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The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LII]**SATURDAY, MARCH 19, 2011/PHALGUNA 28, 1932****Separate paging is given to this Part in order that it may be filed as a Separate Compilation****PART – V****Bills introduced in the Gujarat Legislative Assembly.**

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules:-

THE GUJARAT REGULARISATION OF UNAUTHORISED DEVELOPMENT BILL, 2011.

GUJARAT BILL NO. 27 OF 2011.

A BILL

to regularise the unauthorised development in development areas in the State and for matters connected therewith or incidental thereto.

WHEREAS there has been unauthorised developments in the city of Ahmedabad and development areas in the State, on a large scale;

AND WHEREAS such unauthorised developments are liable to be removed and pulled down;

AND WHEREAS by removal and pulling down of such unauthorised developments, hardship to a large number of people is likely to be caused;

NOW, THEREFORE, it is expedient to have a law to provide for regulatisation of certain unauthorised developments.

It is hereby enacted in the Sixty-second Year of the Republic of India as follows:-

Short title, extent and commencement. 1. (1) This Act may be called the Gujarat Regularisation of Unauthorised Development Act, 2011.

(2) It extends to whole of the State of Gujarat.

(3) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions. 2. (1) In this Act, unless the context otherwise requires, —

- (a) "applicant" means an occupier or owner intending to make an application for regularisation of unauthorised development under section 5;
- (b) "Bombay Act" means the Bombay Provincial Municipal Corporations Act, 1949;
- (c) "built-up area" means the area covered by a building on all floors including cantilevered or projection portion;
- (d) "Commissioner" shall have the meaning assigned to it in clause (9) of section 2 of the Bombay Act;
- (e) "designated authority" means the Commissioner or any other authority or person appointed as the designated authority under section 3;
- (f) "development" shall have the meaning assigned to it in clause (viii) of section 2 of the Gujarat Act;
- (g) "Gujarat Act" means the Gujarat Town Planning and Urban Development Act, 1976;
- (h) "GDCR" means the general development control regulations made under clause (m) of sub-section (2) of section 12 of the Gujarat Act;
- (i) "Ground Coverage" means the total built-up area at the ground level;

Bom. LIX of
1949.

(j) "land" means the land as defined in clause (xiii) of section 2 of the Gujarat Act;

(k) "occupier" means,—

- (i) any person who for the time being is paying or is liable to pay to the owner the rent of the land or building in respect of which such rent is paid or is payable;
- (ii) an owner living in or otherwise using his land or building;
- (iii) a rent free tenant;
- (iv) a licensee in occupation of any land or building;
- (v) any person who is liable to pay to the owner damages or compensation for the use and occupation of any land or building;

(l) "owner" means in relation to any property, includes any person who is, for the time being receiving or entitled to receive, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as an agent, trustee, guardian, manager or receiver for any other person or for any religious or charitable institution, the rents or profits of the property; and also includes a mortgagee in possession thereof;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "unauthorised development" means the development where, irrespective of ownership, no permission of a building or a part thereof is obtained from the authority competent to give such permission, or having obtained permission, the development is in contravention of the relevant law or of such permission.

(2) Words and expressions used in this Act but not defined shall have the meaning as assigned to them in the Gujarat Act and the rules made thereunder.

3. (1) The State Government may appoint, by notification in the *Official Gazette*, the Commissioner as the Designated Authority for the area as specified in such notification.

Designated Authority.

(2) The State Government may also appoint, by notification in the *Official Gazette*, any other authority or person as the Designated Authority as it deems fit for the area specified in such notification.

Public awareness.

4. The designated authority, as soon as may be, after the appointed date under sub-section (3) of section 1 shall cause the substance of the Act to be published for the information of the public in such manner as may be prescribed.

Notice and application for unauthorised development.

5. (1) At any time before the commencement of this Act, a notice issued to an owner or occupier or any order issued or decision taken under the relevant law requiring such owner or occupier to remove or pull down or alter unauthorised development carried out shall be deemed to have stood suspended unless and until such notice, order or decision stands revived under sub-section (2) of section 6 :

Provided that such provision shall not be applicable in case of development carried on land in respect of matters provided in sub-section (1) of section 8.

(2) Notwithstanding anything contained in the relevant law or in the order issued or the decision taken under the relevant law, directing removal, pulling down or alteration of unauthorised development, or discontinuance of any use of land or building, the designated authority shall either *suo moto* or otherwise, within six months from the commencement of this Act, or within such period as may be extended by the State Government by order in writing, serve on the owner or occupier a notice in the manner as may be prescribed and direct him to furnish such particulars and documents as the designated authority deem necessary:

Provided that any applicant who has been served with the notice under the relevant laws as provided in sub-section (1), or not may make an application in the manner as may be prescribed to the designated authority for regularisation of any unauthorised development within the period of six months from the commencement of this Act, or within such period as may be extended by the State Government by an order in writing :

Provided further that in case where more than one owner or occupiers are availing the facility of unauthorised development in part or

whole, all such owners or occupiers shall make an application jointly to the designated authority :

Provided also that the designated authority may after making such inquiry as it thinks fit, if satisfied, allow the lesser number of owners or occupiers to make an application.

(3) The occupier or owner or, as the case may be, the occupiers or owners shall reply in response to the notice served on him or them under sub-section (2) within a period of one month of such notice and in such manner as may be prescribed.

6. (1) On receipt of the reply to the notice or the application made by the applicant under section 5, the designated authority shall, within a period of eighteen months or such period as may be extended by the State Government by an order in writing, scrutinize the same and after making such inquiry as it may deem fit, is of the opinion that the unauthorised development can be regularised, shall pass an order requiring the applicant to pay fees, if any, payable under the relevant laws and the fees payable under this Act for regularisation of unauthorised development.

Grant or
refusal to
regularise
unauthorised
development.

(2) The applicant shall pay the fees as required under sub-section (1) within a period of one month from the date of the order, failing which the notice or order or decision as referred to in sub-section (1) of section 5, shall stand revived and in a case where no notice under the relevant law has been given as provided in sub-section (1) of section 5, the application shall stand refused.

(3) On payment of fees as provided under sub-section (2), the designated authority shall pass an order regularizing the unauthorised development, wholly or partly, with or without conditions, in the form and manner as may be prescribed.

(4) If, on scrutiny of the reply to the notice or the application of the applicant and after making such inquiry, as he deems fit, the designated authority is of the opinion that the unauthorised development cannot be regularised, it shall pass an order, within eighteen months of such reply to notice or application, refusing to regularise such unauthorised development, stating the grounds therefore, in the prescribed form and manner as may be prescribed.

Fees for
regularisation.

7. The State Government shall prescribe, by notification in the *Official Gazette*, the fees payable under this Act and mode of calculation thereof for regularisation of any unauthorised development in respect of the matters specified in sub-section (1) of section 10.

Circumstances in
which
unauthorised
development
shall not be
regularised.

8. (1) An unauthorised development shall not be regularised in a case where unauthorised development is carried out on any of the following lands, namely:-

- (a) land belonging to Government, local authority or statutory body;
- (b) land acquired or allotted by the Government, local authority or statutory body for a specific purpose;
- (c) land under alignment of roads indicated in development plan or a town planning scheme or under alignment of a public road;
- (d) land designated or reserved under a development plan or a town planning scheme;
- (e) lands till regularised as provided in section 9,
- (f) water courses and water bodies like tank beds, river beds, natural drainage and such other places;
- (g) areas earmarked for the purpose of obnoxious and hazardous industrial development

(2) An unauthorised development shall not be regularised if it is inconsistent with -

- (a) fire safety measures under the relevant law, or
- (b) structural stability requirements as per the G D C R:

Provided that subject to other provisions of this Act, on presentation of a certificate from the authority, as may be prescribed, with regard to the compliance of the provisions of clause (a) or (b) or both, as the case may be, the designated authority may regularise the unauthorised development.

(3) Notwithstanding anything contained in clause (a) of sub-section (2), the designated authority may for the purpose of

regularisation of unauthorised development, direct the applicant for making of provisions in the unauthorised development as follows, namely: -

- (a) In the case of buildings with 100 per cent. built-up area with no space for water storage tank and installation of fire pumps and no provision of alternate means of escape or no provision for fixed fire-fighting installations, the designated authority may, in consultation with the Chief Fire Officer of the municipal corporation, area development authority or, as the case may be, the urban development authority direct the applicant to provide such fire safety measures as may be specified in the direction within a period of three months from the date of such direction.
- (b) In the case of buildings where no space is available within the complex in which they are situated for the construction of underground water storage tanks and installation of fire pumps but adequate means of escapes are available, the designated authority may direct the applicant to provide common underground water storage tank and fire pumps in such complex at suitable location within a period of three months from the date of direction.

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1948.
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of 1958.

9. Notwithstanding anything contained in section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 and in section 122 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the lands for which the previous sanction of the Collector under sections 43 and 57 respectively of the said Acts was required but has not been taken and unauthorised development has been carried out on such lands then so far as the regularisation of the transaction of such land is concerned, the same shall be regularised in accordance with the scheme that may be framed by the State Government in the Revenue Department.

Regularisation of
lands for which
sanction of
Collector is not
taken.

10. (1) The designated authority may regularise any unauthorised development in respect of the following matters, namely:-

- (i) Ground Coverage,
- (ii) Built up area,
- (iii) Height of building,

Circumstances in
which
unauthorised
development may
be regularised.

- (iv) Change of use;
- (v) Common plot, and
- (vi) Parking, subject to the condition that the occupier or owner shall provide parking as per GDCR in unauthorised development and where it is not so feasible, in a place owned or occupied by himself or more than one applicant, within such distance not exceeding five hundred meters from the unauthorised development as directed by the designated authority within a period of six months from such direction. However, in the event of non-compliance of the aforesaid directions for any reason, the Designated Authority shall refer matter to the Committee as may be constituted by the State Government by rules and such committee after making such inquiry as it deems fit, will suggest suitable options which shall be taken into consideration by the Designated Authority for the purpose of implementation;
- (vii) Sanitary facility, subject to the condition that the designated authority is satisfied that the sanitary facility provided is adequate;
- (viii) such other matters which the State Government may, prescribe.

(2) The designated authority shall not regularise unauthorised development in respect of the following matters, namely:-

- (a) having such floor space index which the State Government may prescribe;
- (b) projections beyond the plot boundary;
- (c) the change of use which in the opinion may cause danger to health or lead to health hazard;
- (d) falling under the alignment of means of water supply, drainage, sewerage, supply of electricity or gas or of any other public utility service; and
- (e) such unauthorised development which the State Government may, prescribe.

Consequences of regularisation.

11. (1) On regularisation of such unauthorised development under section 6, all court cases or other proceedings, filed by the appropriate authority or the occupant or the owner or otherwise and pending in any

court in so far as they relate to such unauthorised development, shall stand abated.

(2) Any decision under this Act shall not be deemed to have decided the ownership of the unauthorised development.

12. (1) Any person aggrieved by the order or decision of the designated authority under section 6 may within sixty days from the date of the receipt of the order prefer an appeal to an Appellate Officer, who shall be a person who has held the office of a Judge of District Court for a period not less than three years or a Secretary to the Government of Gujarat, and appointed in this behalf by the State Government.

Appeal.

(2) The State Government may appoint as many Appellate Officers as it may deem fit for different areas or part thereof :

Provided that, the Appellate Officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) On receipt of an appeal under sub-section (1) along with a fee of rupees one hundred, the appellate officer may, after giving the appellant an opportunity of being heard, pass an order confirming, modifying or cancelling the order appealed against as expeditiously as possible.

(4) The decision of the Appellate Officer under sub-section (2) shall be final and shall not be questioned in any court of law.

(5) No appeal under this section by an aggrieved applicant shall be entertained by the Appellate Officer unless an amount equivalent to the 50% of the fees payable under this Act is deposited with the designated authority:

Provided that where in the opinion of the Appellate Officer amount to be deposited by the appellant is likely to cause undue hardship to him, the Appellate Officer may in his discretion unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount to be deposited so however that the part of amount so dispensed with shall not exceed fifty per cent. of the amount required to be deposited.

(6) The Appellate Officer shall receive, such monthly salary and such other facilities and allowances from such authority as the State Government may determine from time to time.

(7) The provisions of sub-sections (2) to (5) shall not apply in a case where the appeal is not preferred by the occupier or owner.

**Constitution of
Infrastructure
Development
Fund.**

13. Subject to the rules made under this Act, all amounts received under this Act shall be credited to a fund which shall be called the "Infrastructure Development Fund" which shall be held by the Designated Authority in trust for the purposes of augmentation, improvement or creation of an infrastructure facility.

**Protection of
action taken in
good faith.**

14. (1) No suit, prosecution or other legal proceedings shall lie against any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceedings shall lie against the State Government or any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

**Removal of
doubt.**

15. For the removal of doubt, it is hereby declared that regularisation of unauthorised development under this Act shall be without prejudice to any civil or the criminal liability to which an applicant may be subject to under any law for the time being in force.

**Power of State
Government to
give directions.**

16. (1) The State Government may issue, from time to time, direction to the designated authority as it may deem fit for giving effect to the provisions of this Act and it shall be the duty of the designated authority to comply with such directions.

(2) If any dispute arises with respect to the exercise of powers and discharge of functions by the designated authority under this Act, the same shall be referred to the State Government and the decision of the State Government thereon shall be final.

**Power to make
rules.**

17. (1) The State Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication, make rules for carrying out the purposes of this Act:

Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely :-

- (i) the manner of publication of the substance of the Act for public awareness under section 4;
- (ii) the form of notice to be served on the owner or occupier and the form of application to regularise unauthorised development and manner thereof under sub-section (2) of section 5;
- (iii) the manner for giving reply in response to the notice under sub-section (3) of section 5;
- (iv) the form of order to regularise unauthorised development and the manner under sub-section (3) of section 6;
- (v) the form of order refusing to regularise unauthorised development and the manner under sub-section (4) of section 6;
- (vi) the rates of fees payable mode of calculation of fees under section 7;
- (vii) such other matter under clause (viii) of sub-section (1) of section 10 for regularisation of unauthorised development.
- (viii) such other matters which shall not be regularised specified in clause (e) of sub-section (2) of section 10;
- (ix) constitution of the Committee under clause (vi) of sub-section (1) of section 10;

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the session in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Act to have overriding effect.

18. The provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force, in so far as the regularisation of unauthorised development is concerned.

Repeal and savings.

19. (1) The Gujarat Regularisation of Unauthorised Development Act, 2001 is hereby repealed.

Guj. 23 of 2001.

(2) Notwithstanding such repeal, all notices and directions issued under the repealed Act shall be deemed to have been issued under the provisions of this Act and all proceedings pending before the designated authority including appeals pending before the Appellate Officer shall be decided in accordance with the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

On account of the rapid growth of economic opportunities in and around the major cities of Gujarat, there has been constant influx of the rural population to the urban areas resulting in steep increase in demand for properties for residential, commercial and other uses. This has resulted in feverish construction activities and, several buildings so constructed do not conform to the existing building regulations. Consequently, in the urban areas of the State there have come up a large number of buildings which have been constructed without permission or where permission is granted, constructed in contravention of development and control regulations has taken place. The owners and occupants of such buildings have been given notices under the Bombay Provincial Municipal Corporations Act, 1949 or, the Gujarat Town Planning and Urban Development Act, 1976 as the case may be, requiring them to remove, pull down or alter the buildings. However, the owners and occupants have failed to comply with the requisition of the notice. To meet with the situation, in 2001 the Gujarat Regularisation of Unauthorised Development Act was enacted and some of the unauthorised developments were regularised. However, unauthorised developments which have come after the enactment of previous Act which have not been regularised are a cause of concern. Removal or pulling down of large number of buildings is neither feasible nor desirable. Removal, pulling down or alteration of buildings on a large scale is fraught with the possibility of creating law and order problem and hardship to the people as a large number of the people would be rendered homeless who would have to be provided with housing. The social and economic fabric of the society would be disturbed leading to a chaotic situation in the society. In order to avoid such a situation, intervention of the Government by enacting suitable legislation has become a compelling necessity. Faced with similar situation, some other State Governments in the country have also come out with suitable legislation for regularisation.

It is, therefore, considered necessary to enact a law so as to regularise the unauthorised development.

This Bill seeks to achieve the aforesaid objects.

The following notes on clauses explain, in brief, some of the important provisions of the Bill:-

Clause 1.- This clause provides for the short title, extent and commencement of the Act.

Clause 2.- This clause provides for certain terms used in the Bill.

Clause 3.- This clause provides for appointment of the authority or person by the State Government as the designated authority by notification in the *Official Gazette*, for the area specified in such notification.

Clause 4.- This clause provides that the designated authority shall cause the substance of the Act to be published for the information of the public.

Clause 5.- This clause provides for making application for regularisation of unauthorised development, notice to be given by designated authority, the procedure to be followed for the deciding regularisation of unauthorised development.

Clause 6.- This clause provides for the grant or refusal by the designated authority, to regularise the unauthorised development.

Clause 7.- This clause provides that the State Government shall fix by notification in the *Official Gazette*, the fees payable for regularisation of unauthorised development.

Clause 8.- This clause provides for the matters in which unauthorised development shall not be regularised.

Clause 9.- This clause provides for the regularisation of the transaction of the lands for which necessary permission of the Collector has not been obtained under the relevant Tenancy Acts.

Clause 10.- This clause provides for the circumstances under which unauthorised development shall be regularised.

Clause 11.- This clause provides that all court cases or other proceedings, filed by the appropriate authority or the occupant or the owner or otherwise and pending in any court in so far as they relate to unauthorised development, shall be abated on regularisation of such unauthorised development.

Clause 12.- This clause provides for the an appeal by any person aggrieved by the order or decision of the designated authority; it also provides for the appointment of an Appellate Officers to be appointed by the State Government and the procedure to be followed in the appeal.

Clause 13.- This clause provides for the constitution of the "Infrastructure Development Fund" held by the designated authority in trust for the purposes of augmentation, improvement or creation of an infrastructure facility.

Clause 14.- This clause provides for usual indemnity for action taken in good faith.

Clause 15.- This clause provides that regularisation of unauthorised development under this Act shall be without prejudice to any civil or the criminal liability under any law for the time being in force.

Clause 16.- This clause empowers the State Government to give directions to the designated authority for giving effect to the provisions of this Act.

Clause 17.- This clause empowers the State Government to make, by notification in the *Official Gazette*, rules generally for carrying out the purposes of this Act and particularly for all or any of the matters specified in sub-clause (2) of this clause.

Clause 18.- This clause provides for the overriding effect for anything contained in any other law for the time being in force, in so far as the regularisation of unauthorised development is concerned.

Clause 19.- This clause provides for the repeal of the Gujarat Regularisation of Unauthorised Development Act, 2001 and savings thereof.

NITIN PATEL,

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the appointment of the designation authority by the State Government. Since the officer to be appointed as designated authority would be from the concerned local

authority the expenses towards his pay and allowances and other office expenses would be borne by the concerned authority.

Clause 10 of the Bill provides for the constitution of the Committee by the State Government. The expenditure towards the pay and allowances of the members of the Committee, office expenses and other expenditure shall be borne by the respective concerned authority.

Clause 12 of the Bill provides for the appointment of the appellate officer by the State Government. The expenses towards pay and allowances and other facilities would be borne by the concerned authority.

If, the Bill is enacted and brought into force would not involve any expenditure from the Consolidated Fund of the State.

NITIN PATEL,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill involves the delegation of legislative powers in the following respects:-

Clause 1.- Sub-clause (3) of this clause empowers the State Government to appoint by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 3.- This clause empowers the State Government to appoint, by notification in the *Official Gazette*, such authority or person as the designated authority as it deems fit for the area specified in such notification.

Clause 4.- This clause empowers the State Government to prescribe by rules the manner in which the substance of the Act shall be published for the information of the public.

Clause 5.- (i) Sub-clause (2) of this clause empowers the State Government to prescribe by rules the manner in which a notice

shall be served by the designated authority to the owner or occupier directing him to furnish such particulars and documents as he deems necessary;

(ii) proviso to sub-clause (2) of this clause empowers the State Government to prescribe by rules the manner in which the applicant may make an application to the designated authority within the period mentioned therein for regularization of any unregularized development;

(iii) sub-clause (3) of this clause empowers the State Government to prescribe by rules, the manner in which the occupier or owner or the occupiers or owners shall reply to the notice served on him or them.

Clause 6. (i) Sub-clause (3) of this clause empowers the State Government to prescribe by rules the manner in which the designated authority shall pass an order regularizing the unregularized development, wholly or partly, with or without conditions, on payment of fees.

(ii) sub-clause (4) of this clause empowers the State Government to prescribe by rules the forms and the manners in which the designated authority shall pass an order refusing to regularize such unregularized development.

Clause 7.- This clause empowers the State Government to prescribe by notification in the *Official Gazette* the fees payable under the Act and mode of calculation thereof.

Clause 8.- Proviso to sub-clause (2) of this clause empowers the State Government to prescribe by rules, the authority from whom a certificate shall be obtained and presented to the designated authority with regard to the compliance of the provisions of clause (a) or (b) or both of that clause.

Clause 9.- This clause empowers the State Government to frame a scheme for regularization of the transaction of the lands for which the previous permission of the Collector has not been obtained.

Clause 10.- (i) Para (viii) of sub-clause (1) of this clause empowers the State Government to prescribe by rules the other matters in respect of which the designated authority may regularize the regularized development;

(ii) Para (ix) of sub-cause (1) of this clause empowers the State Government to constitute by rules the Committee to suggest suitable options in the event of non-compliance of the directions for any reason;

(iii) Para (a) of sub-clause (2) of this clause empowers the State Government to prescribe by rules the floor space index for the regularized development;

(iv) Para (e) empowers the State Government to prescribe by rules the regularized development which shall not be regularized.

Clause 17.- Sub-clause (1) of this clause empowers the State Government to make rules, subject to the condition of previous publication, for carrying out the purposes of this Act and to provide for all or any of the matters mentioned in the said clause.

Gandhinagar,
Dated the 18th March, 2011.

NITIN PATEL.

By order and in the name of the Governor of Gujarat,

Gandhinagar
Dated the 19th March, 2011.

C. J. GOTHI,
Secretary to the Government of Gujarat,
Legislative and Parliamentary Affairs Department.