

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17817 of 2018

With

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2019

In R/SPECIAL CIVIL APPLICATION NO. 17817 of 2018

With

CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2024

In R/SPECIAL CIVIL APPLICATION NO. 17817 of 2018

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RAJSINHBHAI CHHAGANBHAI KADCHHA & ANR.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MS.P J.JOSHI(3888) for the Petitioner(s) No. 1,2

MR DEVANG BHATT, ADVOCATE for

MR HS MUNSHAW(495) for the Respondent(s) No. 7

MR NISHANT LALAKIYA(5511) for the Respondent(s) No. 9

MR G H VIRK, GOVERNMENT PLEADER with

MR SIMRANJITSINGH H VIRK, ADVOCATE with

MS NENCY P SHETH(12437) for the Respondent(s) No. 2,3,4,5

MR G H VIRK, GOVERNMENT PLEADER with

MS DHARITRI PANCHOLI, AGP for Respondent No. 1

NOTICE SERVED for the Respondent(s) No. 10,11,8

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 03/09/2025

ORAL ORDER

**ORDER IN CIVIL APPLICATION (FOR DIRECTION) NO. 1 of
2024 IN SPECIAL CIVIL APPLICATION NO. 17817 of 2018**

1. This Civil Application is filed with a prayer to stay the auction for sale of commercial shops constructed in residential

premises known as Rangoli Park Apartments situated at Rajkot, Gujarat.

2. Heard learned advocate Ms. P. J. Joshi for the petitioners, learned Government Pleader Mr. G. H. Virk with learned advocate Mr. S. H. Virk with learned advocate Ms. Nancy Sheth for respondent Nos. 2 to 5 and learned Government Pleader Mr. Virk with learned Assistant Government Pleader Ms. Dharitri Pancholi for respondent No. 1 and learned advocate Mr. Devang Bhatt for learned advocate Mr. H. S. Munshaw for respondent No. 7 and learned advocate Mr. Nishant Lalakiya for respondent No. 9.

3. Learned Government Pleader Mr. G. H. Virk for respondent – Housing Board at the outset submitted that the order dated 26.08.2025 directing Gujarat Housing Board not to auction the commercial shops scheduled on 28.08.2025 is unjust and erroneous. Since the order dated 26.08.2025 restraining the respondent – Housing Board from auctioning the commercial shops was stayed till the next date of hearing, the matter is taken up today for extension of stay or otherwise.

4. Learned advocate Ms. P. J. Joshi for the applicants – original petitioners submitted that the order dated 26.08.2025 is just and proper because the residential dwelling units known as Rangoli Park were constructed under the Mukhya Mantri Gruh Awas Yojna. This scheme (yojna) is a self-finance scheme under which the applicants – original petitioners were directed to pay the amount and this is not the affordable housing for

which commercial construction is permissible. In support of her submissions, learned advocate for applicants – original petitioners relied upon the regulation to submit that, in affordable housing scheme commercial construction to the extent of 10% of total area is permissible which is not the case here. By placing heavy reliance on non-agricultural use permission granted by the Collector (Annexure-A, Page No. 27) learned advocate submitted that as per the said permission, only residential construction is permitted. Despite that the respondent – Housing Board had constructed the commercial shops which is beyond the permission granted by the Collector and therefore also the auction of shops is to be restrained.

4.1 Moreover, since it is self-financed scheme, the General Development Control Regulations (GDCR) for commercial construction would not be applicable. This aspect is once again supported by the RTI information gathered by the petitioner under reply dated 01.03.2017. Referring to the reply of RTI application dated 01.03.2017, learned advocate submitted that the petitioners dwelling units are since falling under MIG 2 and HIG flats, they are not falling within affordable housing Scheme and therefore 10% commercial construction which has been done by Gujarat Housing Board being contrary to the regulations deserves action by not permitting them to auction the commercial shops.

4.2 Referring to the Building Use permission, learned advocate submitted that the regulations were entered into in the year 2014 and thereafter the development permission was taken in the year 2015, when the petitioners have agreed for

purchase of self-financed dwelling unit in the year 2014, the permission taken subsequently beyond the brochure is contrary to the regulation and therefore also the auction of the commercial shops which is likely to be held in near future may be restrained. Learned advocate for the petitioners therefore submitted that the order dated 26.08.2025 being just and proper the prayer made to vacate the stay against auction may be rejected.

5. Strenuously opposing above submissions, learned Government Pleader Mr. G. H. Virk with learned advocate Mr. S. H. Virk with learned advocate Ms. Nancy Sheth for respondent – Gujarat Housing Board submitted that this application is filed seeking to direct the respondent – Board to demolish the commercial construction done in the residential apartments known as Rangoli Park. It is true that the apartments were constructed under Mukhya Mantri Gruh Awaz Yojna. Inviting attention of this Court to the brochure which is annexed along with the petition (Page No. 51), learned Government Pleader submitted that as referred, the applications were to be invited between 20.01.2014 to 28.02.2014 and subsequent to that no applications were to be accepted. Accordingly, the applications were invited and petitioners' applications were considered in terms of the said scheme.

5.1 Further, from the specimen conveyance deed (Annexure-F, Page No. 82) it is evident that the applicant – original petitioners were stated to be having the lease hold rights of their dwelling units and the land in question is in ownership of Gujarat Housing Board. Therefore, the applicants are having

lease hold rights for a period of 99 years of their dwelling units and they are not concerned with the other space or land which belongs to the Housing Board. Further, even in the schedule of the property the specification of the dwelling unit is mentioned (Page No. 88). Accordingly, a development permission was sought from the Municipal Corporation and from the development permission sought by the respondent – Board, it is evident that the permission of residential units and commercial shops was given. Learned Government Pleader in support of his submissions relied upon Page No. 177 where the development permission is granted in favour of Gujarat Housing Board.

5.2 Even the Building Use permission granted by the Rajkot Urban Development Authority (RUDA) also refers to permission of residential as well as commercial units. Furthermore, it is not case of the applicants – original petitioners that construction was done beyond the development permission.

5.3 By placing reliance on the affidavit-in-reply dated 01.09.2025, learned Government Pleader submitted that under affordable housing policy (Annexure-R2, Page No. 205) dated 15.01.2014, the dwelling units and the shops were constructed. By referring to various clauses of the scheme, learned Government Pleader submitted that even in the case of affordable housing scheme or otherwise if the extra land remains with the developer then the developer is eligible to make commercial construction at 10% of the total construction or as per the local GDCR provisions whichever is higher. In the present case, if a comparative chart is perused then the

Housing Board has given permission for commercial shops in less than 6% of total area. Therefore, this is a case where stay granted under order dated 26.08.2025 deserves to be vacated.

6. Considered the submissions and the documents on record. This Court earlier considered the submission of the applicants – original petitioners that the applicants herein applied and where allotted dwelling units after payment of requisite charges. Further, the submission on behalf of applicants – original petitioners that the Housing Board has constructed the commercial shops beyond plan and brochure given and commercial shops were constructed in parking allotted to the applicants. Accordingly, this Court considered grant of stay against the auction to be held on 28.08.2025. However, from the submissions canvassed and the documents on record it is noticed that the applications were invited for application in the year 2014 and thereafter, the development permission dated 25.05.2015 was sought by Housing Board from RUDA in the year 2015. The said permission refers to residential as well as commercial construction. It is not the case that construction was done beyond the development permission. Moreover, it cannot be ignored that the applicants – original petitioners had taken possession of the dwelling units in the year 2017 and they are residing since then. The shops were constructed along with dwelling units and when Building Use permission was granted to the applicants – original petitioners, the shops were in existence. Moreover, under affordable housing policy dated 15.01.2014, this Mukhya Mantri Gruh Awas Yojna was developed by the Housing Board which permits commercial construction to the extent of 10% of the total construction or

as per the local GDCR provisions whichever is higher.

7. Further, in this case, no evidence is produced that the construction is beyond 10% as permissible under the policy dated 15.01.2014. Therefore, the submission canvassed on behalf of the applicants – original petitioners that since they are having the self-financed scheme, the commercial construction is not permissible does not merit acceptance and therefore, in view of forgoing reasons the stay granted not to auction the commercial shops under order dated 26.08.2025 stands vacated forthwith.

8. For the forgoing reasons, the present Civil Application is disposed of.

**ORDER IN SPECIAL CIVIL APPLICATION NO. 17817 of 2018
WITH CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2019**

To be listed on 09.10.2025.

(MAUNA M. BHATT,J)

SHRIJIT PILLAI