

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 208 of 2019

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2020

In R/WRIT PETITION (PIL) NO. 208 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 21314 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 21316 of 2019

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NIPUN PRAVEEN SINGHVI

Versus

STATE OF GUJARAT

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Appearance:

MR.VISHAL J DAVE(6515) for the Applicant(s) No. 1

MS. HIRAL U MEHTA(7003) for the Applicant(s) No. 1

**ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the
Opponent(s) No. 1**

NOTICE SERVED(4) for the Opponent(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH

and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 20/08/2020

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. By means of this petition under Article 226 of the Constitution of India, the petitioner had prayed for the following reliefs as originally framed:

“(a) Your Lordships may be pleased to pass a Writ of Declaration declaring the constitution of the Gujarat Real Estate Appellate Tribunal as “corn non judice” and violative of Articles 14, 19(1)(g), 21 and 50 of the Constitution of India and Section 43(3) of the Real Estate (Regulation and Development) Act, 2016 violative of the basic structure of the Constitution and hence void ab initio, in so far as it establishes the Gujarat Real

Estate Appellate Tribunal and further contrary to the principles laid down by the Hon'ble Bombay High Court in case of Neelkamal Realtors Suburban Pvt. Ltd. and Anr. vs. Union of India and Ors., 2017 SCC OnLine Bom 9302 and further be pleased to quash and set aside the office Order No.MIS/102016/3281/L dated 11.10.17 passed by the respondent no.1;

(b) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondent no.1 to appoint a technical or administrative member of Gujarat Real Estate Appellate Tribunal in accordance with the provisions and applicable rules of the Real Estate (Regulation and Development) Act, 2016;

(c) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondent no.1 to bring the functioning of the Gujarat Real Estate Appellate Tribunal under the supervision of the Ministry of Law & Justice, Gujarat of Gujarat instead of the Respondent no.1 and further be pleased to direct the Respondent no.1 to provide necessary infrastructure, staff and other facilities including a website for smooth functioning of the Gujarat Real Estate Appellate Tribunal;”

2. By means of amendment, the following additional reliefs were claimed:

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“(g) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction to quash and set aside the advertisement dated 04.01.2020 issued by the Respondent no.1 whereby the applications are invited for the post of Chairperson and Members in the Gujarat Real Estate Appellate Tribunal;

(h) Your Lordships may be pleased to issue a Writ of

Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction to the Respondent no.1 for seeking the appointment for post of Chairperson and Members in Gujarat Real Estate Appellate Tribunal by following the procedure as per Section 46 of the Real Estate (Regulation and Development) Act, 2016 and also in consonance with the Constitutional spirit of judicial independence;

(i) Pending admission, hearing and final disposal of this Petition, Your Lordships may be pleased to stay the execution, operation and implementation of the advertisement dated 04.01.2020 issued by the Respondent no.1 whereby the applications are invited for the post of Chairperson and Members in the Gujarat Real Estate Appellate Tribunal;”

3. In effect, the petitioner wants by means of this Public Interest Litigation that the Gujarat Real Estate Appellate Tribunal under the the Real Estate (Regulation and Development) Act, 2016 be constituted and made functional by appointment of Chairperson, Technical and Administrative Members and also be provided necessary space.
4. Ms. Manisha Lavkumar Shah, learned Government Pleader has placed a note upon instructions with regard to the current status of the selection and appointment and also regarding the space being provided for the said Appellate Tribunal. According to the contents of the said note, the selection of Administrative and Technical Members has already been made by the Selection Committee and further, as

far as the Chairperson is concerned, the same is also in advance stage of consultation. With regard to the space, it has been stated that sufficient space has been allotted, details of which are mentioned in the note. The contents of note as provided to us are incorporated hereunder:

“The process of the establishment of the Real Estate Appellate Tribunal is at the verge of the completion. As per Section 45 of the RERA Act, the Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

That, as per Section 46(2) of the RERA Act, The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee. Whereas, as per Section 46(3) of RERA Act, the Judicial Member and Technical or Administrative Member of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

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In view of the above provisions, the Selection Committee has completed the selection procedure and recommended two names for the post of Judicial Member and two names for the post of Technical or Administrative Member, whereas, for the post of Chairperson of Gujarat Real Estate Appellate Tribunal, the Government is in the process of consultation with the Hon'ble Chief Justice of High Court.

For accommodation of the office of the Gujarat Real Estate Appellate Tribunal, the General Administration

Department, State of Gujarat vide its order dated 23.07.2020 has allotted 3378 sq. ft area at Block No.2, D-2 wing, Karmayogi Bhavan, Sector 10, Gandhinagar.”

5. In view of the above, this Public Interest Litigation does not require any further consideration and accordingly stands disposed of.
6. We, however, expect the State to make the appointments at the earliest in view of the statement made. Consequently, Civil Application (For Stay) No.1 of 2020 also stands disposed of.
7. In view of the order passed above, connected petitions which also relate to the same issue namely, Special Civil Application Nos.21314 of 2019 and 21316 of 2019 also stand disposed of along with pending Civil Applications in all the three matters.

THE HIGH COURT
OF GUJARAT

(VIKRAM NATH, CJ)

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DRASHTI K. SHUKLA

(J. B. PARDIWALA, J)