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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, 2022.

GUJARAT BILL NO. 16 OF 2022.

A BILL

*to regularise the unauthorised development in the Municipal Corporation areas,
Nagarpalika areas and development areas in the State and for matters connected
therewith or incidental thereto.*

WHEREAS there have been large scale unauthorised development in the Municipal Corporation areas, Nagarpalika areas and development areas in the State;

AND WHEREAS such unauthorised development has been put up without obtaining building use permission;

AND WHEREAS such unauthorised development is liable to be removed and pulled down;

AND WHEREAS citizens have not earlier regularised their unauthorised development due to economical constrains and other reasons;

AND WHEREAS by removal and pulling down of such unauthorised development, hardship to a large number of people more particularly common men who have invested their hard earned saving is likely to be caused;

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

It is hereby enacted in the Seventy-third 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, 2022.
- (2) It extends to whole of the State of Gujarat.
- (3) It shall be deemed to have come into force on the 17th October, 2022.
- Definitions.** 2. (1) In this Act, unless the context otherwise requires, —
- (a) “applicant” means an occupier or owner who makes an application for regularisation of unauthorised development under section 5;
- (b) “Designated Authority” means the Municipal Commissioner or the Chief Executive Officer of the Development Authority or the Chief Officer of the Municipality or any other authority or person appointed as the Designated Authority.
- (c) "Gujarat Act" means the Gujarat Town Planning and Urban Development Act, 1976; **President’s Act No. 27 of 1976.**
- (d) “CGDCR” means the Comprehensive General Development Control Regulations made under clause (m) of sub-section (2) of section 12 and clause (c) of sub-section (2) of section 13 of the Gujarat Act;
- (e) “land” means the land as defined in clause (xiii) of section 2 of the Gujarat Act;
- (f) “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;
- (g) “owner” in relation to any property, means and 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;
- (h) “prescribed” means prescribed by rules made under this Act;

Guj. LIX of 1949. (i) “relevant law” means the Gujarat Provincial Municipal Corporation Act, 1949 or the Gujarat Municipalities Act, 1963 or the Gujarat Town Planning and Urban Development Act, 1976 or the Gujarat Fire Prevention and Life Safety Measures Act, 2013 or the Real Estate (Regulation and Development) Act, 2016 or the Gujarat Clinical Establishments (Registration and Regulation) Act, 2021 or any rules or bye-laws, regulations standing orders or orders made thereunder;

Guj. 34 of 1964.

**President’s Act
No. 27 of 1976.**

Guj. 11 of 2013.

16 of 2016.

Guj. 18 of 2021.

(j) “unauthorised development” means the development where, irrespective of ownership, no permission to use a building or a part thereof is obtained from the authority competent to give such permission, or having obtained the 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 there under.

**Designated
Authority.**

(1) The State Government may appoint, by notification in the *Official Gazette*, the Municipal Commissioner or the Chief Executive Officer of the Development Authority or the Chief Officer of the Municipality as the Designated Authority for the area as specified in such notification.

(2) The State Government may also appoint, by notification in the *Official Gazette*, such 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 commencement of this Act, shall cause the substance of the Act to be published for the information and awareness of the public in such manner as may be prescribed.

**Application for
regularisation of
unauthorised
development.**

(1) At any time on or before the 30th September, 2022, a notice issued to an owner or occupier or any order issued or decision taken under the relevant law, except under the provisions of the Real Estate (Regulation and Development) Act, 2016, 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:

16 of 2016.

Provided that such provision shall not be applicable in case of development carried on land in respect of matters provided in sub-sections (1), (2) and (3) of section 8.

(2) 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 such form and in such manner as may be prescribed to the Designated Authority for regularisation of any unauthorised development within a period of four months from the commencement of this Act. Making an application shall be an obligation on part of owner/occupier:

Provided that in case where more than one owners 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 further 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 above provision of sub-section (1) shall not be applicable to the notice issued to the owners or the occupiers under the Real Estate (Regulation and Development) Act, 2016.

16 of 2016.

6. (1) On receipt of the application made by the applicant under section 5, the Designated Authority shall, within a period of six months, 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 in accordance with the provisions of this Act for regularisation of unauthorised development as a one-time measure.

Grant or refusal to regularise unauthorised development.

(2) The applicant shall pay the fees as required under sub-section (1) within a period of two months from the date of the order, failing which the notice or order or decision as referred to in 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 and such unauthorised development shall be liable to be removed as per the relevant laws.

(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 such form and in such manner as may be prescribed.

(4) If, on scrutiny of the application of the applicant and after making such inquiry, as it deems fit, the Designated Authority is of the opinion that the unauthorised development cannot be regularised, it shall pass an order, within six months of such application seeking regularisation, refusing to regularise such unauthorised development, stating the grounds therefore, in such form and in such manner as may be prescribed.

Fees for regularisation.

7. The State Government shall specify, by notification in the *Official Gazette*, the fees payable under this Act and the mode of calculation of such fee for regularisation of any unauthorised development in respect of the matters specified in section 10.

Circumstances in which unauthorised development shall not be regularised.

8. (1) Notwithstanding anything contained in this Act, 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) water courses and water bodies like tank beds, river beds, natural drainage and such other places;
- (f) areas earmarked for the purpose of obnoxious and hazardous industrial development;
- (g) playground attached with the educational institution.

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

- (a) where the permissible FSI (Floor Space Index) in a zone is less than 1.0;
- (b) where FSI consumed in other than residential use, is more than fifty per cent. of the maximum permissible FSI as per CGDCR;
- (c) where projections are beyond the plot boundary;
- (d) where the change of use which in the opinion of the Designated Authority may cause danger to health or lead to health and safety hazard;
- (e) where the unauthorised development falls under the alignment of means of water supply, drainage, sewerage, supply of electricity or gas or of any other public utility service; and
- (f) such unauthorised development which the State Government may, prescribe.

(3) An unauthorised development shall not be regularised if it is inconsistent with the provisions of -

- Guj. 11 of 2013.** (a) the Gujarat Fire Prevention and Life Safety Measures Act, 2013, or
- 16 of 2016.** (b) the Real Estate (Regulation and Development) Act, 2016, or
- Guj. 18 of 2021.** (c) the Gujarat Clinical Establishments (Registration and Regulation) Act, 2021, or
- (d) structural stability requirements as per the CGDCR:

Provided that subject to other provisions of this Act, on presentation of a certificate from the authority, for the fire safety measures and a certificate from the structural engineer authorised by the authority as may be prescribed, with regard to the compliance of the provisions of clause (a) or (d) or both, as the case may be, the Designated Authority may regularise the unauthorised development.

(4) Any unauthorised development carried out or an order issued or decision taken as specified in section 5, on or after the 1st October, 2022 shall not be regularised.

- 9.** Notwithstanding anything contained in the Gujarat Provincial Municipal Corporations Act, 1949 and the Gujarat Municipalities Act, 1963, any grant of regularisation of unauthorised development or part thereof under this Act shall be deemed to be a Building use Permission for that building as sought under CGDCR or any such provisions of the laws/orders/bye-laws.
- 10.** Subject to the rules framed under this Act, the Designated Authority may regularise any unauthorised development in respect of the following matters, namely: -
- (i) Margins,
 - (ii) Built up area,
 - (iii) Height of building,
 - (iv) Change of use,
 - (v) Common plot subject to limit of fifty per cent. coverage and of permissible use only,
 - (vi) Covered Projection,

Regularisation of unauthorised development deemed to be Building use Permission.

Circumstances in which unauthorised development may be regularised.

- (vii) Parking, subject to the further condition that the occupier or owner shall provide parking at least fifty per cent. of the requirement as per CGDCR in unauthorised development and where it is not so feasible, in a place owned or occupied by himself or in case of more than one applicant, within such distance not exceeding five hundred meters from the unauthorised development as directed by the Designated Authority. For the rest of the fifty per cent. parking required, the compounding shall be permissible at the prescribed rates.
- (viii) Sanitary facility, subject to the condition that the Designated Authority is satisfied that the sanitary facility provided is adequate;
- (ix) such other matters 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 Designated 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 deemed to have decided the ownership of the unauthorised development.

Appeal.

- 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 such 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.
- (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 fees of rupees two 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 person shall be entertained by the Appellate Officer unless an amount equivalent to the fifty per cent. 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 Designated Authority as the State Government may determine from time to time.

**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 including but not limited to fire safety, parking provision and steps for environmental improvement.

**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.
- (3) Notwithstanding anything contained in the relevant law, the State Government may from time to time issue such directions as it may deem fit, to the Designated Authority with a view to prevent the unauthorised development.

**Power to
make rules.**

17. (1) The State Government may, by notification in the *Official Gazette*, make rules generally for carrying out the purposes of 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 application to regularise unauthorised development and manner thereof under sub-section (2) of section 5;
 - (iii) the form of order to regularise unauthorised development and the manner thereof under sub-section (3) of section 6;
 - (iv) the form of order refusing to regularise unauthorised development and the manner thereof under sub-section (4) of section 6;
 - (v) such other matters which shall not be regularised as specified in sub-section (2) of section 8; and
 - (vi) such other matter under section 10 for regularisation of unauthorised development.

- (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.
- 18.** The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. **Application of other laws not barred.**
- Guj. 26 of 2011. 19.** (1) The Gujarat Regularisation of Unauthorised Development Act, 2011 is hereby repealed. **Repeal of Guj. 26 of 2011 and saving.**
- (2) Notwithstanding such repeal, anything done or any action taken under the said Act shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under this Act.
- Guj. Ord. 3 of 2022. 20.** (1) The Gujarat Regularisation of Unauthorised Development Ordinance, 2022 is hereby repealed. **Repeal of Guj. Ord. 3 of 2022 and saving.**
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Urbanisation is a part of the development process. The economic pull of cities in this phase of development offer jobs to large number of people. Influx of people in the urban area increase the demand for properties for residential, commercial and other use. Increasing size and scale of urban settlements because of rapid urbanization in the State has resulted in large number of buildings constructed without permission or where permission is granted, constructed in contravention of development and control regulations.

The owners and occupants of many buildings have been given notices under the Gujarat Provincial Municipal Corporations Act, 1949 or, the Gujarat Municipalities Act, 1963 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, the Government of Gujarat in 2001 and in 2011 enacted the legislation to regularise the unauthorised development. Some of the unauthorised developments were regularised. But it did not provide the desired results and large number of buildings have not been regularised and still remains without BU permission.

The effects of the global economic crisis in late first decade of 2000 were evident in India leading to significant slowdown in India's economic growth past 2012. The FDI inflow into real estate dropped significantly and what had emerged as one of the most promising markets for foreign investments experienced a downturn.

Government has information that there still exist a number of unauthorised construction and many plot/building owners could not apply for regularisation under the previous legislations. A sample survey was undertaken to identify the type of violations.

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 common man as a large number of the people would be rendered homeless and would lose means of livelihood. 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, the intervention of the

Government by enacting suitable legislation to regularise unauthorised buildings and structures in cities across the State, on the payment of a compounding fee has become a compelling necessity.

Under this Act, the unauthorised development can be regularised only if it is consistent with the provisions of fire safety measures, structures stability and safety of occupants. The Government, having regard to public interest and in order to improve the infrastructure, by this Act, desires to reduce public inconvenience and ensure safety to the residents. The fees prescribed for the regularisation of unauthorised construction shall be utilized for the development and upgradation of infrastructure which would be helpful and beneficial to the general public and societal interest at large.

As the Gujarat Legislative assembly was not in session, at that time, the Gujarat Regularisation of Unauthorised Development Ordinance, 2022 was promulgated to achieve the aforesaid objects. The Bill seeks to replace the said Ordinance by an Act of the State Legislature.

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 defines certain terms used in the Bill.
- Clause 3.-** This clause provides for appointment of the Designated Authority.
- Clause 4.-** This clause provides for publication of substance of Act for public awareness.
- Clause 5.-** This clause provides for making an application for getting the unauthorised development regularised.
- Clause 6.-** This clause provides for grant or refusal to regularise unauthorised development.
- Clause 7.-** This clause provides for fees for regularisation of unauthorised development.
- Clause 8.-** This clause provides for circumstances in which unauthorised development shall not be regularised.
- Clause 9.-** This clause provides for regularisation of unauthorised development deems to be Building use Permission as sought under CGDCR or any such provisions of the laws/orders/bye-laws.
- Clause 10.-** This clause provides for circumstances in which unauthorised development may be regularised.
- Clause 11.-** This clause provides for the consequences of regularisation.
- Clause 12.-** This clause provides for appeal against the decision of the Designated Authority before the Appellate Officer, to be appointed by the State Government.
- Clause 13.-** This clause provides for the constitution of 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 including but not limited to fire safety, parking provision and steps for environmental improvement.
- Clause 14.-** This clause provides for bar of legal proceedings in respect of anything done in good faith.

- Clause 15.-** This clause provides for the removal of doubt.
- Clause 16.-** This clause provides for power of State Government to give directions.
- Clause 17.-** This clause provides for power of State Government to make rules.
- Clause 18.-** This clause provides that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.
- Clauses 19 and 20.-** These clauses provide for repeal of Gujarat Act No. 26 of 2011 and Gujarat Ordinance No. 3 of 2022 and saving thereof.

RUSHIKESH PATEL,

FINANCIAL MEMORANDUM

Clause 3 of the Act provides for the appointment of the Designated 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 Designated Authority.

Clause 12 of the Act provides for the appointment of the Appellate Officer by the State Government. The expenses towards pay and allowances and other facility expenses would be borne by the concerned Designated Authority.

Therefore, the Bill, if enacted and brought into force, it would not involve any expenditure from the Consolidated Fund of the State.

RUSHIKESH PATEL,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for 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. -** (i) Sub-clause (1) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the Municipal Commissioner or the Chief Executive Officer of the Development Authority or the Chief Officer of the Municipality as the Designated Authority for the area as specified in the notification;
- (ii) sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the other authority or person as the Designated Authority as it deems fit for the area specified in the notification.
- Clause 5. -** sub-clause (2) of this clause empowers the State Government to prescribe by rules, the form and manner in which applicant may make an application to the Designated Authority for regularisation of any unauthorised development within a period of four months from the commencement of the Act.
- Clause 6. -** (i) sub-clause (3) of this clause empowers the State Government to prescribe by rules, the form and the manner in which the Designated Authority shall pass an order regularizing the unauthorised development, wholly or partly, with or without conditions.

(ii) sub-clause (4) of this clause empowers the State Government to prescribe by rules, the form and the manner in which the Designated Authority shall pass an order, within six months of such application seeking regularisation, refusing to regularise such unauthorised development, stating the grounds therefore.

Clause 7. - This clause empowers the State Government to specify, by notification in the *Official Gazette*, the fees payable under this Act and the mode of calculation of such fee for regularisation of any unauthorised development in respect of the matters specified in section 10.

Clause 8. - Para (f) of sub-clause (2) of this clause empowers the State Government to prescribe by rules, the unauthorised development other than the unauthorised development as specified in para (a) to (e).

Clause 10 - Para (ix) of this clause empowers the State Government to prescribe by rules the matters other than the matters as specified in para (i) to (viii).

Clause 17. - Sub-clause (1) of this clause empowers the State Government to make, by notification in the *Official Gazette*, rules generally for carrying out the purposes of the Act and particularly for the matters as specified in sub-clause (2).

The delegation of legislative powers as aforesaid is necessary and is of normal character.

Dated the 14th December, 2022,

RUSHIKESH PATEL.

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

K. M. LALA,

Gandhinagar,

Secretary to the Government of Gujarat,

Dated the 14th December, 2022.

Legislative and Parliamentary Affairs Department.

