

ITEM NO.47

Court 4 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SMW(C) No(s).7/2020

**IN RE: THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED
HANDLING OF DEAD BODIES IN THE HOSPITALS ETC.**

**(WITH APPLICATION FOR EXEMPTION FROM FILING ORIGINAL
VAKALATNAMA/OTHER DOCUMENT, APPROPRIATE ORDERS/DIRECTIONS,
CLARIFICATION/DIRECTION, EARLY HEARING APPLICATION, EXEMPTION FROM
FILING AFFIDAVIT, EXEMPTION FROM FILING O.T., EXEMPTION FROM PAYING
COURT FEE, INTERVENTION/IMPLEADMENT, PERMISSION TO APPEAR AND ARGUE
IN PERSON, PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)**

WITH

SLP(C) No. 6381-6382/2021 (III)

**(FOR ADMISSION and I.R. and IA No.55834/2021-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.55832/2021-EXEMPTION FROM
FILING O.T. and IA No.55837/2021-EXEMPTION FROM FILING AFFIDAVIT)**

SLP(C) No. 7546/2021 (III)

**(FOR ADMISSION and I.R. and IA No.67199/2021-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.67200/2021-EXEMPTION FROM
FILING O.T., IA No. 82286/2021 - INTERVENTION APPLICATION, IA No.
82870/2021 - MODIFICATION OF COURT ORDER)**

SLP(C) No. 7690/2021 (III)

**(FOR ADMISSION and I.R. and IA No.67482/2021-EXEMPTION FROM FILING
C/C OF THE IMPUGNED JUDGMENT and IA No.67483/2021-EXEMPTION FROM
FILING O.T. and IA No.67481/2021-PERMISSION TO FILE PETITION)**

Date : 27-08-2021 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

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SLP 6381-82/2021

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SLP 7690/2021

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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 On 8 July 2021, a notification has been issued by the Government of Gujarat in the Urban Development and Urban Housing Department. The notification which was issued purportedly in exercise of the power conferred by Section 122 of the Gujarat Town Planning and Urban Development Act 1976 contains the following directions:

“The buildings that do not have valid building use permission OR are in breach of building use permission OR have violated development control regulations such as change of use, margin, height restrictions etc., the owners/occupiers of such buildings shall immediately take corrective measures to comply with the development control regulations and shall comply with the same within a period starting from today till three months from the last day of applicability of the Gujarat Epidemic Diseases, COVID-19 Regulations, 2020. While all the Municipal Corporations/ Nagarpalikas/Urban Development Authorities/ Area Development Authorities shall take proactive appropriate measures to increase compliance of Building Use permission, however, no coercive action shall be taken against such buildings for breach of development control regulations from today till three months from the last day of applicability of the Gujarat Epidemic Diseases, COVID-19 Regulations, 2020.”

- 2 Section 122 of the Gujarat Town Planning and Urban Development Act 1976,

which has been invoked for issuing the notification, is in the following terms:

“122. Control by State Government. - (1) Every appropriate authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any appropriate authority under this Act any dispute arises between the authority and the State Government, the decision of the State Government on such disputes shall be final.”

3 The power which is vested in the State Government under Section 122 is to facilitate the efficient administration of the Town Planning and Urban Development Act. As a consequence of the notification dated 8 July 2021, the State Government has directed that:

- (i) Buildings which do not have valid building use permission; or
- (ii) Buildings which are in breach of building use permission; or
- (iii) Buildings which have violated development control regulations, such as change of use, margins and height restrictions;

shall be exempt from the obligation to comply with the building control regulations for a period of three months from the last date of the applicability of the Gujarat Epidemic Diseases Covid-19 Regulations 2020. Though the notification states that in the meantime corrective measures shall be adopted to comply with the Regulations, within a period of three months, directions have been issued to all the local bodies in the State of Gujarat to take no coercive measures.

4 Prima facie, the notification dated 8 July 2021 is *ultra vires* the provisions of Section 122. Such an exemption from complying with the building control

regulations which have been validly framed under the town planning legislation bears no nexus with the efficient administration of the Act. Granting exemptions from complying with development control regulations which are made in the public interest to promote the health, safety and welfare of citizens defeats the letter and purpose of the legislation. Condoning the gross irregularities in constructing buildings which do not have building use or, as the case may be, fire permissions, has resulted in violation of the law to the detriment to public health as is evident from the incidents of fire which have taken place both in Rajkot and Bharuch. The State of Gujarat shall take pro-active steps to ensure that the rule of law is observed. Consequently, pending further orders, the enforcement of the notification dated 8 July 2021 shall be held in abeyance by the State of Gujarat.

- 6 List the matters after three weeks.

SLP (C) No 7546 of 2021

- 1 We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution. The judgment of the High Court suffers from no error.
- 2 The Special Leave Petition is accordingly dismissed.
- 3 Interim order shall stand vacated.
- 4 Pending applications, including applications for intervention, stand disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
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