(2014) 07 GUJ CK 0084

In the Gujarat High Court

Case No : Writ Petition (Pil) No. 238 of 2013

Tejendra Jayant Tambe APPELLANT

Vs

Govt. of Gujarat RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Gujarat Town Planning and Urban Development Act, 1976 — Section 22

Citation : (2014) 07 GUJ CK 0084

Hon'ble Judges : Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : A.S. Supehia, Amicus Curiae, Advocate for the Appellant; H.S. Munshaw, Maulik G. Nanavati, and Nachiket A. Dave, Advocate for the Respondent

Judgement

Bhaskar Bhattacharya, C.J.—By this Public Interest Litigation, the petitioner, one Tejendra J. Tambe, claiming to a public-spirited person, has drawn the attention of this Court to various illegalities in the matter of allotment of flats which were constructed for financially weaker sections of the society by Vadodra Urban Development Authority [VUDA, hereafter] constituted by the State of Gujarat.

2. The case made out by the petitioner may be summed up thus:

[a]. Government of Gujarat had acquired two distinct pieces of land for development of economical houses for financially weaker sections of the Society called as "Madhavnagar" and "Keshavnagar" in Atladra, Vadodara.

[b]. After purchase and acquisition of the land by Government of Gujarat, the development and construction contract was awarded to VUDA established by Government of Gujarat under section 22 of the Gujarat Town Planning and Urban Development Act, 1976. VUDA has further contracted builders/developers/ architects to develop schemes of 458 apartments in Madhavnagar development area and 266 apartments in Keshavnagar development area according to structural design and engineering by VUDA and in association with other related

Government and private agencies.

[c]. As per verbal information received from the current occupants, approximate construction and development cost was Rs. 5 Crores for 724 houses [excluding the price of the land purchased and acquired by the Government] for both the projects, and thus each house cost Rs. 70,000/- in the year 2001.]

[d]. The above information was based on estimate and reasonable prevailing market rate of construction, viz. Rs. 450/- per sq. mtr. of good quality immovable property in the year 2001.

[e]. The above scheme was designed for the benefit of financially weaker sections of the society by the public authority, VUDA.

[f]. Each flat consists of one room, kitchen, bathroom and toilet and the total carpet area is 161 sq. ft., which would be sufficient to accommodate three persons, viz. husband, wife and a child.

[g]. Thus, the object of the Scheme was to provide cost efficient housing and residential arrangement on long terms lease basis for welfare of financially weaker section of the Society.

[g]. Madhavnagar Scheme was ready in the year 2001 and occupancy right was given in the year 2002 by VUDA to some purchasers; similarly, the occupancy right was given to the general public in Keshavnagar from the year 2006 onwards.

[h]. In both the housing schemes, many houses were illegally allotted by VUDA to relatives and associates of some public servants with good political influence, who were not from the financially weaker section of the Society.

[i]. In the year 2006, VUDA decided to give the rest of the vacant houses for benefit of needy economically weaker sections of public at old rates of the year 2001 and low monthly rents with the help of government subsidy. The reason for delay of 6 years in lawful disposal of constructed houses was never clarified or informed to general public by AUDA.

[j]. Around 724 families were living in these houses of Madhavnagar and Keshavnagar, and out of 724, around 30% current occupants were bonafide purchasers from financially weaker sections of the Society, who were paying the regular monthly instalments to VUDA.

[k]. The remaining, around 70% current occupants are tenants also from financially weaker section of the Society, who were paying illegal rents and profits to these government owned properties to VUDA agents who are illegal purchasers.

[l]. The current occupants made several complaints to VUDA regarding poor construction but VUDA denied for repairs and maintenance of the premises.

[m]. Two buildings collapsed in the early morning around 4 a.m. on 28th August 2013 and 11 innocent people, who were occupants of the collapsed buildings,

died.

[n]. Some teams of technical experts have informed and advised the disturbed homeless occupants to look for another house on rent because construction and structure of all the remaining buildings also were not suitable for living and occupancy and may collapse at any time due to poor construction by the contractor appointed by VUDA.

[o]. The State Government has also not taken any action to secure the shelter of the homeless families belonging to financially weaker section till the date of filing of the petition.

Hence this petition.

3. The original petitioner, party-in-person, subsequently informed this Court that as he is going out of India, it was not possible for him to continue with this litigation. Since this Court had already entertained the application directing the respondents to file affidavit, this Court permitted the petitioner-party-in-person to retire and appointed Mr. A.S. Supehia, a learned advocate of this Court, as amicus curiae to proceed with this matter.

4. This writ-application was opposed by the respondent No. 2, VUDA, by filing affidavit, and their stance may be summed up thus:-

[a]. VUDA is a statutory body duly constituted under the provisions of Gujarat Town Planning and Urban Development Act, 1976 and is under administrative control and supervision of the Government of Gujarat.

[B]. VUDA decided to put up construction of 458 Residential Units for economically weaker section of the Section on revenue survey No. 48 of Village Atladara, Taluka & District Vadodara in the year 1999.

[C]. Thus, two schemes, known as "Madhavnagar", and ''Keshavnagar" were floated for economically weaker section of the Society and in all 266 residential units were to be constructed on revenue survey No. 11 and 14 of Village Atladara.

[D]. VUDA appointed M/s. Antrix Architect for the architectural and structural work of the said Schemes and work order was issued on 13th August 1999.

[E]. M/s. Antrix Architect was entrusted the architectural and structural design work and the said firm appointed M/s. Kantharia & Padaria Associates for carrying out the structural design work.

[F]. The plans and lay outs were got approved by M/s. Antrix Architect from Vadodara Municipal Corporation as the land in question was within the territorial jurisdiction of Vadodara Municipal Corporation.

[G]. Thereafter, tenders were invited through an advertisement dated 13th September 1999 issued by VUDA for construction of residential units of the Scheme known as "Madhavnagar" which consisted of 33 blocks and in all 458 residential flats for economically weaker section of the Society and the built up area of each of the flat was of 22.5 sq. meters.

[H]. In response to the said advertisement dated 13th September 1999, in all four tenders were received out of which the tender of M/s. Mr. K.R. Makwana & Associates was accepted as it was the lowest one.

[I]. Work order was issued on 17th January 2000 and subsequent to the completion of the work, a completion certificate was obtained from Vadodara Municipal Corporation by Ms/s. Antrix Architect of behalf of VUDA.

[J]. Applications from the eligible members of economically weaker section were invited by the Authority for allotment of residential units at Rs. 62,500/- per each unit. As per the Scheme, a beneficiary was to pay Rs. 22,500/- at the time of allotment and a loan of Rs. 35,000/- per unit was to be made available by National Housing Bank and the same was to be repaid through 156 equal monthly installments of Rs. 362/-. The State Government had provided a subsidy of Rs. 5,000/- per residential unit.

[K]. Computerized draw for allotment of residential units to the applicants was held by VUDA and the successful applicants were allotted the residential units. The procedure followed for allotment to the members of economically weaker section was as per the guidelines laid down by the State Government.

[L]. So far as the water supply lines were concerned, an additional amount of Rs. 69.81 lakh was to be spent and out of Rs. 34.91 lakh were deposited by VUDA in the office of Vadodara Municipal Corporation towards expenses. Rest of the expenses were borne by Vadodara Municipal Corporation. The respondent No. 2 authority also spent an additional amount of Rs. 16 lakh for drainage lines for the beneficiaries of the Scheme. The additional amount of Rs. 13,183/- per residential unit was spent out of VUDA''s own funds and it was never recovered from the beneficiaries.

[M]. In an unfortunate event, two Blocks bearing No. 10 & 11 collapsed on 28th August 2013 resulting into death of 11 individuals. Immediately thereafter, the Government of Gujarat declared an ex-gratia payment of Rs. 2,00,000/- to the family members of the deceased residents. The respondent No. 1 also appointed Inquiry Commission headed by former Chief Secretary for inquiry.

[N]. Immediately after collapse of two Blocks, it was thought fit to shift all the residents of entire "Madhavnagar" Colony to "Renvasera" of Vadodara Municipal Corporation situated at Village Atladara for their safety and security. It was open to all to shift to the said shelter where other facilities including food were provided by Vadodara Municipal Corporation. VUDA has paid an amount of Rs. 10,00,000/- to Vadodara Municipal Corporation for the said facilities for a period commencing from 30th August 2013 to 22nd September 2013.

[O]. During the inquiry held by High Level Commission, Senior Officers of Design Circle of Roads & Buildings Department submitted a technical report to the effect that the residential blocks of "Madhavnagar" Colony were not safe for residential use considering the nature of soil, high water table and faulty structural design.

[P]. Considering the said report, as another Scheme known as "Keshavnagar" was also designed by the same Architect, it was thought fit to obtain a report qua the said Scheme also from M/s. GEO Test House duly appointed by VUDA as Structural Design Experts.

[Q]. It is reported by the said Experts that though there was no damage to the residential units of "Keshavnagar" Colony, the structural design was identical to that of "Madhavnagar" Colony and as the said structural design was defective, the residential units were not safe. It was also opined to pull down the said Blocks in the interest of residents.

[R]. In view of the said report, VUDA immediately convinced the residents on 1st September 2013 to vacate the properties and shift to the residential Tents put up by VUDA in the open space of "Keshavnagar" colony. Accordingly, approximately 250 residents have shifted to the said Tents and the expenses qua food were borne by VUDA. Slowly and gradually all of them have shifted to the places of their choice and at present nobody is occupying the said Tents.

[S]. VUDA thought fit to take immediate alternative measure as all the Blocks of "Madhavnagar" as well as "Keshavnagar" Scheme were to be pulled down. It is submitted that accordingly the Board Members of Vadodara Urban Development Authority have passed a Resolution in its meeting dated 30th October 2013 to put up a new construction of residential units for in all 724 beneficiaries. It is also resolved that each of the residential units would be having built up area of 25 sq. meters against 22.5 sq. meters. The new construction is to be of RCC frame construction instead of load bearing system and the residential units are to be provided free of cost to the beneficiaries.

[T]. Tenders were invited by the Authority by way of publishing an advertisement in the newspapers of 8th November 2013. The construction is to be carried out by the Contractor within a period of 14 months from issuance of work order and execution of work is to be supervised by a Private Project Management Consultant and to be inspected by a third party. There was a defect liability period of 10 years and the life span of the structure is approximately 50 years. In other words, necessary corrective measures were taken promptly by the respondent authorities. The allottees of "Madhavnagar" and "Keshavnagar" Schemes have submitted their Memorandum accepting the said Resolution of the Board Members of VUDA.

[U]. The High Level Commission completed the inquiry and submitted a report to the Government of Gujarat for further action. Immediately after the mishap on 28th August 2013, a First Information Report was lodged at Makarpura Police Station in the city of Vadodara and thereafter, Police has arrested the Contractor Mr. K.R. Makwana and Structural Engineer Mr. Bupendra Padaria as well as Supervisor Mr. B.D. Tamboli and all of them are in police custody since their arrest.

[V]. The Schemes were meant for the members of economically weaker section and the applications were invited from the eligible citizens by way of publishing advertisements in the newspapers. The income criteria, mode of allotment, method of payment etc. were determined as per the policy of the State Government. VUDA being a limb of State Government, has followed the policy of the State Government in true letter and spirit.

[W]. A computerized draw was arranged and the successful applicants were allotted the residential units and even Sale Deeds were also executed at the relevant point of time between VUDA and the successful applicants/allottees.

[X]. VUDA has a complete list of allottees pursuant to computerized draw for the residential units of the said two Colonies apart from the copies of registered Sale Deeds. The ownership of the residential units were of the allottees subsequent to registered Sale Deeds executed between the Authority and the said allottees. Subsequent to collapse of two Blocks of "Madhavnagar" and shifting the residents from both the Schemes, not a single occupant has so far come forward for any lease deed for the benefits available. It was, therefore, decided to form a Committee headed by the Chief Executive Authority for fresh allotment to the beneficiaries.

[Y]. As the residential blocks were constructed and allotted on outright sale basis to the beneficiaries, it was not the responsibility of VUDA to repair and maintain the same and therefore, the contentions raised by the petitioner that the same ought to have been repaired and maintained by the Authority is without any basis.

5. Subsequently, VUDA has also filed another affidavit and made the following further disclosures:

[i]. VUDA decided to put up construction of in all 458 residential units for economically weaker section of the Society on revenue survey No. 48 of village Atladara, Taluka & District Vadodara in the year 1999 known as Madhavnagar Scheme.

[ii]. An advertisement was published in the newspaper inviting applications from the interested parties. Thereafter, a computerized draw was held and allotments were made to in all 458 beneficiaries.

[iii]. VUDA had floated another Scheme known as Keshavnagar Scheme on revenue survey No. 11 and 14 of village Atladara and in all 266 residential units were to be constructed. It is stated that similar procedure for allotment was followed for allotment of these residential units.

[iv]. Subsequently, the Board of Members of VUDA was approached by the allottees for transfer residential units on one or the other grounds and thereupon the Board passed a resolution dated 4th November 2000 laying down a policy for transfer on payment of Rs. 10,000/- as transfer fee. The first and foremost condition for transfer was to examine the issue whether the proposed allottee

belongs to weaker section or not.

[v]. The transfer fee of Rs. 10,000/- was opposed by the allottees. The Board, therefore, passed another resolution in its meeting dated 5th June 2009 resolving that the transfer fee should be Rs. 1,000/- instead of Rs. 10,000/-.

[vi]. Thereafter, in all 38 transfers were permitted in case of residential units of Madhavnagar Scheme is concerned while 5 transfers were permitted in case of Keshavnagar Scheme.

[vii]. Subsequent to untoward incident of August, 2013, VUDA did not permit any transfer so far. Subsequent to August, 2013, VUDA has received 32 applications for transfer in case of Madhavnagar Scheme while 36 applications in case of Keshavnagar Scheme, and no decision is yet taken on these applications so far and the needful would be done by the Committee consisting [1] Chief Executive Authority, Vadodara Urban Development Authority, [2] Dy. Municipal Commissioner, Vadodara Municipal Corporation and [3] Dy. Collector, District of Vadodara as per the Resolution dated 3rd October 2013.

6. It appears that in the year 2006, an agreement was entered into between VUDA and the occupants, wherein, the VUDA was described as "owner" and the occupants were described as "purchaser", which included their legal heirs, executors, administrators and authorized representatives or authorized transferees. Some of the salient features of the said agreement for purchase are quoted below:-

"[1] Purchaser will register this document and will give copy to authority and with that property defined in annexure "a" and for more clarity on the boundaries as per annexure "b" map marked with red color, with this direct occupancy of property shall be given to the purchaser.

[2]

[a]. Purchaser without waiting for demand from Owner shall pay the remaining amount due with interest of Rs. 362 of decided monthly installment. That Rs. 362 [three hundred sixty two rupees only] installment shall be paid in office of owner before 15th day of each month or earlier. Such first installment has been paid along with the acceptance letter, and which is considered as monthly installment for January month. And subsequent installment shall be paid on or before 15th February and then after all installments shall be due and shall be paid in accordance with the above mentioned time period till the full repayment of the purchase amount.

[b]. During the interim period Purchaser, hereby agrees to pay all charges, duties, assessment and additional taxes related to Owner for conveyed property and dues to authority for water connection, road maintenance and other common facilities and services and expenditure share of the purchaser to authority.

[c]. Purchaser, in above mentioned period agrees to maintain, the property,

water connections, drainage lines, electricity and such other services from his own expenses. Purchaser shall maintain the property [which includes the yearly internal and external painting or white wash] in good condition.

[d]. Purchaser, shall not do any trade or business in conveyed property or shall give permission to do so. Or shall not misuse the property without permission for purposes like katha, puja, prarthana or any social function or give permission to do so. And purchaser hereby agrees to avoid any activity which results in annoyance and disturbance or loss to neighbors/Owner and shall prevent others from doing so. In accordance with the above rules permission shall be given to such limited number of persons for occupancy.

[e]. Till the property is transferred to purchaser, Purchaser hereby agrees to allow Owner, his servant or agent to enter in the property during day time and allow to check the refitment situation and if during checking it is found to repair the property then Owner can order such repair to Purchaser at his cost. And if purchaser fails to repair in stipulated time then it is lawful for Owner to repair at the cost of purchaser. It is not a lawful duty of Owner to maintain and repair the property, and in such situation decision of Owner shall be final and binding and purchaser hereby agrees to pay such repair amount to the Owner.

[f]. Purchaser hereby agrees to give permission to enter into property for maintenance and repair work of the waterline, drainage line or electricity or any other line or associated work or for connection with other property to Owner, his appointed person, or his servant or his contractor.

[g]. Purchaser, without express written permission and as per Owner''s approved map shall not do any changes in property or give permission to do so. Such permission or deviation shall be repaired and made good within one month notice from owner. It is lawful for Owner to repair such deviation at purchaser''s cost, if purchaser fails to make good any deviation within one month. But it is not mandatory for owner to do the repair such deviation. Purchaser hereby agrees to pay expenses finally decided by Owner whose decision shall be final and binding. But Owner reserves the right to reject such permissions for change and deviation in plan as per his conscience and such decision shall be binding. In addition to this, if Owner does any changes in accordance with Gujarat Town Planning and Urban Development Act, 1976 then purchaser cannot claim any exemption from responsibility.

[h]. Purchaser hereby agrees to use property conveyed by Vadodara Urban Development Authority for residential purpose of his actual family members only.

[i]. As mentioned in above rules, Purchaser at the time of execution of this agreement will become a member of registered cooperative housing society established by occupants, and will continue as member, and will pay and pay reasonable demands to such society, and abide by the by-laws of the society and authority''s above laws and parallel agreement with the society and will discharge all responsibilities as member of the society. Such chapters of parallel agreement

of the society are considered as part of this agreement which are applicable in this section.

[j]. As per this agreement purchaser hereby binds himself to follow the conditions as per annexure "c" during his occupancy.

[k]. It is hereby agreed to abide by the rules and regulations of this scheme mutually agreed roles and liabilities as per scheme document which is considered as part of this agreement.

[l]. In property management rules related to "property''s site-status" and clear provisions; It is hereby forbidden for Purchaser to complain or object or to file suit related to this property.

[m]. As per disposal of property regulation, if Owner has made any expenditure related to service for such reason, purchaser hereby agrees to pay such service expenses to owner along with the monthly installments as per above rules. Owner shall decide such expenses and which shall be final and binding. But if such expenses become part of the monthly installment for in case of non formation of housing society or it''s failure and or non acceptance of the liability by local civil authority or any such contingency. And in such case occupants will become unauthorized occupants. And authority can take action in accordance with Gujarat Public Buildings [Unauthorized Ejection] Act, 1972.

[n]. No immovable property rights or interests are created in favour of the Purchaser with this deed. And purchaser shall not take any legal actions against the interest of the Owner Or sue the Owner for damages. And still in such events, purchasers hereby agree to compensate the loss to Owner.

[o]. In event of any kind of accident results in damage or destruction of the property purchaser hereby agrees to indemnify the owner from any liabilities and loss. Still if Owner receives the insurance money, Owner shall repair the properties from such money. But if damage to property is of such nature or technically difficult those repairs cannot be done be done with available repair or maintenance funds with the registered housing society and/or insurance money is insufficient for repair the property, then from the insurance money and money received from purchaser, Owner shall recover the value of debt liability of owner and other related expenses of the property and remaining funds if any will be given to purchaser. But with the condition that in all above case and events Owner''s decision shall be final and binding. It is hereby clarified that said property shall only be insured against "FIRE".

[p]. During the life time of the purchaser, he shall give his signed will to Owner and related register housing society''s secretary so that Owner shall transfer the property in favour of member of his family and if purchaser don''t have family then his relative or Dependant or nominee in case of his death, upon receipt of satisfactory proof of death of purchaser, but along with continued liabilities and responsibilities towards Owner and registered cooperative housing society,

Purchaser can revoke such appointment and also appoint new person with condition that if purchaser fails to appoint as above, then Owner shall accept the legal heirs of purchaser as beneficiaries of this agreement.

[q]. Purchaser as per this agreement, property management system or any document which deploys the financial liability on purchaser shall pay regularly such all dues, liabilities in full. And in case of delay in such payment, then such due amount appropriated to nearest full rupee shall be paid with two per cent interest towards loss. If amount falls due for more than two months or due amount is not paid with monthly two percent interest then Owner can eject purchaser from property, and for ejection as per this section all such outstanding dues with two percent monthly interest along with the loss is recoverable as arrears of land revenue in accordance with Gujarat Public Buildings [Unauthorized Ejection] Act, 1972 and for such recovery authority shall follow the regulations as per the above Act.

[r]. In case Purchaser as per provisions, conditions of property management rules allows more number of persons to occupy the property or allows the other person to occupy the property who is not bound by above conditions, and breaches this agreement, then Owner can take following actions for recovery of compensation.

Compensation shall be dependent on month or the part of the month, and that shall not exceed the monthly installment as per decision of the officer of the authority. Such compensation amount shall be furthermore to monthly installment or remaining part.

On demand from Owner, obviation of compensation for breach or occurrence of breach again, then Owner can take action in accordance with provisions of Gujarat Public Buildings [Unauthorized Ejection] Act, 1972 and eject the occupant. With notice of breach of agreement, office shall give demand notice for compensation. Purchaser will be heard by officer and after that as per situation decide the recovery amount for compensation or take final decision and steps regarding ejection of the purchaser.

[s]. If Purchaser uses the property, common area in property or common facilities in such manner that it results in loss, damage or deterioration, or wastage, then as the case may be, the Purchaser shall make good the expenditure to owner or to registered cooperative housing society for such defective work. But if there is any dispute regarding such compensation and expenditure due to defective work then authority''s officer''s decision shall be final and binding. In addition to this if purchaser makes such mistake section [sic] second time then 1% time amount of expenditure and third time one and half time amount shall be paid to owner. For the s fourth time such mistake Owner can take action in accordance with provisions of Gujarat Public Buildings [Unauthorized Ejection] Act, 1972 for ejection.

[t]. Security deposit of the purchaser shall be kept aside as reserve, and

purchaser cannot claim that amount for any liability arising from his part, but during ownership transfer agreement against purchaser and registered cooperative housing society this amount shall be appropriated. During ejection first preference shall be towards dues of Owner, second preference shall be towards dues of registered housing society and if such amounts are not recoverable then third preference shall be towards the dues of the Municipal Corporation, electricity supply and such public authorities for recovery from said security amount. And after Purchaser assigns the possession to Owner then and then only as per decision of owner, remaining amount shall be paid back to purchaser on demand and as per terms of ejection.

[u]. Whatever is stated in this document, still after hearing the related parties after inquiry Owner''s decision shall be final and binding. If it is found that Purchaser has made any false statement or concealment of important details in prescribed application form during verification by asset allocation committee, then it is lawful for owner to do immediate ejection and with that this agreement stands terminated and paid full amount will be confiscated by Owner.

[v]. Whatever is stated in this document, Purchaser hereby agrees to pay increment in land price, construction fund/development fund as per decision of the authority, and payment of such compensation shall be in accordance with the increment in price which shall be decided by the authority, which is binding and final. Such amount shall be paid by purchaser within one month from the demand of authority. Purchaser shall have option to pay this amount in 36 installments as decided by the authority.

[w]. Whatever is stated elsewhere in this document, still if Owner or contractor has filed case in court Or as a result of dispute resolution between Owner and Contractor Or due to any accident or event which increases the bill of contractor to Owner which in turn increases the property value decided by Owner, purchaser agrees to compensate the same to Owner, such payment shall be in accordance with additional proportionate expenses decided by Owner, and such final payment shall be decided by Owner and Purchasers is bound to make such payment to Owner.

[3] Owner hereby agrees that after regular repayment of monthly installment in full, Owner shall transfer the ownership of property in favour of the purchaser with ownership transfer deed, but with condition that still such ownership transfer deed is done, Purchaser must have paid all dues to Owner including the document charges, and also dues to registered co-operative society and any public authority. After that as per the provisions of transfer deed, purchaser will become the "Owner" of the house and member of building along with other purchasers of the registered cooperative housing society. And in this manner Purchaser acquired rights and liabilities as per by-laws of registered cooperative housing society, will be continued through the registered cooperative housing society. Owner in prescribed manner transfer the property through the transfer of ownership deed in favour of registered cooperative housing society, with pre-

condition that all dues including document charges shall be paid in full before such transfer to owner and public authorities. With such transfer of ownership deed, the land on which the building is constructed will be vested in the lawful ownership of registered cooperative housing society in which the purchaser is a member and continue to be a member.

[4] In ordinary course after full payment of monthly installments, Owner shall execute above mentioned ownership transfer deed, still if Purchaser applies to transfer the property to him early to terminate this agreement, then Owner shall initiate the process as mentioned in clause [3] above, and after meeting above mentioned requirements and method Owner will execute ownership transfer deed.

[5] There is a provision for change and reform in above rules and property management rules. Purchaser hereby agrees to abide by such changes and reform which have been made and now after being done.

[6] The above rules or the rules under the aforesaid agreements or decisions taken in respect of any dispute or disagreement arise interpretation of the writings, then decision shall be taken by Chief Executive Officer. Against such decision of the authority, purchaser shall appear to the authority within one month of such decision, unless such decision shall be final and binding for the purchaser.

Despite this provision, if purchaser wants to file petition in court for legal remedy then purchaser hereby agrees to pay costs of all expenses related to such litigation to the authority.

7. In course of hearing, we find that the VUDA has selected M/s. N.R. Construction as developer for the purpose of reconstruction of the demolished building and according to the terms of the agreement, it is for the developer to reconstruct and also to make alternative rehabilitation arrangement till the construction is completed. We, therefore, decided to add M/s. N.A. Construction as additional party-respondent to this petition. We also added Vadodara Municipal Corporation as party-respondent to this application. Subsequently, by our order dated 6th March 2014, we passed a direction upon the VUDA to the following effect:

[1] Until further order, no order approving transfer of allotment should be passed on payment of any amount of transfer fee.

[2] The VUDA will disclose in affidavit, whether the persons who are getting benefit of alternative rental accommodation are complying with the requirement of payment of installments in terms of the original clause of allotment.

[3] The Committee constituted by the VUDA for approval of transfer would prepare guidelines for such transfer.

[4] The original allotment having been given only on payment of Rs. 62,000-00, and that too, by way of installments, the Committee should bear in mind that the

original allottees should not be permitted to make profit out of the transfer, and the transfer, if at all, should be made in favour of the natural heirs and legal representatives of the original allottees. In other words, no allotment should be permitted in favour of the total outsiders.

8. After hearing the learned amicus curiae and the learned counsel for the parties and after going through the aforesaid materials on record, we find that the object of the VUDA is to give allotment to the persons of weaker sections of the society at a paltry amount of Rs. 62,500/- and that too, by way of installments. Such benefit should not be permitted to be transferred on the basis of transfer fee. The right of transferring the property should be restricted only to natural heirs of the allottee. If an allottee has more than one heir, he can decide to exclude any one of them. But the VUDA should not permit an allottee to transfer the property inter vivos or by Will to a person who is not his natural heir.

9. We have further found that in the past, VUDA has already allowed transfer on payment of transfer fees and consequently, fresh right has been created in favour of persons who are not heirs or legal representatives of original allottee. We do not propose to disturb those transfers which had already taken place and VUDA has already recognized such right in favour of the transferee. But henceforth, VUDA should not, in lieu of transfer fee, recognize any transfer by an allottee in favour of a person other than his natural heir. Our attention has been drawn to the fact that there are several allottees who have not complied with the essential requirements of agreement of making monthly installments and that monthly installments are due from several allottees. In such situation, we direct the VUDA to give an advertisement in the newspaper intimating that the defaulter allottees, within three months from the date of publication, should pay all the arrears of installment amount and in default, their right in the scheme will be forfeited and they will not be considered for new allotment when after the construction of new building, the VUDA will decide to allot. Similarly, if within three months as indicated above, any of the allottees in default, does not pay the arrears, the developer who is entrusted to make new construction will have no liability to give temporary accommodation to such person during the construction work.

10. We, thus, dispose of this Public Interest Litigation by directing the VUDA to comply with the above direction and in case of original allotment, which will be forfeited by virtue of this order, those should be filled up from the new allottees having the required qualification for being entitled to allotment and they will be guided by the original terms and conditions embodied in the agreement. For filling up vacancy arisen due to forfeiture, the VUDA will give advertisement in the Newspaper and will fill in the vacancy, by public lottery among eligible persons. Similarly, the developer is also directed to complete the construction in terms of agreement with the VUDA after compliance of the requirements of Vadodara Municipal Corporation under law.

