvement, Abolition and Rehabilitation] Act, 1973 and therefore its provisions will not be applicable to present petitioners.

2. Hon'ble Division Bench in LPA No. 630/2013 in SCA No. 7352 of 2018 Hon'ble Court has held that the GR dated 18.07.2013 is issued by urban

Development and urban Housing Department and it is applicable for areas covered under Gujarat Slums (Improvement, Abolition and Rehabilitation) Act. 1973 only. The subject land is not declared as "slum" as per said Act of 1973 and hence rehabilitation cannot be sought. The order passed in LPA No. 630/2013 is confirmed till date. (Para 11-13page 394-400 of SCA 9091/2020)

3. The Gandhinagar, being Capital project, is covered under the aegis of Road and Building Department by virtue of government Resolution dated 29.06.1988. Therefore, Executive Engineer, Road and Building Department is the competent authority to initiate proceedings and not Gandhinagar Municipal Corporation. Furthermore, the notification dated 16.03.2010 forming the Corporation also expressly excludes the Government land of Gandhinagar Notified Area from the purview of Corporation.

D. Subject land to be used for welfare of State

1. The subject land of sector 13/14 is situated in the radius of the Gandhinagar Railway station. The project is being executed by Gandhinagar Railway & urban Development Corporation Limited (GARUD) which is a joint venture company of government of Gujarat and Ministry of Railways represented by Indian Railway Stations Development Corporation. Copy of the photograph is annexed hereto with Note.

E. Judgments relied upon by State:

1. ***Association of Cabin Holders of Karchelia vs. State of Gujarat and others*** *[2006 SCC online Guj 269 : 2007 (48) (1) GLR 826*

2. ***Asikali Akbarali Gilani and others vs. Nasir Husain Mahebubbhai Chauhan and other*** *[(2016) 10 SCC 799]*

3. ***National Institute of Medical Sciences University, Rajasthan and another vs. State of Rajasthan and others*** *[(2018) 13 SCC 390]"*

● **ANALYSIS:**

15 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicants are entitled to any relief, as prayed for, in the two writ applications.

16 "***The very right to be human is denied every day to hundreds of millions of people as a result of poverty, the unavailability of basic necessities such as food, jobs, water and shelter, education, health care and a healthy environment.***

- Nelson Mandela-"

17 The picture that emerges from the materials on record is that the writ applicants started occupying the subject land situated at Gandhinagar over a period of almost three decades. If attention would have been paid by the State Government at the right time and in the right direction, then the situation, as highlighted before us in the present litigation, could have been averted. There cannot be any denying to the fact that everyone has the right to a standard of living adequate health and wellbeing of himself and his family including food, clothing, housing, medical care and necessary social services. The protection of life guaranteed by Article 21 of the Constitution encompasses within its ambit the right to shelter to enjoin the meaningful right to life. The preamble of the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of person so as to fasten fraternity among all sections of the society in the country. Article 39(b) of the Constitution enjoins upon the State that the ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the State to promote with special care social, economic and educational interests of the weaker sections of the society, in particular, the Scheduled Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with the right to shelter as

an inseparable component for meaningful right to life. There need not be any debate on the question whether the right to residence and settlement is a fundamental right under Article 19(1)(e) and is a facet of inseparable meaningful right to life under Article 21 of the Constitution. The answer has to be in the affirmative. Food, shelter and clothing are three minimal human rights. It is in this context that the State has undertaken as its economic policy the planned development of various housing schemes. The right to allotment of houses constructed by the Housing Board to the weaker sections, lower income group people under the Lower Income Group Scheme was held to be a constitutional strategy, an economic programme undertaken by the State and that the weaker sections are entitled to allotment as per the scheme.

18 The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal, it is the bare protection of the body; for a human being, it has to be a suitable accommodation, which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution of India aims towards ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house, but a reasonable home, particularly, for people in India can even be mud-built thatched houses or a mud-built fireproof accommodation.

19 In **Olga Tellis (supra),** the Supreme Court considered the right to dwell on the pavements or in slums by the indigent and accepted the same as a part of right to life enshrined under Article 21 of the Constitution. The Supreme Court held that their ejectment from the place nearer to their work would be deprivation of their right to livelihood. They would be deprived of their livelihood, if they are evicted from their slum and pavement dwellings. Their eviction tantamounts to

deprivation of their life. The Constitution Bench had held that if the right to livelihood is not treated as a traditional right to life, the easiest way of depriving a person of this right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness, but, it would make life impossible to live. The deprivation, therefore, must be consistent with the procedure established by law. It was further held that which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. However, the Supreme Court held in the said case that in all cases of ejectment of the encroachers, it is not obligatory on the part of the State / Corporation to provide alternative accommodation. No absolute principle can be laid down in this regard and would depend upon the facts of each case.

20 Mr. Jeet Bhatt, the learned counsel appearing for the writ applicants of the Special Civil Application No.9138 of 2020 has relied upon various judgements of the Supreme Court on the "Right to Shelter" as to be found in his written submissions. By and large, all such decisions have been taken note of by the Supreme Court in the case of **Dr. Ashwini Kumar vs. Union of India and others [Writ Petition (c) No.193 of 2016 decided on 13th December 2018]**. Dr. Ashwini Kumar – the petitioner therein had preferred a writ petition under Article 32 of the Constitution with regard to enforcement of the rights of elderly persons under Article 21 of the Constitution. The petitioner had made several prayers in the writ petition and one of those was with respect to the right to shelter. We quote the relevant observations made by the Supreme Court as under:

> *"21. It is about two decades since this Court recognised the right to shelter or the right to reasonable accommodation as one of the basic needs of any human being. Unfortunately, while there has been some positive development in this regard, attention has not been paid to the needs of the*

elderly who require special care and attention which, in many sections of our society, is missing. With this in mind, the petitioner emphasised the right to shelter and referred to several decisions, many of which recognise the right to adequate shelter as a fundamental right, which we believe applies to the elderly as well.

22. In ***Shantistar Builders v. Narayan Khimalal Totame*** *[AIR 1990 SC 630] this Court recognised the right to food, clothing and shelter as being a guarantee of any civilised society. As far as the right to shelter is concerned, it was observed that there is a right to reasonable accommodation. It was held in paragraph 9 of the Report as follows:*

> *"9. Basic needs of man have traditionally been accepted to be three food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in……..." (Emphasis supplied by us).*

23. A much fuller discussion is to be found in ***Chameli Singh v. State of Uttar Pradesh [(1996) 2 SCC 549]*** *wherein this Court explained, in a sense, the requirements of the right to shelter. It was held in paragraph 8 of the Report that the right to shelter would include adequate living space but that does not mean a mere right to a roof over one's head. It was held that the right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. It was held in paragraph 8 of the Report as follows:*

> *"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man……. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting……." (Emphasis supplied by us).*

24. Finally, in ***Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*** *[(1997) 11 SCC 121] this Court referred to and followed*

Chameli Singh. More importantly, reference was made to our obligations under international law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The petitioner strongly relied upon our international obligations and submitted that apart from the law laid down by this Court in several judgements, we should respect and acknowledge our international obligations in regard to the right to shelter. Reference was made to paragraphs 12 and 25 of the Report which read as follows:

> *"12. Article 19(1)(e) accords right to residence and settlement in any part of India as a fundamental right. Right to life has been assured as a basic human right under Article 21 of the Constitution of India. Article 25(1) of the Universal Declaration of Human Rights declares that everyone has the right to a standard of living adequate for the health and well- being of himself and his family; it includes food, clothing, housing, medical care and necessary social services. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights lays down that State parties to the Covenant recognise that everyone has the right to standard of living for himself and his family including food, clothing, housing and to the continuous improvement of living conditions. ……*
>
> *25…….The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers case* ***[SLPs Nos. 47-51 of 1996], Olga Tellis case [(1985) 3 SCC 545] and the latest Chameli Singh case [(1996) 2 SCC 549]*** *and a host of other decisions which need no reiteration….." (Emphasis supplied by us).*

25. We are in full agreement with the view expressed by the petitioner but we must be aware of the caution given by this Court to the effect that the right to shelter is subject to "economic budgeting" by the State. No blanket order can be prayed for by the petitioner or even argued for overlooking the financial capacity of the State. No doubt, at some stage the petitioner did contend that in matters of fundamental rights, financial issues take a backseat but it must be remembered at the same time that the resources of the country are not unlimited and when it comes to the Court directing the State to expend amounts, judicial restraint is necessary.

26. The learned Additional Solicitor General referred to the recently revised Integrated Programme for Senior Citizens. It is noted in the introduction to the Programme that there has been a steady rise in the

population of senior citizens in India. The number of elderly persons has increased from 1.98 crore in 1951 to 7.6 crore in 2001 and 10.38 crore in 2011. It is projected that the number of 60+ in India would increase to 14.3 crore in 2021 and 17.3 crore in 2026. The main objective of the Programme is to improve the quality of life of the Senior Citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities....It is also proposed to encourage productive and active ageing through providing support for capacity building activities. It was submitted that under this Programme grant-in- aid is given for running and maintenance of senior citizens homes, homes for elderly women etc.

27. There can be no doubt that the right to shelter is an important constitutional right and therefore shelter must be made available to everybody and to the maximum extent possible. With this in view, the Government of India has framed schemes, inter alia, for homeless persons particularly in urban areas but it is time to recognize that there are a large number of elderly persons in several parts of the country, including rural India, who are rendered 'homeless' due to migration of their families to other parts of the country and even outside the country. While some of these elderly persons are certainly not destitute, but they do need assistance because of their age and are willing to pay and contribute for a roof over their head. In the absence of a suitable number of old age homes, and homes as per their status, they are left to fend for themselves making them vulnerable to mishaps and other unforeseen events."

- **RIGHT TO ADEQUATE HOUSING IN INDIA**

21 Hunger may have been the human race's constant companion, and 'the poor may always be with us', but in the twentieth century, one cannot take this fatalistic view of the destiny of millions of fellow creatures. Their condition is not inevitable but is caused by identifiable forces within the province of rational human control. The picture that conjures up in our minds when we think of the word 'slum' is that of a dirty, unhygienic group of make shift shanties with long lines of people waiting at the Municipal water pump, bawling babies literally left on the street corners to fend for themselves and endless cries of help. However, what needs to be seen is a far more sensitive and realistic picture of these helpless viewed as an essential component of Article 21 of our

Constitution, which assumes paramount importance in the sphere of individual liberties. It is vicious cycle of population growth, opportunities in the cities leading to migration to the cities, poverty with low incomes, tendency to be closer to work hence occupying any land in the vicinity lead to the eventual formation of such slums.

- **LEGISLATION OF OTHER COUNTRIES WITH RESPECT TO "RIGHT TO SHELTER":**

22 At the outset, it is of vital importance to note that the Constitution of the Republic of South Africa has made the right to shelter/housing a fundamental right as defined under Articles 26 and 28 of the Bill of Rights. The most important judgment that has set the precedent and trend with reference to the interpretation of right to housing and shelter is the Grootboom judgment given by the Constitutional Court. Mrs Grootboom and the other respondents previously lived in an informal squatter settlement called Wallacedene. A quarter of the households of Wallacedene had no income at all, and more than two thirds earned less than Rs. 500 per month. About half the population were children; all lived in shacks. They had no water, sewage or refuse removal services and only 5% of the shacks had electricity. Faced with the prospect of remaining in intolerable conditions indefinitely, the respondents began to move out of Wallacedene at the end of September 1998. They put up their shacks and shelters on a vacant land that was privately owned and had been earmarked for low-cost housing. They called the land "New Rust". They did not have the consent of the owner and on 8th December 1998 he obtained an ejectment order against them in the Magistrates' court. The order was served on the occupants but they remained in occupation beyond the date by which they had been ordered to vacate. Mrs Grootboom said they had nowhere else to go: their former sites in Wallacedene had been filled by others. The eviction proceedings were renewed in March 1999. Negotiations resulted in the grant of an order

requiring the occupants to vacate New Rust and authorizing the sheriff to evict them and to dismantle and remove any of their structures remaining on the land on 19th May 1999. The Magistrate also directed that the parties and the municipality mediate to identify alternative land for the permanent or temporary occupation of the New Rust residents. Mrs Grootboom and the other respondents applied for an order directing the appellants forthwith to provide:

> (i) adequate basic temporary shelter or housing to the respondents and their children pending their obtaining permanent accommodation;
>
> (ii) or basic nutrition, shelter, health care and social services to the respondents who are children.

The judgment given by Yacoob J. clearly stated that *"Section 26(2) imposes an obligation upon the state to take reasonable legislative and other measures to ensure the progressive realisation of this right within its available resources .It conferred a general right of access to adequate housing. The state is obliged: (a) to take reasonable legislative and other measures; (b) within its available resources; (c) to achieve the progressive realization of this right. The judgment went on to say that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling. Access to land for the purpose of housing is therefore included in the right of access to adequate housing in Section 26. A right of access to adequate housing also suggests that it is not only the state that is responsible for the provision of houses, but that other agents within our society, including*

individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society…The poor are particularly vulnerable and their needs require attention."

23 In **Mitu-Bell Welfare Society vs. The Kenya Airports Authority**, the Kenyan Supreme Court set out some important propositions with respect to the right to housing, evictions, and structural interdicts. The case involved a set of residents of the Mitumba Village, which was located near the Wilson Airport. On 15th September 2011, a Notice was published in the newspapers by the Attorney-General, giving the residents one week time to vacate the land. The residents obtained a stay from the High Court, but the State authorities went ahead and demolished their houses anyway. The residents then asked the High Court to issue a finding that the demolition was illegal, that they were entitled to the land, or – in the alternative – to reasonable alternative accommodation, and to compensation.

The High Court agreed. Mumbi Ngugi J. found that the residents did not have a legal right over the land (it was public land). Despite that, however, the Notice of Eviction was unreasonable; first, because of the short seven-day period; secondly, in the absence of domestic legislation on the subject, the international human rights law would apply, and the Eviction Notice fell short of those standards; thirdly, the destruction of the residents' houses and personal effects violated their right to property under the Kenyan Constitution; fourthly, the refusal to provide reasonable alternative accommodation violated the residents' right to housing under the Kenyan Constitution; fifthly, the residents' had a constitutional right to public participation and consultation before eviction, which had not been done; sixthly, that the demolitions had been discriminatory, as multi-story buildings, also in the vicinity of the

airport, had not been touched; and finally, the rights of children had been violated (as their school had been demolished). Coming to relief, the High Court crafted a "structural interdict" (what we understand as a continuing mandamus), requiring the State to submit a plan for what it intended to do with respect to shelter and access to housing for the marginalised groups, and – for this specific case – to meaningfully engage with the residents and find an appropriate resolution.

The Kenyan Court of Appeal reversed the High Court's judgment. It held, first, that the State was under no obligation to reallocate land, given that the residents had no legal right to it; secondly, that considerations of "national security" justified the eviction; thirdly, that the High Court was not entitled to grant a structural interdict/continuing mandamus, and the format of the structural interdict in the present case involved overstepping judicial boundaries; fourthly, that the international human rights law was inapplicable to the present case, as the Kenyan Constitution and legislation covered the issue; fifthly, that the socio-economic rights – such as the right to housing – were only progressively realisable, and therefore unenforceable; and finally, that "it is not the role or function of the Courts to re-engineer and redistribute private property rights."

The case therefore came up to the Kenyan Supreme Court. The Supreme Court partially allowed the residents' appeal, and reversed the judgment of the Court of Appeal (although the judgment of the High Court was not entirely restored). Because of jurisdictional constraints under the Kenyan Constitution, the Supreme Court essentially limited itself to addressing four issues: (a) the role of structural interdicts as a form of judicial remedy; (b) the application of international human rights law in domestic adjudication; (c) the relevance of UN Guidelines in the interpretation of socio-economic rights; (d) the scope of the right

to housing under Article 43 of the Kenyan Constitution.

On the first issue, the Supreme Court noted that the scope of remedies was governed by Article 23 of the Kenyan Constitution. Article 23 used the word "may" when setting out forms of judicial relief (declaration, injunction etc.). Article 23, therefore, was an illustrative list, as had been affirmed by precedent. Structural interdicts, thus, were not ruled out by the Constitution. At the same time, the Supreme Court clarified that:

"Interim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the Courts, have to be ***specific, appropriate, clear, effective, and directed at the parties to the suit or any other State Agency vested with a Constitutional or statutory mandate to enforce the order.*** *Most importantly, the Court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters (sic) policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no Constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions."*

The Supreme Court, therefore, endorsed a form of bounded structural interdict, that would bring it in line with the separation of powers. It found that at least a part of the High Court's order failed to comply with this threshold.

On the second and third issues, the Court found that the international law principles were applicable in informing the interpretation of Constitutional articles. Consequently, it was permissible for the judge to *"refer to the Guidelines as an aid in fashioning*

appropriate reliefs during the eviction of the appellants. Rather than offending the Constitution, the Guidelines actually do fill the existing lacuna as to how the Government ought to carry out evictions."

It is on the question of the right to housing that the Supreme Court returned its most interesting findings. Article 43 of the Kenyan Constitution states that: "Every person has the right to accessible and adequate housing, and to reasonable standards of sanitation." Article 21(2) enjoins the State to take measures for the progressive realization of this right. Article 20(5) further provides that if the State claims that it is unable to fulfill an Article 43 right because of a lack of resources, it will bear the burden of showing that, and will also ensure that resources are prioritised to serve the interests of the most marginalised. The Court then noted:

The right to housing in Kenya is predicated upon one's ability to "own" land. In other words, unless one has "title" to land under our land laws, he/she will find it almost impossible to mount a claim of a right to housing, even when faced with the grim possibility of eviction.

The Court then came to the heart of its argument. While holding that an "illegal occupation" over "private" land could not create prescriptive rights in favour of the occupants, the case was different for public land. The Court held :

"We are of the considered opinion, that where the landless occupy public land and establish homes thereon, they acquire not title to the land, but a protectable right to housing over the same. Why, one may wonder, should the illegal occupation of public land give rise to the right to shelter, or to any right at all? The retired Constitution did not create a specific category of land known as "public land". Instead, the constitution

recognized what is referred to as "un-alienated government land". The radical title to this land was vested in the president, who through the Commissioner of lands, could alienate it, almost at will. The consequences of this legal regime have been adequately recorded for posterity elsewhere. ***The 2010 Constitution has radically transformed land tenure in this country by declaring that all land in Kenya belongs the people of Kenya collectively as a nation, communities and individuals.*** *It also now creates a specific category of land known as public land. Therefore, every individual as part of the collectivity of the Kenyan nation has* ***an interest, however indescribable, however unrecognizable, or however transient, in public land.***

Effectively, the Kenyan Supreme Court held that in a democratic, constitutional polity, the land belonged to the people. For this reason, even where (landless) people did not have a legal right to land, they retained an interest in it. This, then, allowed the Court to go on and hold:

"The right to housing over public land crystallizes by virtue of a long period of occupation by people who have established homes and raised families on the land. ***This right derives from the principle of equitable access to land under Article 60 (1) (a) of the Constitution.*** *Faced with an eviction on grounds of public interest, such potential evictees have a right to petition the Court for protection. The protection, need not necessarily be in the form of an order restraining the State agency from evicting the occupants, given the fact that, the eviction may be entirely justifiable in the public interest.* ***But, under Article 23 (3) of the Constitution, the Court may craft orders aimed at protecting that right, such as compensation, the requirement of adequate notice before eviction, the observance of humane conditions during eviction (U.N Guidelines), the provision of alternative land for settlement, etc.***

And:

"The right to housing in its base form (shelter) need not be predicated upon "title to land". Indeed, it is the inability of many citizens to acquire private title to land, that condemns them to the indignity of "informal settlement". ***Where the Government fails to provide accessible and adequate housing to all the people, the very least it must do, is to protect the rights and dignity of those in the informal settlements.*** *The Courts are there to ensure that such protection is realized, otherwise these citizens, must forever, wander the corners of their country, in the grim reality of "the wretched of the earth."*

In other words, therefore, the Supreme Court decoupled the legal right to land (as set out under a country's property law regime) from a constitutional interest in land (which, in turn, informed the right to housing), which inhered in all people, by virtue of the democratic principle that all land belongs to the people. The constitutional interest in land would not always translate into a property right, but it would vest in the occupant a range of enforceable legal rights (for example, against eviction/to alternate accommodation/to reasonable engagement etc.), that the Court would articulate and vindicate, on a case to case basis.

The Court finished by remitting the case to the trial Court, with a direction that it be disposed off in line with its findings and with the original pleadings.

- **CANADA**:

In Canada, the right to housing is not included in either *The Constitution Act, 1867* or the *Canadian Charter of Rights and Freedoms*

(the *Charter*). Also, the Canadian provinces and territories do not protect housing in their laws. Provincial human rights codes protect only against housing discrimination and denial of housing, and sometimes against forced evictions. They also allow for special programs that prevent inequality, which may include housing programs. Nevertheless, Canada has signed and ratified the *International Covenant on Economic, Social, and Cultural Rights* which, as mentioned earlier, recognizes adequate housing as a fundamental human right. Since Canadian legislation does not mention the right to adequate housing, the Courts have to rely on the international legal instruments when interpreting and applying Section 7 of the *Charter* (which guarantees the right to life, liberty and security of the person) and Section 15 (which protects equality rights).

According to the UN Special Rapporteur, the Courts must protect both the negative and positive housing rights guaranteed by these international instruments. The Negative housing rights protect the individuals from certain violations of their housing rights while the positive housing rights can force the government to take some action. But the Canadian courts did not acknowledge both rights. The Supreme Court of British Columbia recognized some negative housing rights, when the province had no adequate shelter available, in the following cases:

> ***Victoria (City) v Adams*, 2009 BCCA 563,**
> ***Abbotsford (City) v Shantz,* 2015 BCSC 1909,**
> ***British Columbia v Adamson*, 2016 BCSC 584, and**
> ***British Columbia v Adamson,* 2016 BCSC 1245.**

However, in *obiter* (a ruling not required for the outcome) the Ontario Court of Appeal in ***Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852** ruled that Section 7 does not create positive rights to

guarantee adequate living standards.

In April 2018, the government released the country's first National Housing Strategy in order to implement Canada's obligation under international human rights law. However, as it was originally introduced, the *National Housing Strategy Act* did not have necessary elements of a practical human rights structure, especially in terms of accountability. Thus, amendments were needed to ensure that the government could achieve its aim of recognizing housing as a human right, and to guarantee that it could set up methods to protect this right.

In April 2019, and after making some amendments, the government introduced the *National Housing Strategy Act* in the *Budget Implementation Act* (which the Governor General approved in June 2019). This Act requires the government to "further the progressive realization of the right to adequate housing" as recognized by international human rights laws.

Section 4 of this Act reads:

It is declared to be the housing policy of the Government of Canada to

(a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;

(b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;

(c) support improved housing outcomes for the people of Canada; and

(d) further the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights.

The UN Rapporteur on the right to housing, Leilani Farha, has

commented:

> *With just over a decade before the Sustainable Development Goals are to be achieved, the Government of Canada has shifted its approach to the right to housing to one that recognizes housing as a fundamental human right essential to the inherent dignity and well-being of the person.*

She added:

> *Canada's new model contains the hallmarks of a human rights approach. Not only does it include a legislated right to housing, it also establishes in law creative mechanisms to monitor and hold the Government accountable and ensure access to remedies to address systemic barriers to the enjoyment of adequate housing. This model can serve as an example for countries all over the world.*

24 We have no hesitation in saying that despite so many laws, judicial activism shown by the Supreme Court of India, over a period of time including the various High Courts, the problem of adequate housing in India has not been addressed properly by the States. The rapid growth of congested slums in urban India speaks volumes about the problems faced by the dwellers. Professor (Dr.) Upendra Baxi, a Legal Scholar and a Professor of Law at the University of Warwick and a Distinguished Scholar in Public Law and Jurisprudence has expressed the following opinion on the various decisions of the Supreme Court delivered in the nineties. We quote:

> *"Some recent judicial performances go so far as to fully suggest a total reversal of human rights to dignity and livelihood, which the Court itself since the Eighties indeed not too long so painstaking evolved. Some court orders go so far as to mandate, under the pain of contumacious conduct, any human rights- oriented intervention against the enforced demolitions. The bulldozers remove the last sight of their existence as documented citizens; all evidence of title and occupation (including the only 'passport' they posses by way of pattas, their inchoate 'title' deeds, and prominently their ration cards) stand maliciously and wantonly destroyed. Not too long ago during the 1975-76 imposition of the internal Emergency, such happenings were poignantly described as emergency excesses. Today, these*

somehow constitute the badges of good governance! Surely, structural adjustment of judicial activism, or judicial globalization Indian-style, thus with a single- minded consistency, now produces with some irreversible human rights destructive globalizing intendment some new judicial productions of the estates of Indian human rightlessness".

25 Deciding a litigation of the present nature is quite painful. The weaker sections of the society like the writ applicants in the present case, no doubt, have the basic human and constitutional right to shelter and it becomes the paramount duty of the State to fulfill those. However, it gives no person the right to encroach and erect structures or otherwise on footpaths, pavements or public space or at any place reserved or earmarked for a public utility. This is exactly what seems to have happened in the case on hand. It may be true that the writ applicants were residing at the place in question past couple of years, but, still, as a Court of Law, we should not be oblivious of the fact that it was nothing, but encroachment over the government land over a period of time. We are not impressed with the submission canvassed on behalf of the writ applicants that the writ applicants cannot be said to be encroachers as they have a right to shelter being both a fundamental as well as a human right. The debate as regards the rights of encroachers over public land vis-a-vis the right to shelter should come to an end. This debate should not go on for a indefinite period of time. Mere long possession, over public land by way of encroachment by itself, is not sufficient to say that the encroachers are not liable to be evicted as they have a right to shelter. The right to shelter and encroachment are two different facet. An encroacher may save himself from being forcibly evicted only if during his period of stay over the encroached public land any enforceable legal right has crystallized in his favour. Otherwise, merely by asserting the "Right to Shelter", an encroacher, over public land, cannot say that he cannot be evicted. There is no way that an encroacher

can enforce the "Right to Shelter" for the purpose of protecting his unlawful possession. The right to shelter, which the writ applicants are talking about, is an obligation of the State. It is the State which has to discharge its obligation in this regard. The documents like voter card, ration card, electricity bill, etc. do not confer upon encroachers any vested legal right in their favour to hold the possession. Such document, at the most, may evidence of only one thing and that is possession. We may reiterate that the right to shelter does not mean right to retain the government land encroached upon. The right to shelter may be a fundamental right under the Constitution, but, certainly, no person has any right to retain the land encroached upon under the purported right to shelter. It is to be enforced under the provisions of the Constitution. It is extremely difficult for us to accept the South African Jurisprudence or the Kenyan Jurisprudence, as discussed above. Having realized this serious problem, the State Government issued a Government Resolution dated 3rd July 2003 laying down a policy by prescribing the eligibility criteria for the allotment of alternative land to various hutment dwellers in the various sectors of the city of Gandhinagar. It appears that a cut-off date fixed i.e 30th November 1999. The Government Resolution dated 3rd July 2003 referred to above enumerates 15 conditions for the grant of alternative accommodation. It is the case of the respondents that the writ applicants failed to fulfill such eligibility criteria and were declared not eligible for the alternative accommodation. It is the case of the respondents that mere possession of an identity card or voter card or the registration of the name in the survey list by itself is not sufficient to avail the benefits of the Government Resolution dated 3rd July 2003. We take notice of the fact that after detailed verification around 128 hutment dwellers were identified and recognized as eligible for alternative accommodation in terms of the Government Resolution dated 3rd July 2003. We also take notice of the fact that a Coordinate Bench of

this Court in the case of **Arunaben Amratbhai Rohit and others vs. State of Gujarat** rendered in the **Letters Patent Appeal No.630 of 2018 in Special Civil Application No.7352 of 2018** took the view that the Government Resolution dated 18th July 2013 has been issued by the Urban Development and Urban Housing Department, the same would be applicable to the areas covered under the Gujarat Slums (Improvement, Abolition and Rehabilitation) Act, 1973 only. The subject land has not been declared as "slum" in accordance with the Act, 1973. We also take notice of the fact that the subject land is situated within the radius of the Gandhinagar Railway Station. The State Government wants to develop the land for a public project. The project is being executed by the Gandhinagar Railway and Urban Development Corporation (GARUD), a joint venture company of the Government of Gujarat and the Ministry of Railways represented by the Indian Railways Station Development Corporation.

26 It is also necessary to refer to paragraph 9 of the Apex Court's judgment in the case of **Ahmedabad Municipal Corporation vs. Nawabkhan Gulabkhan and others [AIR 1977 SC 152]**, which reads as under:

> *"The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. ... . No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. … .. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or foot-paths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would*

be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to see, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principal of natural justice."

Before expressing opinion in paragraph 9, the Apex Court pointed out in paragraph 7 as under:-

"It is for the Court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a give case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of general public. They are not laid for private use indeed, their use for a private purpose frustrates the very object for which they carved out from portions of public roads. ..... No one has a right to make use of a public property for the private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or re-passing by the pedestrians."

Thus, it is clear that no one has a right to make use of public property for private purposes .

27 The concept of fundamental right of life and liberty, is founded on natural rights or human rights. Fundamental rights in Indian Constitution are subject to reasonable restrictions. The Indian Constitution uses the expression `interest of the general public' in clauses (5) and (6) of Article 19, as a ground of permissible limitation to

the freedoms of movement, residence and profession guaranteed under Article 19(1)(e) and (g) of the Constitution.

28 In determining whether the measure is in the interest of general public, the Court has to assess whether the measure would further the welfare or progress of the society as a whole (**Joti Vs. Union Territory AIR 1961 SC 1602)** even though it might cause hardship to a Section of a community, owing to the peculiar conditions in which they are placed.

29 As fundamental rights which are also human rights are available against the State; In cases of conflict between the interest of the individual and the State guarantee of human rights must necessarily contain the limitations or exceptions. The guarantee of human rights will prevail subject to these limitations, so that the collective interest may not be jeopardised. It is, therefore, always necessary for the Court to balance the need for the protection of the guaranteed individual rights with social justice which the State is enjoined by the Constitution to protect. In other words, the Constitution protects the rights and freedoms only within the limits of reason and the Court can interfere where the State has exercised its power in a "manifestly unfair or arbitrary manner".

30 In ascertaining the reasonableness of the restrictions on fundamental rights, the Court has to look at the objective of the law as well as means chosen to implement that object. The reasonableness of the means involves - (i) the means chosen shall not be arbitrary and (ii) it should impair as little as possible the right of freedom under consideration. In protecting, therefore, a fundamental right to life and liberty with its extended meaning as given by the Supreme Court in the cases reviewed above, and taking into consideration that reasonable

restrictions in general public interest can be imposed on such rights, in cases of slum dwellers, homeless and squatters on public pavements or roads, on their complaint of violation of their human rights or fundamental rights, they should be given the relief, keeping in view the needs and requirements of general public. It is, therefore, always necessary to reach a just balance between the rights of an individual and society. When there is unequal contest on such vital issues involving human rights of individuals, between rich and poor, or strong and the weak, persons with shelter and those without it – the issues need to be resolved as far as possible to protect the rights of the weak and the needy sections of the society and to promote at the same time the interest of the society in general.

31 At this stage, we may quote few relevant observations made by a Division Bench of this Court in the case of **Peoples Union for Civil vs. State of Gujarat** rendered in the **Special Civil Application No.3426 of 1998** and allied matters decided on 5th September 2000. We quote the relevant observations:

> *"##. Public properties are usually not protected by means of wire fencing or compound wall or by guard/watchman, and the concerned authorities are not taking enough care to ensure that the properties, particularly open land, are not encroached. Therefore, not only that huts have been erected on such open plots, but in certain cases, even high-rise buildings have been built up by encroachers. If such encroachers have encroached upon public property for whatever reason and have erected huts or unauthorised construction, can it be said that they cannot be ejected despite the fact that there is illegal and unauthorised construction and that property is required for a public purpose? The duty of the Court is to strike a balance between the two.*
>
> *##. It may happen that due to negligence/inaction of public servants or due to pressure on the public servants from superior officers or other persons who are actively taking interest in other fields, no action is taken by the public servants either preventing persons from encroaching on open land or for removal of encroachments. They might have allowed in a given*

case on an assumption that the trespassers after getting job will find out their own accommodation. But the fact is, once a hut is constructed, it remains there and it is also known that the huts are sold and the advantage is taken subsequently in some cases by some builders also. The Apex Court, in OLGA TELLIS has observed that some slumlords are providing space on payment where a dwelling house or a hut is erected.

##. In view of what is stated above, it is not obligatory on the part of the State/Corporation to provide alternative accommodation, and it cannot be argued for a moment that in view of the judgment of the Supreme Court, it is the right of an encroacher either to stay at the encroached place permanently or to get an alternative accommodation. Even the Apex Court has not laid down an absolute principle that in all cases of removal of encroachments, the State/Corporation must provide alternative accommodation. It depends upon facts and circumstances of each case. At the cost of repetition, we would say that the Apex Court pointed out the facts situation and particularly ratio of free hold land, population etc. and yet granted benefit to the people settled prior to 1976.

##. As pointed out in the case of NAWABKHAN, in view of consistent influx of rural people to the urban areas and consequential growth of encroachments and slums affecting ecological balance, sanitation and safety of pedestrians, Government should provide infrastructural facilities for rural areas by proper planning and execution. It may be required to be stated that the efflux is not only intra-State but also inter-state.

##. Huge land is available with the State Government for disposal which was acquired under the provisions contained in the Urban Land (Ceiling & Regulation) Act. If from this land some portion is reserved for providing alternative accommodation to the hutment dwellers by making a scheme, the problem can be solved.

##. One must not also forget the fact that a person who has migrated to an urban area might have his own land or building in his home town/State. This aspect is also required to be considered while giving alternative accommodation. Merely because a person is residing in a hut after migrating to an urban area, it cannot be said that such a person is a poor person. Therefore, this aspect is also required to be kept in mind while fixing the norms for allotment.

##. It is also required to be noted that in cities, land is very scarce. Therefore the State Government should be vigilant to see that opportunities are made available to the public at different distant places

(de-centralisation) so as to avoid accumulation of population at a particular place. It is with this intention that industrial Estates are planned in rural areas which not only provide employment to residents of the rural area but also prevent efflux of rural public into urban areas. Therefore, when Industrial Estates are planned, it should be planned in such a way that schemes for residential houses are also provided to downtrodden persons coming to take employment in such Industrial Estates. More and more opportunities should be made available in rural areas so that people from urban areas may shift to rural areas.

##. With regard to employment that can be offered to residents of rural areas, the Apex Court, in ***NAWABKHAN's*** *case, pointed out that "it would be for the Union of India, all the State Governments and the Planning Commission, which are Constitutional functionaries, to evolve such policies and schemes as are necessary to provide continuous means of employment in the rural area so that in the lean period, after agricultural operations, the agricultural labour or the rural poor would fall back upon those services to eke out their livelihood."*

32 As noted above, it is very painful that hundreds of families ultimately lost their shelter and might have been forced to take shelter at some other places. In such a scenario, to what extent, the High Court, being a Writ Court, can help such helpless people who are rendered homeless. We are talking about few hundreds of people in the present case, but,there must be thousands of such families hailing from a very poor strata of society without any shelter in the entire State. This is where the Government needs to play a very vital role. To a certain extent, Mr. Jeet Bhatt and Ms. Dharmistha Raval, the learned counsel appearing for the writ applicants are justified in making the submission that the State Government uses the tool of "eligible criteria" to discriminate and deny people their rights to housing and their right to shelter. For instance, those who meet the arbitrary "cut-off dates" and extensive documentation requirements are considered "eligible" for housing or resettlement, but still, shunted to uninhabitable settlements, generally on the peripheries of the city. Those declared "ineligible" are rendered homeless or left to fend for themselves. The State Government

must shift its focus from construction of houses to the provision of the allotment of land, from housing targets to housing justice and from market - based interventions to a human rights – based approach. A rights-based approach will ensure that housing is affordable, accessible to all, habitable, and culturally appropriate. It will guarantee access to basic services and infrastructure and provide tenure security and freedom from dispossession. We are of the view that people like the writ applicants do not want state-constructed tenements. They want rights over the land on which they live and access to housing finance and technical assistance to build their homes. The State Government should consider to promulgate right to housing legislation and invest in adequate, low cost housing, including through the provision of rental housing.

33 Since the time of the judgement in the case of **Olga Tellis (supra)**, the Supreme Court, this High Court and various other High Courts of this country has been talking about the right to shelter. It has been now almost more than four decades that we have been talking about this so-called right to shelter. Whether this judicial activism, over a period of more than 40 years, has made any difference to the various Governments of different political parties? Whether this discussion has brought around any change in the lives of lakhs of homeless people? Unfortunately, the answer to both these questions is a big “No”. Today also, lakhs and lakhs of people are homeless living below the poverty line, and for them, the only shelter is the place where they go off to sleep in the night with the sky as their roof, whether it be monsoon, winter or scorching heat.

34 We summarize our conclusions as under:

(i) Right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution. It is a constitutional duty of the State to provide house sites to the poor.

(ii) Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights. There could be no individual liberty without a minimum of property. The objective of 'facilitating adequate shelter of all' also implies that direct Government support should mainly be allocated to the most needy population groups.

(iii) Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated India is the arch of the Constitution set down in its Preamble. Articles 39 and 38 enjoins the State to provide facilities and opportunities. Article 38 and 46

of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavor to eliminate inequalities in status. Basic needs of man have traditionally been accepted to be three namely- food, clothing and shelter. The right to life is guaranteed in any civilised society. It is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor.

(iv) No person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose. The State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter to make the right to life meaningful, effective and fruitful.

[*(i), (ii), (iii), (iv)* ***vide Rajesh Yadav vs. State of U.P.*** *reported in* ***Laws (All) 2019 (7) 57].***

[v] The weaker sections of the society, no doubt, have the basic human and constitutional right to shelter. However, it gives no person the right to encroach and erect structures, or otherwise, on any public place saying that he has no other place to go. Mere long possession even with documents like voter card, ration card, electricity bill, etc., over any public land by way of encroachment, by itself, is not sufficient to say that the encroachers are not liable to be evicted, as they have a right to shelter. An encroacher can save himself from being forcibly evicted only if during his period of stay over the encroached land any enforceable legal right has crystallized in his favour. This legal right does not mean the mere

constitutional right to shelter.

[vi] The State Government should identify and earmark certain lands acquired under the Land Ceiling Act and frame a uniform policy to allot them in accordance their with people hailing from a very poor strata of the society. We remind the State Government that when it plans an industrial zone or commercial zone, the provisions should also be made for providing residential accommodation / housing facility to the downtrodden class or the persons taking up employment in the industries and for persons providing ancillary services.

[vii] Even under the Gujarat Town Planning and Urban Development Act, 1976, there is a provision for providing housing accommodation to the weaker sections of the society. As regards the areas covered under the Act, there is also a scheme about improvement in Chapter – XVI, which requires to be taken a serious note. It refers to improvement scheme, clearance area, redevelopment areas, provisions of housing accommodation in the poor class, land acquisition, levy of betterment charges.

[viii] The State Government should consider formulating scheme in line with the principles laid down by the Apex Court in the case of **Nawabkhan (supra).** In doing so, care shall be taken to ensure that the land so vacated by the slum-dwellers is not re-occupied by another cluster of slum dwellers, and the alternative site is utilised by the same citizens to whom it is allotted. Otherwise, it may happen that a particular person takes possession of the alternative accommodation and never goes there or dispose it of and the same person re-occupies the vacated premises or joins another cluster or slum dwellers in the vicinity. Moreover, the State/

Municipal/Local authorities must take due care to protect open plots from preventing it to be occupied by encroachers. If due care is not taken, ejection of slum-dwellers and providing alternative accommodation will be a never ending process.

35 In the facts and circumstances of the present case, it is difficult for this Court to grant any relief as on date to the writ applicants. As noted above, the dwelling houses have already been demolished. The authorities have taken over the possession of the land. It is not possible at this point of time even to pass any order for providing alternative accommodation, as, according to the respondents, all those, who were eligible under the scheme of the State Government, more particularly, the resolution of the year 2003, have been granted alternative accommodation, whereas, all those, who were found to be not eligible, have been declined, which includes the present writ applicants. As both the learned counsel appearing for the writ applicants have placed significant reliance on the fact that the writ applicants were issued voter card, identity card, etc., we are reminded of a very famous quote of '*P. J. O'Rourke*', which reads thus:

> *"Positive rights are the right to shelter, the right to education, the right to health care, the right to a living wage. These things are – these are, I would call them, more properly, political rights rather than positive rights. And they are extremely tricky, because now we are dealing with things that are zero sum.*
>
> *- P. J. O'Rourke"*

36 With the aforesaid, we dispose of both the appeals as well as the two writ applications. The connected Civil Applications also would not survive and those are also disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH