

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/WRIT PETITION (PIL) NO. 104 of 2018****With****CIVIL APPLICATION NO. 1 of 2019**

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JIGNESH MAHESHBHAI PANDYA

Versus

STATE OF GUJARAT &amp; 3 other(s)

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Appearance:

MR AMIT M PANCHAL(528) for the Applicant(s) No. 1

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA

LAVKUMAR, GOVERNMENT PLEADER WITH MR VINAY B VISHEN, AGP

for the Opponent(s) No. 1,3

MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR MRUGEN K

PUROHIT(1224) for the Opponent(s) No. 4

MR MAULIK NANAVATI WITH MR PARTH BHATT WITH MS MANVI

DAMLE, ADVOCATES FOR NANAVATI AND CO.(7105) for the

Opponent(s) No. 2

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE**

and

**HONOURABLE MR.JUSTICE BIREN VAISHNAV**

Date : 16/07/2019

**ORAL ORDER****(PER : HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE)**

1. This Court once again has had the opportunity of lending its ear to a conflict between so called 'materialistic interests' and 'sustainable development'. It is trite that in the name of environmental development there is exploitation of Mother Earth. However, the present is a glaring case of thousands of hutment dwellers, residing in about 1457 hutment dwelling units and occupying pond/waste land for around four decades. These dwellers came to be displaced by demolishing their huts and on an assurance given by the respondent no. 2 –

Vadodara Municipal Corporation for 'In-Situ' rehabilitation for which contract was given to respondent no. 4 through public notice based on the policy of Public Private Partnership (PPP) and as a part of the Pradhan Mantri Awas Yojana, Mukhya Mantri Awas Yojana and Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973. However, the said action has been opposed in this belated Writ Petition PIL on the ground that such 'In-Situ' rehabilitation of slum dwellers is not permissible on the pond/waste land so notified by the Irrigation Department of State of Gujarat under Section 5 of the Bombay Irrigation Act, 1879 and that it is contrary to law laid down by the Supreme Court of India as well as this Court. We, therefore, being conscious of the fact that we are expected to strike a mutual balance between protection of environmental resources and development of the mankind by exploring the possibility of protecting and preserving part of the total area of the water body, so earmarked by the Technical Committee as possible to revive and recharge have heard the petition at length which revolves around 'Kharabo Talavadi' situated at Revenue Survey No. 444, in village Tandalja, Taluka and District Vadodara admeasuring 48259 sq. mtrs and is occupied by almost 1457 hutment units.

2. Before proceeding with the hearing of the main petition, we have heard Civil Application filed by the hutment dwellers for impleading them as party respondents. As a result of hearing and going through the records, we find it to be in the fitness of things if the applicants of the application are given an opportunity of hearing. Therefore, the application is allowed and the applicants are impleaded as party respondents in the main petition.

3. Coming to the facts of the present case, the petitioner has preferred the present Public Interest Litigation for quashing and setting aside the process for Denotification of land, which is sought to be made as per "Letter of Acceptance" to respondent no. 4 dated 20.10.2016 from the office of Additional City Engineer, Vadodara Municipal Corporation in respect of granting approval to developer, M/s. Cube Construction Private Limited, Vadodara for undertaking work under First Vertical PPP for Rehabilitation and Redevelopment at Sahakarnagar at the land situated in village Tandalja, District Vadodara in T.P. Scheme No. 22, Revenue Survey No. 444, Final Plot No. 234, admeasuring 48,259 sq. mtrs.

3.1 As averred in the writ petition, the above area is notified as 'lake' ('Talav' in Gujarati) in Village Form No. 1 and vide notification dated 10.01.2005 by Department of Narmada and Water Resources, Water Supply and Kalpasar Department, Sachivalaya, Government of Gujarat for the purpose of development of slums under the Slum Rehabilitation and Redevelopment Scheme and under the Pradhan Mantri Awas Yojana, as per Standing Committee Resolution No. 339 of the Vadodara Municipal Corporation dated 29.09.2016 at the cost of Rs.81,41,85,000/- and a premium amount of Rs.15,16,11,111/- to be paid to Vadodara Municipal Corporation.

3.2 As averred in the writ petition and so submitted emphatically by learned advocate for the petitioner, the above exercise undertaken by respondents is in flagrant violation

and with utter defiance and in breach of the directions issued by this Court in the judgement dated 02.08.2002 rendered in the case of **Shailesh R. Shah vs. State of Gujarat and Others reported in 2002 (3) GLH 642 : 2002 Vol. 43 (3) GLR 2295** and also contrary to principles enumerated by the decisions of the Apex Court in the cases of **M.C. Mehta vs. Union of India and Others reported in (1996) 8 SCC 462**, **Hinch Lal Tiwari vs. Kamala Devi and Others [(2001) 6 SCC 496]**, **M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India and others [(1997) 3 SCC 388]**, **R.K. Mittal and Others vs. State of Uttar Pradesh & Others [(2012) 2 SCC 232**, **M.K Balakrishnan(1) and Others vs. Union of India and Others [(2009) 5 SCC 507**, **Susetha vs. State of Tamil Nadu & Others [(2006) 6 SCC 543**, **Intellectuals Forum Tirupati vs. State of A.P and Others [(2006) 3 SCC 549**, **M. Velu vs. State of Tamil Nadu & Others [2010 SCC OnLine Mad 2736]**, **Residence Welfare Association vs. State (NCT) of Delhi [2013 SCC OnLine Del 4387**, **Consumer Action Group vs. Project Director and member Secretary [2010 SCC OnLine Mad 3989]**, **Sandeep Brahmhatt vs. State of Gujarat & Others [2001 SCC OnLine Guj 147 : 2002 (2) GLH 536.**

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3.3 In the above backdrop of contentions, it is submitted that at Sr. No. 147 Revenue Survey No. 444 is of Kharaba Talavadi situated in village Tandalja of Taluka and District Vadodara admeasuring 48259 sq. mtrs and it reveals 800 huts near Basil School in the notification dated 10.01.2005 issued under Section 5 of the Bombay Irrigation Act (Gujarat Amendment Act, 1982), 1879 by the Department of Narmada

and Water Resources, Water Supply and Kalpsar Department. The above fact remains undisputed and keeping in mind law laid down by this Court as well as Apex Court in the above referred decisions along with solemn assertion and declaration made before this Court in earlier round of litigation pertaining to water bodies in the case of **Sailesh R. Shah (supra)**, the land in question which is earmarked as 'tank poromboke' could not have been parted for any use other than development or recharging the water body. The prayer thus reveals that directions to be issued to respondents no. 1 to 3 to ensure that the water body as declared at Sr. No. 147 in the notification dated 10.01.2005 to be maintained and preserved as water body only and not to be alienated in any other manner or for any other purpose and further restraining respondents no. 1 to 3 from denotifying the land in Tandalja village, District Vadodara.

3.4 Reliance is placed on decisions to which reference is made in earlier part of the judgement namely **Sailesh R. Shah (supra)**, **Susetha (supra)** about requirement of preserving water bodies /resources wherein the Apex Court referred to earlier case of **Intellectual Forum, Tirupati (supra)** where principles of sustainable development and inter generational equity were enumerated and the duties cast upon constitutional force to consider and direct the state authorities that even Directive Principles of State policy as reflected in paragraph no. 4 of the Constitution particularly Article 48A and 51A(g) vis-a-vis fundamental rights guaranteed by the Constitution of India including Articles 14, 19 and 21 are to be taken care of.

3.5 The case of **Kamal Nath (supra)** was also relied upon wherein the Apex Court considered 'Public Trust Doctrine' which is part of the Union liability and it extends to natural resources such as rivers, forests, seashores, air etc. for the purpose of protecting the ecosystem. In the above decision, the Apex Court considered the observations of the Apex Court in the case of Supreme Court of California in **Mono Lake case reported in 33 Cal 3d 419 (National Audubon Society vs. Superior Court of Alpine County)**. Other decisions on the line namely voicing concern by the Apex Court about imminent need to conserve, protect and maintain ecological balance vis-a-vis sustainable development was considered as of utmost importance and Court should leave no stone unturned in seeing that natural resources are not scattered away or illegally used by unscrupulous elements namely some section of the society who undertake development work by indulging into construction for residential, commercial or industrial purpose disregarding environmental loss.

3.6 Further, in the case of **Jagpal Singh and Others vs. State of Punjab and Others reported in (2011) 11 SCC 396**, resolutions were passed by the Gram Panchayat for regularising common village land/community land and when water bodies exist namely either village pond or grazing land they need not be permitted to be encroached either by granting lease or regularizing in any manner. Lastly, in the case of **Sarvepalli Ramaiah (Dead) As Per Legal Representatives and Others vs. District Collector, Chittoor District and Others reported in (2019) 4 SCC 500**, once again the Apex Court relied on the decision in the

case of **Susetha (supra), Kamal Nath (supra) and Intellectual Forum, Tirupati (supra)** by emphasizing the need to retain and restore the water bodies and held that water bodies are invaluable.

3.7 On the aspect of requirement of maintaining judicial discipline so as not to take a different view or express any doubt on the correctness of the decision of a co-ordinate bench of the same High Court though brought to the notice of the bench and requirement of strict self discipline so as to strengthen an inbuilt mechanism in the judicial system itself, our attention is invited to a decision of the Apex Court rendered in **U.P Gram Panchayat Adhikari Sangh and Others vs. Daya Ram Saroj and Others [(2007) 2 SCC 138]** and on the aforesaid premise, Mr. Amit Panchal, learned advocate for the petitioner submitted that the petitioner as such has no grievance if slum dwellers are rehabilitated elsewhere on any other government land but not on water bodies and in the facts of this case so identified since 1952 and details about the same is reflected in revenue record as such.

3.8 Further, notification dated 10.01.2005 itself is unequivocally clear that since decades it remained not only described and identified as such but accepted by all authorities namely District Collector, Vadodara, concerned departments of State of Gujarat and Vadodara Municipal Corporation. By taking us to various communications addressed by the authorities themselves inter, se he submitted that it would reveal that Revenue Survey No. 444 at Sr. No. 147 of the notification dated 10.01.2005 is Tank

Poramboke ('Talavadi' in gujarati) Kharaba land.

3.9 On 27.08.2001 vide Government Resolution dated 27.07.2001, it was prohibited to alienate tanks/lakes/ponds/water bodies under the Department of Revenue, State of Gujarat in any manner and all authorities were directed in no uncertain terms that even no proposal be forwarded to make any modification or relaxation for usage of such land for the purpose other than preservation and recharging of water bodies. It is submitted that by solemn affirmation made by the then Principal Secretary, Urban Department, Government of Gujarat by filing affidavit dated 30.07.2002, it was accepted in due deference to the suggestion of the Court in that case that General Development Control Regulations were framed or shall be framed and care shall be taken by all Area Development Authorities and Town Development Authorities and Local Authorities to preserve and maintain water bodies and not to permit any construction over such lands.

3.10 That reference made about Gujarat Rural Urban Housing Scheme and PPP for Rehabilitation and Redevelopment viz-a-viz Pradhan Mantri Awas Yojana and contract awarded in favour of respondent no. 4 by respondent no. 2 – Vadodara Municipal Corporation is therefore contrary to law laid down by this Court in case of **Sailesh R. Shah (supra)** and other such decisions thereafter by the Apex Court to which reference is made earlier. It is further submitted that though an attempt is made by respondent no. 1 – State of Gujarat , respondent no. 2 – Vadodara Municipal Corporation and respondent no. 3 – District Collector, Vadodara by filing



affidavits-in-reply to justify the stand that they have taken now about need to provide shelter to slum dwellers occupying more than 1400 huts as on date in the affidavit filed by them and report of the Expert Committee will not in any manner allow such authorities from committing any breach of their own notifications and the law laid down by the Apex Court as well as this Court.

3.11 Mr. Panchal, learned advocate for the petitioner invited our attention to an affidavit-in-rejoinder filed by the petitioner and submitted that respondent no. 2 – Vadodara Municipal Corporation is the local authority and has a role to play under the Gujarat Town Planning and Urban Development Act and is bound by the assertion of the deponent of the affidavit filed by the Principal Secretary, Urban Land Development Department on 30.07.2002. It is submitted that respondent no. 2 – Vadodara Municipal Corporation is responsible for creating such a situation whereby hutments are removed under the requirement of rehabilitation at the very place which is ‘tank poramboke’ waste land so notified as a water body. Therefore, none of the respondents no. 1, 2 and 3 are permitted to deviate from the stand taken by the Principal Secretary, Urban Land Development Department in his affidavit dated 30.07.2002 in the proceedings of earlier writ petition being Special Civil Application No. 10621 of 2000 and directions contained in paragraph no. 50 of judgement dated 02.08.2002 passed therein i.e. in the case of **Sailesh R. Shah (supra)**.

3.12 According to learned advocate for the petitioner, if respondents are not made to stop by parting with water

bodies of subject writ petition then this will become a routine exercise for them to wriggle out of the decision in the case of **Sailesh R. Shah (supra)** and will continue to exploit and misuse natural resources contrary to law and in blatant disregard to decisions of the Apex Court as well as this Court.

3.13 When the land is described, identified and notified as 'tank poramboke' any decision by respondent no. 2 to rehabilitate and redevelop such land including for the purpose of construction of premises/residential accommodation for slum dwellers by taking recourse to either Pradhan Mantri Awas Yojana or Mukhya Mantri Gruh Yojana is not permissible and therefore all decisions taken in this regard and finally allotting subject land in favour of respondent no. 4 for the purpose of rehabilitation of slum dwellers and redevelopment by awarding contract or entering into any understanding even through PPP is not permissible and the Court shall come down heavily upon respondents and the Writ Petition PIL be allowed by accepting the prayers made.

4. Mr. Kamal Trivedi, learned Advocate General appearing for respondent no. 1 submitted that so far as law laid down by this Court in the case of **Sailesh R Shah (supra)** and other decisions of the Apex Court are concerned, as such no reliance can be placed but all such decisions can be distinguished in the facts and circumstances of the case. He submitted that Form No. 7/12 of revenue record of the village under the heading "type and area of land" carried an endorsement as "Kharabo Talavdi" with a remark of "Bin Parvangi thi Zupada" (in gujarati) for land bearing Survey No. 444 admeasuring 48,259 sq. mtr in village Tandalja,

District Vadodara.

4.1 As early as on 23.06.1976, part of the land in question was reserved for the purpose of establishment of hutment dwellers on a request made by Karmachari Mitra Mandal. Later, a certificate qua 4047 sq. mtr of the land was allotted in favour of Muktinagar Co-operative Housing Society Limited by respondent no. 3 – District Collector, Vadodara and thereafter on 27.08.2001, a Government Resolution was issued by Revenue Department whereby disposal of all reservoirs , lakes, ponds, water bodies etc. coming under the occupation of the Revenue Department came to be prohibited to which reference is made by learned advocate for the petitioner.

4.2 Further attention is invited to decision in the case of **Sailesh R. Shah (supra)** and the notification dated 10.01.2005 issued under Section 5 of the Bombay Irrigation Act (Gujarat Amendment Act, 1982), 1979. Apropos Mukhya Mantri Gruh Yojana to provide In-Situ rehabilitation of families residing in slums, Government Resolution was issued on 18.07.2013 whereby minimum 25sq. Mtr of land will be made available with constructed house with basic amenities with an obligation on the part of the private developer to arrange alternative accommodation of slum dwellers till their residential units are constructed and ready for occupation.

4.3 Various communications were addressed by respondent no. 2 – Vadodara Municipal Corporation to respondent no. 3 – District Collector, Vadodara namely communication dated 01.01.2014, Government Resolution dated 15.02.2016

whereby Credit Link Subsidy for providing easy and better housing facilities to the slum dwellers at the place of original residence was introduced linking with Pradhan Mantri Awas Yojana or Mukhya Mantri Gruh Yojana. It is brought to our notice that respondent no. 2 - Vadodara Municipal Corporation issued a notice inviting offers from the interested parties for the development of Integrated Group Housing Facility on the land in question at Sahakarnagar as early as on 11.07.2016 and 'Letter of Acceptance' came to be issued in favour of respondent no. 4 on 20.10.2016 for providing residential units and also for redevelopment. No doubt according to learned counsel when the subject land was notified as water body under the control of Department of Revenue as per Government Resolution dated 27.08.2001, the Collector was to submit a proposal after getting said land denotified. As per communication dated 16.11.2016 and letter addressed by District Collect within a month thereafter at the same time, respondent no. 2 - Vadodara Municipal Corporation also requested respondent no. 3 for allotment of land in question for the purpose of constructing residential units for In-Situ development for hutment dwellers by preserving and beautifying land admeasuring 4,200 sq. mtr as water body and onward proposal was sent by District Collector on 26.10.2017 for denotification and allotment of the land for the purpose.

4.4 Mr. Trivedi, learned Advocate General submitted that the State Government issued a Government Resolution on 26.03.2018 appointing a Technical Committee consisting of **(i)** Additional Collector, Vadodara, **(ii)** Superintending Engineer, Vadodara Irrigation Project, Vadodara, and **(iii)**

City Engineer, Vadodara Municipal Corporation, Vadodara for the purpose of finding out the feasibility of allotment of the subject land with a query and report to be submitted on four different questions namely how many sq. mtr of land is declared as water body, secondly how much area was in existence excluding water body and including the same, whether water was being filled in or filled out in the water body before existence of slum and fourthly, how much area of notified water body where inflow of water existed etc. and the report was submitted by the above Technical Committee along with a Rojkam dated 29.04.2018 which revealed that as per panchnama drawn on 17.03.2015 total land admeasuring about 4200 sq. mtrs is in the form of large 'pit' and about 3000 sq. mtrs is open land and on the remaining land admeasuring about 41,059 sq. mtrs, there are hutments along with religious places and further there was no sign of accumulation of water on the land in question but during monsoon such an accumulation of water takes place and that was also limited to large pit of the land in question. He submitted that the writ petition was thereafter filed in the year 2018.

4.5 Therefore, it is submitted that in the facts and circumstances of the case, when a decision is taken by the authorities namely respondents no. 2 & 3 and allotment of subject land is already made in favour of respondent no. 4 and only part of the total land is a water body, pragmatic view is to be taken when such findings are submitted by the Technical/Expert Committee.

4.6 Mr. Kamal Trivedi, learned Advocate General then

distinguished the decisions relied on by Mr. Amit Panchal, learned advocate for the petitioner and submitted that the above decisions are not applicable on the facts and circumstances of the present case and in fact law laid down by the Apex Court no doubt emphasizes protecting resources and redevelopment of water bodies but at the same time when such an exercise was not possible, a limited deviation is made by taking individual care that no further damage is caused. In his submissions, learned Advocate General emphasized the need for harmonizing between requirement, protection of natural resources viz-a-viz acute need for rehabilitation of slum dwellers by balancing the interests since Public Interest Litigation is not adversary so as to benefit all and in the facts of this case, 1400 huts are already removed by the Corporation and even more than 5000 customers are awaiting shelters as a part of Pradhan Mantri Awas Yojana or Mukhya Mantri Gruh Yojana for which contract is finally awarded in the year 2016. He submitted that the writ petition therefore deserves to be dismissed.

5. Mr. Mihir Joshi, learned advocate for the respondent no. 4 at the outset would oppose maintainability of the writ petition PIL at the behest of the petitioner belatedly namely after two years of finality of the contract awarded by respondent no. 2 in favour of respondent no. 4 after issuing a notice inviting offers on 11.07.2016 and 'Letter of Acceptance' was issued on 20.10.2016 and particularly when the petitioner had knowledge of such public interest and now at this stage respondent no. 4 has invested a huge amount and is paying monthly charges in favour of hutment dwellers who are already removed as a part of the policy of In-Situ development

and has an obligation to arrange alternative accommodation till the residential units are constructed on the land in question and they are shifted. He submitted that such a policy has statutory force in addition to the Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973 which creates an obligation on the part of the State Government.

5.1 Mr. Joshi submitted that respondent no. 4 – Private Developer is paying Rs.2,000/- per month to each eligible hutment dweller/unit holder through Bank and about Rs.28.54 lakhs are paid to 1427 eligible hutment dwellers very month and other infrastructural and establishment expenditure where a monthly cost borne by respondent no. 4 is about Rs.4 crore. Our attention is invited to the project summary, project development and Bidding Process, public notice issued and communication addressed to Bank about transmitting amount of monthly expenses for 1427 hutment dwellers.

5.2 According to learned Senior Counsel appearing for respondent no. 4, the present writ petition PIL is not going to subserve any public interest and judgements relied on by learned advocate for the petitioner are not to be read and interpreted like Euclid's theorem but by taking into consideration ratio decidendi. In support of his submissions that when possibility of revival of water bodies is ruled out and contract in favour of respondent no. 4 is concluded finally, a belated attempt on the part of the petitioner to invoke extraordinary jurisdiction by filing Public Interest Litigation under Article 226 of the Constitution of India is contrary to law laid down in the case of **Delhi Development Authority**

**vs. Rajendra Singh and Others reported in (2009) 8 SCC 582.** It is submitted that the appeal in the present case is settled for all purposes.

5.3 Mr. Joshi, learned Senior Counsel for the respondent no. 4 has also relied on submissions made on the factual scenario and contents of the affidavits-in-reply filed by respondents no. 1 to 3 that how Technical Expert Committee concluded about part of the whole subject land may have traits of water body which is not more than 2400 sq. mtrs. He has also opposed any kind of concession to be given by taking away contracted land for rehabilitation of slum dwellers and redevelopment project. It is submitted that in absence of merit in the present writ petition PIL, the same deserves to be dismissed.

6. Mr. Maulik Nanavati, learned advocate for the respondent no. 2 – Vadodara Municipal Corporation adopted the submissions of learned Advocate General on behalf of respondents no. 1 and 3 and submitted that the Corporation has followed a fair and transparent policy for awarding contract in favour of respondent no. 4 upon issuance of notice inviting tender by way of public advertisement and now slum dwellers are already removed from the place occupied by them with a promise to rehabilitate them at the very same place and therefore any interference by this Court at this stage will not serve any public good but on the contrary will create an irreversible situation. As a part of public obligation, respondent no. 2 – Vadodara Municipal Corporation was following various schemes like Pradhan Mantri Awas Yojana or Mukhya Mantri Gruh Yojana for which the Corporation/Local authorities were directed to rehabilitate



slums and that truthful attempts are made by the Corporation namely to preserve and maintain water bodies which really exist and beautify the same and to rehabilitate slum dwellers. Both the above averred objects cannot be termed contrary to law laid down by this Court or the Apex Court. He submitted that therefore the writ petition PIL deserves to be dismissed.

7. Mr. M.T.M. Hakim, learned advocate for the slum dwellers adopted the submissions made by learned Advocate General, Mr. Mihir Joshi, learned Senior Counsel for respondent no. 4 and Mr. Maulik Nanavati, learned counsel for respondent no. 2 and submitted that for decades the slum dwellers were occupying the subject land without any disturbance and pursuant to various schemes so notified by the State and Central governments, it is hoped that a small roof will be provided for their shelter with some basic amenities which should not be taken away particularly when the Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973 is in force whereby name of slum Sahakar Nagar, Opposite Muktinagar Society, Tandalja Road is identified and the owner of the land is State Government for which now rehabilitation is undertaken. Accordingly, it is submitted that petition deserves to be dismissed.

8. Having heard learned advocates appearing for the respective parties and from the entire conspectus of facts what is evident is that the genesis of this PIL is the litigation initiated by way of PIL being Special Civil Application No. 10621 of 2000 (**Sailesh R. Shah (supra)**) relating to protection, preservation and improvement of water bodies in the State and safeguarding them against encroachments.

8.1 An affidavit dated 30.07.2002 was filed therein stating that the government would collect data from the development plans about water bodies and they will be notified by the government. This led to the issuance of the notification dated 10.01.2005. Reading the notification, it indicates that the lands in question i.e. Survey No. 444 at Tandalja has been referred to as "Kharabo Talavdi" i.e. waste land/water body along with encroachment. The land is admeasuring 48,250 sq. mtrs which consists not only water body but waste land which is flat and occupied by hutment dwellers.

8.2 Similarly, reading of the affidavit filed on behalf of the Vadodara Municipal Corporation would indicate that the claim of the petitioner that the whole parcel of land is a water body seems misplaced. The revenue records describe it as 'Kharabo Talavdi' i.e. waste land - water body or Tank Poramboke. Even when the lake did exist it was on the land admeasuring 4000 to 5000 sq. mtrs and even today the cupped lake/pit is only to that extent. The claim therefore that the entire piece of land is a water body exclusive is not correct.

8.3 It is pertinent to note that as early as in the year 1976 the land was reserved for the purpose of establishing a society for people living in the slums. Slums were established on the land since the year 1978-79. In the year 1988, the land was earmarked as a government waste land. The Corporation's affidavit clearly reveals that since the year 1951 there is no lake. The land in question has an indentation of about 4,200 sq. mtrs where water gets collected during monsoon.

9. The chronology of events so submitted by the learned Advocate General would indicate that the State taking into consideration all the aspects and keeping in mind the notifications dated 27.08.2001 and 10.01.2005 undertook the exercise of identifying the exact area of the water body which is a part of the waste land so notified vide notification dated 10.01.2005. With the objective of providing affordable housing and making urban areas slum free by providing housing to the poor at free of cost or at subsidised rates, the State Government introduced a policy vide resolution dated 17.08.2013 providing for In-Situ rehabilitation of approximately 7 lakhs families residing in the slums. The Central Government also announced a scheme to provide free houses to the hutment dwellers under the Scheme of Pradhan Mantri Awas Yojana. Here too the object was to utilize available land in optimal manner and to improve the neighbourhood at low or minimal cost. Accordingly, the Vadodara Municipal Corporation vide its resolution dated 21.11.2013 resolved to notify Sahakar Nagar, Tandalja as slum area and the Government of Gujarat issued a notification dated 27.01.2014 notifying the area in exercise of powers under clause (j) of Section 2 of the Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973. The Vadodara Municipal Corporation on being satisfied that the area, as per the provisions of the Gujarat Slums Areas Act, notified the land in question for improvement, clearance and redevelopment, invited expression of interest.

9.1 In the backdrop of the above, what followed is that the Revenue Department on 16.11.2016 addressed a letter to the

Respondent No.3 Collector, *inter alia*, informing that vide Government Resolution dated 27.08.2001, the State Government has put a restriction on the disposal of the land notified as '*talav*' and thus, requested the Respondent No.3 Collector to submit a proposal after getting the said land denotified or submit a proposal for effecting development on the land surrounding '*talav*'. Respondent No.3 Collector accordingly addressed a letter to the Respondent No.2 Corporation, *inter alia*, conveying the aforesaid information. Respondent No.2 Corporation addressed a letter to Respondent No.3 Collector, *inter alia*, requesting for allotment of land in question for the purpose of constructing residential units for In-Situ development for hutment dwellers on the land in question after denotification, while preserving and beautifying the land admeasuring about 4,200 sq. mtr. as waterbody.

9.2 Thereafter, on 11.07.2016 an advertisement was issued for development of Integrated Group Housing Facilites. The project implementation required providing transit accommodation to 1427 slum units situated on the land in question. Pursuant to the tender process, a Letter of Acceptance was issued on 20.10.2016 to the respondent no. 4. The cost of slum rehabilitation/construction was Rs.81,41,85,000/- and slum dwellers were shifted to transit accommodations where the amount of Rs.2000/- each is to be paid to the slum dwellers towards such accommodation pending completion. Rs. 4 crores have already been spent.

10. From the communications as above, what is evident is that with the sole object of maintaining a balance between

sustainable development and ecology/environment, an exercise was undertaken by the authorities of the State of fulfilling the twin objective of slum redevelopment and preservation of a lake/water body on the parcel of land. As it is discernible from the revenue records, out of the aforesaid land admeasuring 48,259 sq. mtrs in the Final Plot No. 234 only 4200 sq. mtrs is a water body/indented portion as is so described in the revenue records also as "Kharabo Talavdi - Waste Land - Water body - Tank - Proamboke". Revenue records reveal a pit of 4200 sq. mtrs which both the State and the Corporation have gone on record to assure that the same will be rejuvenated, beautified and preserved as a lake/water body. The Court has to preserve the delicate balance between the two objectives of sustainable development and ecology.

11. It is a fact that the urban poor who live in slums face serious issues of hygiene, water, sanitation and health. It is with an object of creating a better living environment that the 'In'Situ Slum Development' program is introduced under the Awas Yojana. The State with this benevolent avowed object appointed a Technical Committee when the Deputy Secretary (Panchayats), Narmada, Water Supply and Kalpasar Department stated that the land can only be denotified by the Urban Development Department. The Technical Committee inspected the area/land in question to decide or inspect as to which and what area of the land in question is covered under the Water body and which is occupied by slums. A report was sought with the following information:

- (i) How many square meters of land is declared as waterbody?

- (ii) Within how much area, the slum was in existence? (without the waterbody and including the same)
- (iii) Whether the water was being filled in the waterbody because of the existence of slum and if no, then since how long the water was not being filled in?
- (iv) Within how much area of notified waterbody, there was inflow of water and within how much area thereof, there was slum.

11.1 The Technical Committee physically verified the land and drew a Rojkam dated 19.04.2018 and a report was submitted on 25.04.2018. The highlights of the report are as under:

- (i) That total land admeasuring about 48,259 sq. mtrs has been notified as waterbody by the Narmada, Water Resources, Water Supply and Kalpsar Department.
- (ii) That pursuant to the Panchnama drawn on 17.03.2015, total land admeasuring about 4,200 sq. mtrs is in the form of large 'pit', whereas, land admeasuring about 3000 sq. mtrs is an open land and on the remaining land admeasuring about 41,059 sq. mtrs, there are hutments along with religious places.
- (iii) It appears that in the recent past, there is no sign of accumulation of water on the land in question, however, during monsoons, accumulation of water takes place and that is limited to the large 'pit' forming part of the land in question.
- (iv) It appears that there is no source of water and still total land in question i.e. 48,259 sq. mtrs was notified as waterbody. Moreover, out of that total land admeasuring 48,259 sq. mtrs, existence of hutments and religious places over the land admeasuring about 41,059 sq. mtrs. could be believed.

12. What is therefore evident is that right from the beginning the land was designated as a “Sarkari Kharabo Talav” - Waste Land/Poramboke – Water body/ Tank. There exists a large pit admeasuring 4200 sq. mtrs where water gets accumulated during monsoon whereas rest of the land, as stated in the affidavit and based on revenue records and photographs is plain land.

13. The apprehensions voiced by the petitioner therefore that the entire parcel of land is a water body are therefore misconceived and misplaced. As far as the existing area of water body of 4200 sq. mtrs is concerned the Corporation and the State authorities have on affidavit assured this Court of rejuvenating and beautifying the same. We, therefore, need to strike a balance in our care of the environment in juxtaposition with sustainable development. The hutment dwellers who have moved out to make way for construction of suitable housing under the Awas Yojana also deserve to be given their share in the economy of sustainability. It is in this context that our views are echoed through the relevant paragraphs in the case of **Intellectual Forum, Tirupati (supra)**.

“68. The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this court has often faced situations where the needs of environmental protection have been pitched

against the demands of economic development. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in Paragraph 13, which states:

"In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population. "

70. This court in the case of **Essar Oil v. Halar Utkarsh Samiti**, was pleased to expound on this. Their Lordships held: **(SCC p. 406, Para 27]**

"27. This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. "

83. On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs



just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centres in search of livelihood, mis-match between demand and supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

84. The World has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on, the key question which often arises and the Courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of the humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leaves us to the conception of growth and development which sustains from one generation to the next in order to secure 'our common future'. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress." It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well being, coupled with a corresponding duty of ensuring that resources are conserved and preserved in such a way that

present as well as the future generations are aware of them equally.”

14. Keeping the aforesaid principles in view, we do not see any reason to stall the project of rehabilitation and redevelopment of the slum area at Sahakarnagar, Opp. Mukti Nagar Society, Tandalja Road, Tandalja in Revenue Survey No. 444, T.P. No. 22, F.P. No. 234 at Vadodara.

15. In addition to what we have said above, what is apparent is that the redevelopment was notified on 29.01.2014. The tender process commenced in July 2016, the respondent no. 4 was issued a letter of acceptance in October 2016. The work was to be completed in 18 months. The construction had started in November 2016 and the slum dwellers were evicted in July 2017. Without bringing all these facts on record, the PIL was moved in May 2018. Clearly, the PIL was barred by delay and laches. However, since we have heard this writ petition PIL at length on merit, objections raised by Mr. Mihir Joshi, learned Senior Counsel appearing for respondent no. 4 about not to entertain the writ petition solely on the ground of two years of delay in challenging the contract awarded in favour of respondent no. 4 is not gone into. We therefore dismiss the PIL and vacate the interim relief granted vide order dated 28.05.2018.

16. While parting we direct that the participants in the project on the land in question shall rejuvenate and beautify the lake/water body in the 4200 sq. mtrs area so be declared as a water body and see that the water body is preserved in the true spirit of the declaration made before this Court in the

litigation namely Special Civil Application No. 10621 of 2000 i.e. **Sailesh R. Shah (supra)** and in the present proceedings.

17. Petition is accordingly dismissed. Interim relief stands vacated.

18. After completion of dictation of judgement, learned advocate for the petitioner seeks stay of the present order for a period of two weeks. The said request has been vehemently opposed by learned advocates for the respondents. Considering the fact as noted above that the project has not seen the light of the day since it was started i.e. since 2016, we are not inclined to grant any further relief to the petitioner. The issue concerns rehabilitation of slum dwellers who are staying in transit accommodation and due to the operation of the interim stay the construction of their houses under the Awas Yojana has been stalled. Request is accordingly rejected.

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THE HIGH COURT  
OF GUJARAT

(ANANT S. DAVE, ACJ)

WEB COPY

(BIREN VAISHNAV, J)

DIVYA