IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1080 of 2025

In R/SPECIAL CIVIL APPLICATION NO. 16757 of 2023

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 1080 of 2025
With
R/LETTERS PATENT APPEAL NO. 1081 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16301 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025 In R/LETTERS PATENT APPEAL NO. 1081 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16301 of 2023
With
R/LETTERS PATENT APPEAL NO. 1082 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16760 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025 In R/LETTERS PATENT APPEAL NO. 1082 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16760 of 2023
With
R/LETTERS PATENT APPEAL NO. 1083 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16750 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025 In R/LETTERS PATENT APPEAL NO. 1083 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16750 of 2023
With
R/LETTERS PATENT APPEAL NO. 1084 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16210 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025 In R/LETTERS PATENT APPEAL NO. 1084 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16210 of 2023
With
R/LETTERS PATENT APPEAL NO. 1085 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16749 of 2023
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In

R/SPECIAL CIVIL APPLICATION NO. 16749 of 2023
With
R/LETTERS PATENT APPEAL NO. 1086 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16753 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 16753 of 2023
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R/LETTERS PATENT APPEAL NO. 1087 of 2025
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R/SPECIAL CIVIL APPLICATION NO. 16751 of 2023
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In
R/SPECIAL CIVIL APPLICATION NO. 16751 of 2023
With
R/LETTERS PATENT APPEAL NO. 1088 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16758 of 2023
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In
R/SPECIAL CIVIL APPLICATION NO. 16758 of 2023
With
R/LETTERS PATENT APPEAL NO. 1089 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16759 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025 In R/LETTERS PATENT APPEAL NO. 1089 of 2025
In
R/SPECIAL CIVIL APPLICATION NO. 16759 of 2023

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THE SENIOR TOWN PLANNER
Versus
RENUKABEN KISHORBHAI SUTARIYA

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Appearance:
MR DEEP D VYAS(3869) for the Appellant(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 15/09/2025

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE D.N.RAY)

1. The present bunch of petitions seek to challenge the common judgment and order dated 27.01.2025 by which the learned Single Judge interpreting Clause No.6.17.4 of the comprehensive General Development Control Regulations (GDCR) has held that for the subject lands, 20% deduction is the correct assessment and the deduction of 40% as held in the orders of the Appellants (which were impugned in the Special Civil Applications), is erroneous.

2. For the sake of recording the foundational facts, we refer to Letters Patent Appeal No. 1080 of 2025 arising out of Special Civil Application No.16757 of 2023, as the same were referred to by the learned Single Judge by taking Special Civil Application No.16757 of 2023 to be the lead matter.

3. The brief facts referred to in the impugned judgment are as under:-

> *“4.1 The petitioner herein is a partnership firm and owner of the subject land. Erstwhile owner of the subject land preferred an application seeking development permission in the year 2001 to respondent No.3 -Surat Urban Development Authority (For short "SUDA"). An*

application for Non- Agricultural Use Permission was also preferred in year 2002 by erstwhile owners. Both these applications preferred by erstwhile owner of subject land were considered and allowed by orders dated 08.11.2001 and 01.11.2002 respectively.

4.2 After filing of above referred applications, the petitioner Firm became co-owner of the subject land. Mutation entry on record refers to partnership firm M/s. Hans Developers (the petitioner) as owner of the subject land. The validation Certificate dated 19.06.2019 also refers the name of the petitioner as owner of subject land. Accordingly, the petitioner Firm made an application under section 27 of the Gujarat Town Planning and Urban Development Act, 1976 seeking development permission for construction. The said application was allowed by an order dated 03.02.2020.

4.3 Consequently, the petitioner made an application under section 65(A) of Gujarat Land Revenue Code, 1979 for change of NA use from residential purpose to multipurpose and the same was also allowed by the

District Collector, Surat vide order dated 23.06.2020. Accordingly, construction was carried out.

4.4 Thereafter, an order dated 01.08.2022 was passed revoking/cancelling the development permission granted under order dated 03.02.2020. Aggrieved by which, the petitioner preferred Special Civil Application No.16208 of 2022 and this Court vide order dated 13.10.2022 directed the authority to pass fresh order after providing an opportunity of hearing to the petitioner. An opportunity was provided to the petitioner on 20.10.2022 and thereafter, orders dated 12.11.2022 and 21.12.2022 were passed, aggrieved by which, SCA No. 24904 of 2022 is filed.

5. In all the captioned writ petitions issue involved is whether revocation/cancellation of earlier development permission (for construction) is justified."

4. Mr.Deep D.Vyas, learned advocate for the Appellants has referred to the following provisions of the Gujarat Town Planning Act, 1976; (for short "**TP Act**"):-

"SECTION 27: Application of permission for development

Any person, not being the Central Government or a State Government, intending to carry out any development in any building or in or over any land within the limits of a development area on or after the date referred to in section 26, shall, except where such development is for any of the purposes specified in the proviso to that section, make an application in writing to the appropriate authority for permission for such development in such form and containing such particulars and accompanied by such documents as may be prescribed.

[and by such scrutiny fees as may be prescribed by regulations).

SECTION 28: Permission for retention or continuance of use of any building or work or any use of land

(1) Any person not being the Central Government or a State Government intending to retain any use of building or work constructed or carried out on any land, or to continue any use of land made, before the date on which a final development plan in respect of any development area in which such building or land is situated comes into force, which use is not in conformity with the provisions of the regulations or the final development plan shall make an application in writing to the appropriate authority for permission to retain or continue such use, containing such particulars and accompanied by such documents, as may be prescribed [and by such scrutiny fees as may be prescribed by regulations], within six months from the date on which the final development plan in respect of such development area comes into force.

(2) On and after the date on which the said period of six months expires, no person shall retain or continue any such use of building or work or land, without such permission having been obtain or contrary to the terms thereof:

Provided that where such person has applied under sub-section (1) within the period of six months and no order under section 29 has been made within that period, he shall retain or continue such use until the date of such order.

SECTION 29: Grant or refusal of permission

(1) On receipt of an application under section 27 or section 28, the appropriate authority shall furnish the applicant with a written acknowledgement of its receipt and after satisfying

itself that the development charge (and scrutiny fees), if any, payable by the applicant has been paid and after making such inquiry as it thinks fit may, subject to the provisions of this Act, by order in writing-

> *(i) grant the permission with or without any condition; or*
> *(ii) grant the permission, subject to any general or special orders made by the State Government in this behalf; or*
> *(iii) refuse to grant the permission.*

(2) Any permission under sub-section (1) shall be granted in the prescribed form and every order granting permission subject to conditions or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(3) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(4) If the appropriate authority fails to communicate its order to the applicant within three months from the date of receipt of the application, such permission shall be deemed to have been granted to the applicant on the expiry of the said period of three months.

(5) If any person carries on any development work or retains the use of any building or work or continues the use of land in contravention of the provisions of section 27 or section 28 or of any permission granted under sub-section (1) of this section, the appropriate authority may direct such person, by notice in writing, to stop further progress of such worker to discontinue any use and may, after making an inquiry in the prescribed manner, remove or pull down any building or work carried out and restore the land to its original condition or, as the case may be, take any measures to stop such use.

(6) Any expenses incurred by the appropriate authority under sub-section (5) shall be a sum due to the appropriate authority under this Act from the person in default.

SECTION 32: Lapse of permission

Every permission granted or deemed to have been granted under section 29 shall remain in force for a period of one year from the date of such grant and thereafter it shall lapse:

> *Provided that, the appropriate authority may,*

application made to it, from time to time, extend such period by a further period or periods not exceeding one year at a time, so however, that the extended period shall in no case exceed three years in the aggregate:

Provided further that the lapse of the permission as aforesaid shall not bar any subsequent application for fresh permission under this Act."

4.1 Mr. Vyas, further referred to the GDCR, particularly Clause No.6.17.4, which is quoted hereinbelow for ready reference :

"6.17.4 Contribution of Land for any development in Non-TP Areas

1. For any development in confirmation with zoning or use, where the Town Planning Scheme is not declared, the owner/applicant shall contribute land to the competent authority for infrastructure. Such contributed land shall be adjusted in town planning scheme prepared in future. The extent of contribution shall be asunder:

a. 40% of the land falls in D1 and D2 category.

b. For development in any area other than "6.17.4.1a" above, minimum 12.0 mts width of one road, considered to be a cross over road shall be provided. Such road shall be a public road and the land falling under such road shall be part of the land contributed for infrastructure development.

2. Land contribution required under clause 6.17.4(1), may not be required in the following cases. However for relaxing the land contribution, the competent authority shall record the reasons in writing and then decide.

a. Where permission was granted for a layout and order for non-agriculture purpose, under land revenue code is passed by the competent authority before 28th March, 2018, the aforesaid provision of contribution of land shall not applying

case of plot less than or equal to 2500 sq.mts. While land contribution upto 20% shall apply in case of plot more than 2500 sq.mts. Nevertheless, the competent authority while granting such relaxations, shall record the reasons in writing.

b. Land of closed textile mills and is to be used for industrial use only.

c. Land falls in Gamtal or Agriculture Zone.

3. Where the Town Planning Scheme is not prepared, the competent authority shall, for proper access, circulation and mobility, prepare a road network plan. Such shall be in sync with any, existing or development plan roads.

4. In case of any development permission other than for agriculture use in agriculture zone, the contribution of land for amenities shall be applicable as stated in above."

4.2 After taking this Court through the aforesaid provisions, Mr. Vyas submitted that the impugned judgment and order has been passed upon an erroneous reading of Clause No.6.17.4 of the GDCR more particularly when the Appellate Authority –Surat Urban Development Authority (**SUDA**) falls under D.1 category. Mr.Vyas submitted that the intention of the legislature in the prescribed date of 28th March, 2018 under Clause No.6.17.4 cannot be resorted to include stale cases where the land is kept open or undeveloped for years together. Mr.Vyas vehemently contended that if the development permission itself has lapsed and the writ petitioners had applied for development permission for

construction after the cut-off date of 28th March, 2018, which, in the present case was granted by the order dated 03.02.2020 and revised NA permission from residential purpose to multipurpose was granted by the order dated 23.06.2020, then, it cannot be said that the criteria under Sub clause 2(a) of Clause 6.17.4 has been met, and therefore, the contribution in such case could not be said to be only 20%.

5. Mr.Shalin Mehta, learned Senior Advocate appearing for the Respondent-original writ petitioners, on the other hand, submitted that the initial development permission was granted to the erstwhile owner of the subject land by the order dated 08.11.2001. Consequently, the order of NA permission was also passed on 01.11.2002. The development permission for construction based on the aforesaid order which was prior to 28th March, 2018, which is the cut-off date and therefore, the mandate of Clause 6.17.4 stood complied with.

We find that while discussing the facts of the cases at hand, the learned Single Judge has categorically held as under :-

"14. In all the petitions herein, admittedly order was passed and permission was granted for a layout and order for non-agriculture purpose, under land revenue code by the competent authority before 28.03.2018. Moreover, the land in question is having plot area of more than 1000 sq,.mtrs.; and therefore, 20% deduction shall apply. Moreover, Clause (2) of GDCR 6.17.4, further provides that for relaxation of land contribution the competent authority shall record the reasons in writing. Merely because the authority failed to pass a reasoned order for relaxation is no ground to penalize the petitioner.

15. In the opinion of this Court therefore, contention of respondents-SUDA that since, cases of the petitioners fall under GDCR No.6.17.4(1), clause (2) of GDCR No.6.17.4 would not be applicable, is an erroneous reading. When clause (2) refers to relaxation towards land contribution under clause 6.17.4(1), both clauses of GDCR No. 6.17.4 would be applicable and exceptions carved out under clause (2) shall have to be read into. In the opinion of this Court reading of GDCR No.6.17.4. (1) in isolation is not permissible. Submission of learned advocate for respondent-SUDA that since clause (a) of GDCR No.6.17.4.(1) would be applicable in cases of petitioners, clause (2) of GDCR No. 6.17.4 would not be applicable, is therefore rejected.

16. In view of above, the orders dated 12.11.2022 and 21.12.2022 in each of the petitions revoking/ cancelling earlier development permissions are quashed and set aside.

17. All these captioned writ petitions are thus allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. No order as to costs."

6. The facts of the instant case, recorded in the judgment impugned are that that the development permission and NA permission were granted to the erstwhile owner as early as in the years 2001/2002. The petitioners are purchasers who had applied for development permission and change of use from residential to multipurpose (for revised NA permission) in the

year 2022, which were also duly granted, but later cancelled in the year 2022. The subsequent development permission dated 03.02.2020 with 20% deduction was cancelled on the ground that 20% deduction was a mistake and is required to be rectified, inasmuch as, rightful deduction is of 40% as per Clause 6.17.4 (1) (a) of the Regulations of 2017.

7. These facts demonstrate that the land in question was converted from agriculture to non-agricultural purpose in the year 2002. There is a statement that the land in question was not developed by the erstwhile owner, but the fact remains that the development permission granted in the year 2001 was never cancelled. The subsequent plot validation certificate was applied by the petitioner firm and was duly granted. The change of user by the revised NA permission granted in the year 2020 or cancellation of development permission of 2020 in the year 2022, will not change the position.

8. A bare reading of Clause 6.17.4 (2) (a) indicates that it covers those cases where development permission and NA permission have been granted prior to 28.03.2018, which was

found to be attracted in the facts of the instant case by the learned single judge. The learned single judge records in paragraph No. 14 that in all the cases that the development permission and NA permission were granted prior to 28.03.2018.

9. Thus, according to us, the findings recorded by the learned Single Judge by which the orders cancelling/revoking the development permission were set aside, were in the specific facts of the present cases. Once this factual position could not be controverted by Mr.Vyas, we are of the opinion that no interference is called for in the present bunch of appeals, inasmuch as, the application of Clause 6.17.4 of the GDCR was held to be favouring the respondents–original writ petitioners. Accordingly, no question arises before us which would entail us to make any interpretation of the provisions of Clause 6.17.4 of the GDCR, beyond the case of the present case, one way or the other. For the aforesaid reasons, there is no good ground to interfere with the impugned judgment and order. It is clarified that the decision of the learned single judge or the observations hereinabove are confined to the facts of the present case and are not to be taken as any

interpretation of the provisions of Clause 6.17.4 of GDCR, in any manner and hence not be taken as a precedent covering the field.

10. Resultanlty, present appeals are dismissed with no order as to costs. Consequently, the connected Civil Applications stand disposed of accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

VARSHA DESAI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: VARSHABEN VAGHAJIBHAI DESAI(HC01393), PRIVATE SECRETARY, at High Court of Gujarat on 17/09/2025 14:52:00