

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12617 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE MAUNA M. BHATT****sd/-**

Approved for Reporting	Yes	No
	Yes	

GUJARAT COLONY CO OP HO SOC LTD

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR. RAJAN J PATEL(6775) for the Petitioner(s) No. 1
 DELETED for the Respondent(s) No. 10,12,14.1,14.2,16,17,21,22,24,30,8,9
 MS SUMAN MOTLA, LD.ASSTT. GOVERNMENT PLEADER for the
 Respondent(s) No. 1
 MR PRAVIN P PANCHAL(2059) for the Respondent(s) No. 13,19,28
 MR RITESH B DAVE(2815) for the Respondent(s) No. 29
 MR SATYAM Y CHHAYA(3242) for the Respondent(s) No. 3
 MR SHAILESH V BORISA(2479) for the Respondent(s) No. 27
 MR YATIN SONI(868) for the Respondent(s) No. 11,7
 N J MEVADA(9058) for the Respondent(s) No. 5
 RULE SERVED for the Respondent(s) No. 23
 RULE UNSERVED for the Respondent(s) No. 6
 SHIVAM H CHOKSHI(9120) for the Respondent(s) No. 20
 KARISHMA R CHAUHAN(9136) for the Respondent(s) No. 13,15,20,25,28
 MR DARSHKUMAR M BUNHA(11765) for the Respondent(s) No. 15,25,26
 MR DEEP D VYAS(3869) for the Respondent(s) No. 2,4
 MR HARSH K JADAV(12250) for the Respondent(s) No. 27
 MR KIRAN S PANCHAL(1187) for the Respondent(s) No. 13,19,28
 MR MANISH J PATEL(2131) for the Respondent(s) No. 29
 MR NIKHILESH J SHAH(3007) for the Respondent(s) No. 18
 MR PIYUSHKUMAR A MAKASANA(12151) for the Respondent(s) No.
 15,25,26

CORAM: HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 28/08/2025****ORAL JUDGMENT**

1. With the consent of the learned advocates for the respective parties, the present petition is taken up for final hearing today.

2. This petition is filed seeking to direct respondent No.2- Ahmedabad Municipal Corporation to evict and demolish and thereafter to grant necessary permission for redevelopment of residential flats known as “Gujarat Colony Co-Operative Housing Society Limited”, also known as “Rupal Apartment” situated at Town Planning Scheme No.3, Final Plot No.100 (old Survey No.347/A/1/K of Mouje Village: Ranip, Taluka: Sabarmati, District: Ahmedabad. It is also prayed that since the petitioner society fulfills the mandate under section 41-A of the Gujarat Ownership Flats Act, 1973 (hereinafter referred to as “the Act”), they are entitled for redevelopment of residential flats known as “Gujarat Colony Co-Operative Housing Society Limited”, also known as “Rupal Apartment” situated at Town Planning Scheme No.3, Final Plot No.100 (old Survey No.347/A/1/K of Mouje Village: Ranip, Taluka: Sabarmati, District: Ahmedabad, (hereinafter referred to as “flats in question”).

3. Facts, as referred in the petition, are as under:

3.1 The petitioner herein is a registered co-operative housing society having registration No. GH/8604 dated 28.08.1980 situated at the address stated hereinabove, containing 7 blocks having total 165 residential units/flats, which are constructed in the year 1980. Therefore, construction of the flats in question is undisputedly more than 45 years old. Flats in questions are in dilapidated condition, which is apparent from their slabs, beams, columns, etc. Moreover, some portion had collapsed earlier and construction being in dilapidated condition, it is not safe to the human lives.

3.2 It is case of the petitioner that on account of its dilapidated condition and considering the construction of flats in question being more than 45 years old, majority members of the society had decided to undergo redevelopment. Accordingly, procedure as provided under the provisions of the Act was followed. However, on account of 14 members objecting earlier to the action of redevelopment, it could not be proceeded, leading the petitioner to file this petition.

3.3 It is case of the petitioner that on account of requirement of section 41-A of the Act being fulfilled, the petitioner is entitled to get relief as prayed for in this petition.

4. Heard learned advocate Mr.Rajan Patel for the petitioner, learned AGP Ms.Suman Motla for respondent No.1, Mr.Deep Vyas for respondent Nos.2 & 4, Mr.Satyam Chhaya for respondent No.3, Mr.N.J.Mevada for respondent No.5, Mr.Yatin Soni for respondent Nos.7 & 11, Ms.Karishma Chauhan for respondent Nos.13, 15, 25 & 28, Mr.Nikhilesh Shah for respondent No.18, Mr.K.R.Chauhan for respondent Nos.15, 25. Mr.Shivam Chokshi for respondent No.20, Mr.Piyush Makasana for respondent Nos.13, 15, 19, 25, 26 and 28, Mr.Harsh Jadav with Mr.Shailish Borisa for respondent No.27, Mr.Manish Patel with Mr.Ritesh Dave for respondent No.29.

5. Learned advocate Mr. Rajan Patel for the petitioner submitted that registration of petitioner society on 28.08.1980 is not in dispute. Society contains 7 blocks, having 165 residential units and having 165 members, is also not in dispute. Therefore, considering the old construction and its dilapidated condition, the society by its majority members have decided by resolution dated 17.07.2021 to initiate process of redevelopment and accordingly, tenders were invited for redevelopment of the flats in question. Resolution passed by the society is at Page-73.

5.1 Thereafter, Notice dated 29.09.2021 (Annexure II, Page-

36) was issued by the AMC under section 264 of the Gujarat Proventil Municipal Corporation Act 1949('GPMC Act' for short). After that on 21.10.2021 resolution No.11(2) was passed by majority members of the society delegating powers to the Chairman of Society for initiating redevelopment process for hiring Architect, Civil Engineer and Lawyers. Resolution dated 21.10.2021 contains all the agendas. Accordingly, on 18.11.2021, advertisement was issued inviting tenders (Annexure-IV, Page-38). Accordingly, procedure contemplated under the provisions of the Act was followed. Chairman initiated process for redevelopment and after publication of advertisement, Annual General Meeting of the society was called on 18.12.2021, wherein offers received for redevelopment were opened and considered. Resolution No.2 dated 24.04.2022 was passed short listing three developers – Dynamic, Satyamev and Shantam. After uniform agreement through voting via WhatsApp, M/s.Dynamic Infracon was selected by 117 out of 165 voters. The members, who had not voted for redevelopment, had not objected for the same. Thus, conscious democratic decision was taken to give redevelopment work to respondent No.5 – M/s.Dynamic Infracon.

5.2 Thereafter, one more Notice was issued by Ahmedabad Municipal Corporation on 17.05.2022 (Annexure-VI, Page-74) to

do the needful noticing hazardous and dangerous condition of the flats in question and danger to the lives of the residents. Accordingly, though action of demolition of flats in question was required urgently, resolution No.13 dated 27.05.2022 was passed to identify non-cooperative members and initiate legal action. Accordingly, resolution No.25 dated 10.12.2022 was passed inviting objections from dissenting members. Structural Stability Report was obtained from AMC- licensed Engineer (Hiteshkumar S. Devmurari, Grade-I) on 04.01.2023. As per Structure Stability Report dated 04.01.2023, Engineer had suggested demolition and reconstruction. Accordingly, decision was taken for redevelopment wherein earlier 89% members had supported the redevelopment, which later on increased to 96% members, which is evident from the meeting held on 30.01.2023 (Annexure-IX, Page-104). Deed of Declaration was signed between the Developer and majority members on 27.11.2022. Prior to that, the plan was discussed, area given upon redevelopment, monthly rent, transportation charges and other requirement upon redevelopment was discussed first and forming part of deed of declaration dated 04.02.2023.

5.3 Thereafter, MOU was entered into between respondent No.5- M/s.Dynamic Infracon and individual member on 21.06.2023 whereby 149 out of 165 members (91%) had

signed. Thus, only 16 dissenters remain. During the pendency of this petition, 8 dissenters had settled their dispute and therefore only 8 dissenters had not signed the MOU with respondent No.5.

5.4 Further, during pendency of this petition, earlier 8 members, who had dissented, out of those 7 members having their flats Nos.2/A/15, 6/B/47, 10/A/47, 11/A/40, 12/B/52, 12/B/50 and 13/B/61 had consented for redevelopment. Thus, on the date of hearing of this petition, only one member i.e. Respondent No. 18 having flat No.11/A/39 has not consented for redevelopment.

5.5 Learned advocate submitted that objections are raised by members (respondent no.18) having dispute with regard to ownership of the flat, for which, proceedings are pending before learned Trial Court and the petitioner society is agreeable to abide by the directions of the Civil Court, Ahmedabad in Regular Civil Suit No. 176/2022 filed by respondent No.18 against respondent No.17 is pending.

5.6 Learned advocate further submitted that though respondent No.18 was in possession and pursis is filed before the Trial Court to the effect that the petitioner society will

hand over the possession upon redevelopment to the member, who was in possession, shall have to be ignored and thus, the pursis is not pressed at this stage by the petitioner.

6. Learned advocate Mr.Nikhilesh Shah for respondent No.18 – sole objecting member submitted that pursis filed is contrary since the suit is pending before the Trial Court. Learned advocate for objecting member submitted that if the order is passed permitting redevelopment subject to giving possession of the flat in question shall be handed over as per direction of the Trial Court, he has no objection. Further, transportation charges, rent and other consequential charges during pendency of redevelopment, if any to be paid, shall be deposited before Nazir of the Trial Court. Such a direction would serve and protect the interest of respondent no.18. Learned advocate submitted that Civil Suit is filed by respondent No.18 against respondent No.17 and therefore, order and judgement is binding to the parties.

7. Considered the submissions and documents on record. As stated hereinabove, the flats in question being more than 45 years old and in dilapidated condition, is evident from the Notice issued by Ahmedabad Municipal Corporation on 29.09.2021 followed by another Notice dated 17.05.2022.

Further, Notices refer to dilapidated construction dangerous to human lives cannot be ignored.

8. Moreover, it is evident that the construction is more than 45 years and more than 91% members had agreed for redevelopment at the time of filing of the petition and at present only 1 member dissented for redevelopment. Therefore, requirement of section 41-A of the Act have been fulfilled.

9. It would be apposite to refer to the decision of this court in the case of **Rabari Tejmalbhai Gagabhai v. Ratnamani Cooperative Housing Society Limited** in Letters Patent Appeal **No.1427 of 2023**, wherein it is held as under:-

“8. Having extensively gone through the provisions of Section 41-A read with the Rules 18 to 25 made thereunder, we record that the society for carrying out redevelopment work of the building has to follow the terms and conditions as laid down in Section 41-A which are :-

(i) The building shall have completed the period of twenty-five years from the date of issuance of the development permission by the concerned authority;

(ii) The concerned authority has declared the building being in ruinous condition, i.e. declared it dilapidated and dangerous to any person

occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof;

(iii) Consent of not less than 75% of the members of the building for redevelopment of the building has been obtained.

10. Thus, since the petitioner society has met and complied with the conditions enumerated in Section 41-A of the Act and decided to go for redevelopment, this Court under section 226 of the Constitution of India is inclined to entertain this present petition.

11. Further, it is not case of objecting member that the petitioner society has not followed the procedure therefore, considering the procedure followed, as narrated hereinabove in earlier paragraphs, this court deems it appropriate not to reiterate the procedure and take it as procedure being followed and not objected by any of the members for redevelopment. It is no one's case that redevelopment shall not be permitted on account of non-following the procedure.

12. Moreover, MOU is consciously signed by majority of the members and from various covenants of the MOU, it is noticed that members are benefited by redevelopment and other requirement of payment of rent, transportation charges and

consequential benefits have been taken care of. Thus, only issue remains with regard to respondent No.18, and it is noticed that he is not agreeable to the pursis filed along with affidavit by the petitioner society, stating that the petitioner Society will hand over the possession to the member, who is in possession at the time of vacation of flats in question. In this relation, it is noticed that respondent No.18 has filed Civil Suit against respondent No.17 and the same is pending adjudication where ownership right is yet to be decided by the learned Trial Court. Therefore, in the opinion of this court, if the petitioner society is directed to hand over possession as per decision of Trial Court, it would meet the ends of justice. It is further directed that even the rent, transportation charges and any other consequential benefits, if any paid by respondent No.5- Developer, the same shall be deposited before the Nazir of the Trial Court and learned Trial Court shall decide the payment to be made of this amount upon adjudication of the civil suit.

13. For the foregoing reasons, the prayers prayed in the present petition are required to be allowed and the same are allowed.

14. Therefore, following directions are issued that would

safeguard the interest of all members including respondent No.18, which are as under:

14.1 Since, few of the member of the society have agreed to the redevelopment during the pendency of this petition, they are also directed to hand over vacant and peaceful possession of their respective flats to the petitioner society within the period of eight weeks from the date of receipt of this order.

14.2 Respondent No.18 is directed to hand over vacant possession of flat No.11/A/39 to the petitioner society, within a period of eight weeks from the date of receipt of this order.

14.3 Since Respondent No.18 was in possession of flat No. 11/A/39, the transportation cost shall be given to respondent No.18, upon he/she giving peaceful vacant possession of the said flat.

14.4 The petitioner Society, respondent No.18 and respondent No.5- M/s.Dynamic Infracon are directed to abide with the orders passed by the Civil Court, Ahmedabad in Regular Civil Suit No. 176/2022.

14.5 The petitioner Society and respondent No. 5 –

M/s.Dynamic Infracon is directed to hand over the possession of new flat in lieu of existing flat No.11/A/39 to such person or the persons as may be directed by the Civil Court, Ahmedabad in Regular Civil Suit No. 176/2022.

14.6 Respondent No. 5 – M/s.Dynamic Infracon is directed to deposit monthly rent amount for flat No.11/A/39 and other amount to be paid to the members as per MOU before the Nazir of Civil Court, Ahmedabad where the Regular Civil Suit No. 176/2022 is pending and the same shall be disbursed as may be directed by the Trial Court.

14.7 With regard to the pursis filed by the petitioner society undertaking to grant the possession of the new flat in the redeveloped society to the member in possession of the flat at the time of vacation of flats, in view of the submission made on behalf of petitioner shall stand withdrawn and not to be considered by learned Trial Court.

15. Respondent Nos. 17 and 18 are directed to cooperate in the redevelopment of petitioner society and shall strictly abide by the decision of the Civil Court, Ahmedabad in Regular Civil Suit No. 176/2022.

16. With this, the present petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

sd/-
(MAUNA M. BHATT,J)

DIPTI PATEL...