IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4933 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 4934 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 4935 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 4936 of 2025

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KANJIBHAI LALJIBHAI BAMNIYA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MS TANAVEER K LOLADIA(9994) for the Petitioner(s) No. 1
MR SAHIL TRIVEDI, LD.ASSTT. GOVERNMENT PLEADER for the Respondent(s) No. 1
MR DM DEVNANI(5880) for the Respondent(s) No. 3,4

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CORAM:**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 14/04/2025

ORAL ORDER

1. All these petitions are filed challenging the Notices issued under section 478(2) of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the GPMC Act"), whereby the petitioners have been given time till 15.04.2025, to provide necessary documents referred in the said Notices, failing which appropriate action under section 478(2) of the GPMC Act has been indicated.

2. Since the issue involved in all these petitions are identical challenging the Notices issued under section 478(2) of

the GPMC Act, with the consent of the learned advocates for the respective parties, all these captioned writ petitions are taken up for hearing together and decided by this common order.

3. Heard learned advocate Ms.Tanaveer Loladia for the petitioners, learned Assistant Government Pleader Mr.Sahil Trivedi for respondent No.1 and learned advocate Mr.D.M.Devnani for respondent Nos.3 and 4.

4. At the outset, Learned advocate Ms.Tanaveer Loladia for the petitioners requested for deletion of respondent No.5. The same is permitted to be deleted forthwith.

5. Learned advocate for the petitioners submitted that Notices issued under section 478(2) of the GPMC Act to all the petitioners are bad in law because, they are hypothetical, undated, without details and therefore, the same deserve to be quashed and set aside. Learned advocate further submitted that action under section 478(2) of the GPMC Act, can be taken by Commissioner of Municipal Corporation and in these cases evidently, the Notices were issued by Deputy Commissioner (South Zone), and thus since the Notices were issued without any authority of law, the same deserve to be quashed and set aside.

6. On merits, learned advocate for the petitioners by placing reliance on Page-14 of Special Civil Application No.4925 of 2025, submitted that one Councilor of Chhaya Nagarpalika had issued Certificate dated 15.12.2000 justifying ownership of the subject property with the petitioners. Moreover, the area in which the petitioners reside is known as Sai Baba Area, Narsang Tekra, Rajivnagar, Ward -3 of Porbandar Municipal Corporation. All the petitioners are residing in that area, in their respective residential houses since decades. Despite that, Notices dated 05.03.2025 followed by Notices dated 27.03.2025 (referred in SCA 4925 of 2025) have been issued. Under the said Notices, certain details have been called for. Learned advocate submitted that when the petitioners went with the relevant documents, the authority refused to take them on record, which lead the petitioners to file these petitions.

7. Learned advocate for the petitioners further submitted that reason given in the Notices of blocking the rain water by the residences of the petitioners, creating rain water logging in other residences of that area, is not correct. Factually, the residents of premises which blocks the water, had vacated their houses. The residences of present petitioners are not blocking the water way and therefore, the Notices issued are bad in law on merits too.

8. Further, one of the residents, who is not party to these proceedings, was given *sanad,* which indicates legitimate right over the subject property. The petitioners despite providing opportunity when went with the representation and documents, they were not accepted and therefore if opportunity by providing further time is granted, all these petitioners will approach the authority along with representation and necessary documents. Therefore, though Show Cause Notices have been challenged, some time may be provided so that the petitioners can approach the authority with necessary documents.

9. Learned Assistant Government Pleader Mr.Sahil Trivedi for respondent No.1 – State of Gujarat, submitted that subject land for which the Notices have been issued is Government Waste Land -*"Sarkari Padtar Land"* and no construction is permissible on that government waste land. Whereas in this case construction was done on Government Waste Land, that too without any prior permission. Further, these are only Show Cause Notices, whereby certain documents have been called for and without submitting the documents, these petitions have been filed. No documents are forming part of these petitions also and therefore, the present petitions may not be entertained.

10. Learned advocate Mr.D.M.Devnani for respondent Nos.3 and 4 submitted that respondent No.2 is now not required to be joined as party respondent because Porbandar City is now holding status of Corporation since 01.01.2025. Earlier subject area (behind Sai Baba Area) was in Chhaya Nagarpalika and that area is now merged with the Municipal Corporation of Porbandar.

11. Responding to the submissions of learned advocate for the petitioners, learned advocate Mr.Devnani submitted that the contention taken that the Notices issued under Section 478 of GPMC Act are without authority of Law, is not correct. In all these petitions challenge is made to the Show Cause Notices issued under section 478 of GPMC Act. Inviting attention of this Court to the Notices dated 05.03.2025 (Page-11 of Special Civil Application No.4925 of 2025), learned Advocate submitted that it is true that all these Show Cause Notices were issued by Deputy Commissioner, calling for certain details. The impugned Show Cause Notices were issued on account of power assigned by the Commissioner to the Deputy Commissioner. However, till date no action is taken under Section 478 of the GPMC Act. Moreover, Notices are dated, as in SCA No. 4925 of 2025 it is 05.03.2025, whereby time till 15.04.2025 was provided, likewise all notices are dated with the reason for initiation of action under section 478 of GPMC

Act. All petitioners were served with individual Notices, where details have been provided. The Notices dated 05.03.2025, were followed by another Notices dated 27.03.2025, served individually, wherein once again time was provided to the petitioners to provide documents referred therein and therefore, the petitions deserve to be rejected as the same challenge Show Cause Notices.

12. Learned advocate Mr.Devnani further submitted that though under Notice dated 05.03.2025, time till 15.04.2025 was provided, one more Notices dated 27.03.2025 were served and till date no coercive action has been initiated. Despite long time granted, till date the petitioners had neither produced single documents before the respondent authority nor forming part of these petitions. Moreover, this petition is misconceived because Notices do not indicate any coercive action. Upon receipt of the documents as called for, appropriate action will be taken by the Commissioner and therefore, contention that Notices were without authority of law deserve to be rejected.

13. On merits, learned advocate Mr.Devnani submitted that, since the matters were circulated on urgent note by the petitioners, he had sought certain instruction from the concerned authority. Accordingly it is instructed that there are approximately 1800 to 2000 residential houses in Narsang

Tekri, behind Sai Baba Temple, and the said area is zoned as a residential area. The area opposite the canal is known as Sai Baba area Society. Some communities have encroached on the said land and constructed residences without due permission. On account of such encroachment on the existing sewers and raw canals and their action of diverting water in their own way, created obstruction, to reach water to the canal. On account of the said water blocking, in monsoon, 4 to 5 feet rain water logs in the residences of other side of the canal.

14. Further, the said water logging had resulted into administrative difficulties and damage to public road. Necessities of pumping stations, resulted into bearing of huge financial cost in this regard. Encroachment has increased in last 2-3 years, and created problems of water logging in the opposite areas. In the nutshell, encroachment on canal is created problem for which, the present Notices have been issued. On the aspect of not accepting the documents by the authority, learned advocate submitted that, false averment and submission has been made that authority had refused to take document and representation.

15. In support of issuance of Notices under Section 478(2) of GPMC Act, learned advocate Mr.Devnani relied upon following two judgements:

(i) Jayeshkumar G. Vyas V/s. Vijay Housing Development Corporations in **Special Civil Application No.5555 of 1993** reported in **1993(0)ALJEL-HC 205595**,

(ii) Manilal Shamjibhai Bavarva V/s. State of Gujarat in **Special Civil Application No.6771 of 2017** in **2022(0) AIJEL-HC 244760**

16. Considered the submissions and decisions relied upon. Upon revisitation of facts, it is noticed that these petitions challenge the Show Cause Notices issued under section 478(2) of the GPMC Act, under which certain documents were called for from the petitioners in relation to their ownership of the subject land and development permission if any of their premises in question. It is not in dispute that the individual Notices were served to the petitioners. The Notices dated 05.03.2025 and 27.03.2025 refer to Show Cause Notices issued under Section 478 of the GPMC Act, seeking certain documents failing which, further action in accordance with law was indicated. These Show Cause Notices have been issued by Deputy Commissioner, and till date no action under Section 478 of GPMC Act is taken. Section 478 of GPMC Act provides for "Work or thing done without written permission of the Commissioner to be deemed unauthorised"; where in theses

cases final decision by the Commissioner is not yet taken. Therefore, this Court is not in agreement with the submission of learned advocate for the petitioners that action initiated is without authority of law. Further, the Notices refer date, the details of the documents called for, time limit within which the documents were to the produced, the area with ward No, and description of the construction, therefore in the opinion of this Court, it cannot be said that the Notices are wage and hypothetical as contended by learned advocate for the petitioners. Moreover, it cannot be ignored that challenge is to the Show Cause Notices by which, certain documents have been called for. No documents in relation to their ownership right or development permission is forming part of these petitions. The reliance placed on a Certificate dated 15.12.2000, signed by Councilor of Municipality, in the opinion of this Court is no recognition in eye of Law.

17. For the reliance placed on tax receipts and electricity bills, to justify their occupation, will not create any right over the subject premises. In this context it would be apposite to refer to the decision of this Court in case of **Jayeshkumar G. Vyas V/s. Vijay Housing Development Corporations** in **Special Civil Application No.5555 of 1993** reported in **1993(0)ALJEL-HC 205595**, wherein it is held as under:

"21. As regards the contention that the respondent-Corporation and it's Officers are estopped from demolishing the structures, it would be sufficient to observe that there cannot be any estoppel against the exercise of statutory powers. Mere collection of taxes in respect of the use of the unauthorised constructions would not estop the Corporation from discharging its statutory functions under the provisions of Sections 260, read with Section 478 of the Act. As held by the Supreme Court in Amrit Banaspati Co. v. State of Punjab , no legal relationship could arise by operation of promissory estoppel which would be contrary both to the Constitution and the law. The promissory estoppel cannot be used for compelling a public authority to carry out a representation or promise which is prohibited by law or which was devoid of any authority or power of the concerned officer or the public authority to make. As held by the Supreme Court in Vasantkumar Radhakishan Vora v. Board of Trustees of the Port of Bombay AIR 1991 SC 14, promissory estoppel should not be extended, though it may be founded on an express or implied promise stamped from the conduct or representation by an office of the State of public authority, when it was obtained to play fraud on the Constitution and the enforcement would defeat or tend to defeat the constitutional goals. Equally so when the conduct amounts to playing fraud on the statutory provisions. Therefore, the allegations that some officers had connived with the unauthorised constructions which would amount to fraud on statutory provisions, cannot create any equity in favour of the petitioners. If the officers have by connivance not taken action for some time, that would not debar the statutory authority from exercising its power.

22. Mere recovery of taxes in respect of unauthorised constructions would neither create any estoppel nor would it amount to waiver and an action can be taken under the provisions of the Act for removing the unauthorised construction even in respect of properties for which taxes are recovered. Proviso to Section 139(2) of the Act clearly envisages recovery of property taxes even in respect of buildings which are unauthorisedly erected. Therefore, the contentions raised on behalf of the petitioners on the basis of recovery of taxes fall to the ground."

In one more decision rendered in the case of **Manilal**

Shamjibhai Bavarva V/s. State of Gujarat in **Special Civil Application No.6771 of 2017** in **2022(0) AIJEL-HC 244760**, this Court has held as under:

> **"16.** It is also found that no document is produced by the petitioners on record of the present petition to show that the construction put up on the said land is also after taking permission from the any of the competent authority and therefore, even constructions put up by the present petitioners are also apparently found not in accordance with law and can be termed as illegal construction.**"**

18. Be that as it may. However, since at this stage, learned advocate for the petitioners requested for further time to file their representations along with necessary documents before the concerned authority, following order is passed.

(i) Considering that earlier Notice dated **05.03.2025**, was followed by another Notice dated **27.03.2025**, the petitioners are directed to give their representations along with called for documents, before the Commissioner of Porbandar Municipal Corporation on **17.04.2025** at **11:00** am. If so required, opportunity of hearing shall be provided to the representative of the petitioners. Parties to cooperate.

(ii) Once such representations along with necessary documents are received, the same are directed to be

taken on record. After verification of the documents, it is open for the authority to pass appropriate orders in accordance with law. The orders shall be communicated to the concerned petitioners.

(iii) This court has not gone into the merits of the matters and it is open for the respondent thereafter to proceed further in accordance with law.

19. With this, all these petitions are disposed of.

(MAUNA M. BHATT,J)

DIPTI PATEL...

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DIPTIBEN PIYUSH PATEL(HC00191), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 15/04/2025 18:25:11