

The Gujarat Regularisation of Unauthorised Development Act, 2001

GUJARAT

India

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Act 23 of 2001

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The Gujarat Regularisation of Unauthorised Development Act, 2001 Gujarat Act No. 23 of 2001 First published, after having received the assent of the Governor in the "Gazette Government Gazette", on the 1st September, 2001. An Act to regularise unauthorised development in urban development area or development area in the State. It is hereby enacted in the Fifty-second Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Gujarat Regularisation of Unauthorised Development Act, 2001. (2) It shall be deemed to have come into force on the 22nd November, 2000.

2. Definitions.

(1) In this Act, unless the context otherwise requires,- (a) "area development authority" means the authority constituted under section 5 of the Gujarat Town Planning and Urban Development Act, 1976 (President's Act No. 27 of 1976) (hereinafter in this section referred to as "the Gujarat Act"); (b) "Commissioner" shall have the meaning assigned to it in clause (9) of section 2 of the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949) (hereinafter in this section referred to as "the Bombay Act"); (c) "designated authority" means the Commissioner, the area development authority or, as the case may be, urban development authority; (d) "development" shall have the meaning assigned to it in clause (viii) of section 2 of the Gujarat Act; (e) "development area" shall have the meaning assigned to it in clause (ix) of section 2 of the Gujarat Act; (f) "prescribed" means prescribed by rules made under section 9; (g) "the relevant law" means the Bombay Act or the Gujarat Act or any rules or by-laws, regulations, standing orders or orders made thereunder. (h) "urban development authority" shall have the meaning assigned to it in clause (xxviii)

of section 2 of the Gujarat Act.(2)Development shall be deemed to be unauthorised if no permission of authority competent to give such permission is obtained therefor, or having obtained such permission, the development is in contravention of the relevant law or of such permission.

3. Regularisation of unauthorised development.

(1)(a)A notice issued to a person under the relevant law at any time before the 22nd November, 2000 requiring such person to remove or pull down or alter unauthorised development carried out, owned or occupied by him; or(b)any order issued or decision taken under the relevant law at any time before the 28th April, 2001, the date on which the Gujarat Regularisation of Unauthorised Development Ordinance, 2001 (Gujarat Ordinance 3 of 2001), was first published, directing removal or pulling down or alteration of unauthorised development carried out, owned or occupied by a person.shall-(i)in the case of (a) be deemed to have stood suspended with effect on and from the 22nd November, 2000, and(ii)in the case of (b) be deemed to have stood suspended with effect on and from the 28th April, 2001.unless and until such notice, order or decision stands revived under subsection (5).(2)(a)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, where in the opinion of the designated authority-(i)a person has, at any time before the 22nd November, 2000 carried out any unauthorised development in urban development area or development area, and(ii)such unauthorised development may, having regard to the provisions of section 4, be regularised.the designated authority, within such period and in such manner as may be prescribed, serve on the person a notice requiring him within such period not being less than a month as may be specified therein to comply with such requisitions made under section 4 and specified therein and to pay to the designated authority such fees [as may be prescribed by the State Government] [Substituted for 'per square metre of each category of unauthorised development as may, subject to the provisions, be determined by the designated authority and specified therein' by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).]:[***] [Provisos deleted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).](aa)[Where an unauthorised development in urban development area or development area has been carried out at any time before the 22nd November, 2000 and the development has been wholly destroyed by the earthquake or rendered substantially and permanently unfit for the purpose of occupation due to the earthquake in the month of January, 2001 and the owner or occupier of such development intends to carry out development at the same place and with the same built up area as existed prior to such destruction, the designated authority may, notwithstanding anything contained in the relevant law but having regard to the provisions of section 4, by an order allow him to carry out such unauthorised development subject to such terms and conditions as may be prescribed and may regularise the same in accordance with the provisions of this Act, as if such unauthorised development had been carried out before the 22nd November, 2000. [Clause (aa) inserted by Gujarat 10 of 2002, dated 6th April 2002 (w.r.e.f 25-11 -2001)]Provided that the designated authority, while regularising such unauthorised development shall not charge any fee prescribed in the Table.](b)It shall be lawful for the designated authority to form the opinion referred in clause (a) either on the basis of information available with it or an application made to it by a person who has carried out or who owns or occupies the unauthorised development.(c)The designated authority, shall, as soon as may be, after service of notice to a person under clause (a),

cause the substance thereof to be published for the information of the public, in such manner as may be prescribed.[***] [Table of Fees and Explanation deleted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).](3)(a)Subject to the provisions of clause (b), upon the compliance of requisitions made under section 4 and specified in the notice, to the satisfaction of the designated authority and on the payment of fees under sub-section (2), such development shall cease to be unauthorised and a certificate to that effect shall be issued to the person by the designated authority in such form as may be prescribed.(b)(i)The designated authority shall, before receiving the fees and issuing of the certificate under clause (a), consult a committee of experts consisting of three persons, who have knowledge of and experience in structural engineering, fire fighting and town planning respectively, constituted by the designated authority, on the question as to whether the person has, while complying the requisitions complied with the fire safety measures and structural stability requirements as per the National Building Code and the Indian Standard Specifications for the time being in force and it shall be the duty of the committee to advise the designated authority on the question so referred.[Provided that the provision of this sub-clause shall not apply to the building having ground plus one floor constructed as load-bearing structure.] [Proviso inserted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).](ii)The Committee shall follow such procedure for disposal of its business as may be determined by the designated authority.(4)An amount deposited by a person with the municipal corporation of a city, the area development authority or, as the case may be, the urban area development authority against unauthorised development shall be set off against the fees to be paid by him under sub-section (2).(5)Where no notice is served upon a person under sub-section (2) within the period prescribed under that sub-section or where a notice is served upon a person under subsection (2) but a certificate is not obtained by him under sub-section (3) within such period as may be prescribed, the notice, order or, as the case may be, decision referred to in sub-section (1) shall stand revived.

3A. [Application of sections 3 and 4 in certain circumstances. [Section 3A inserted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).]

- The provisions of sections 3 and 4, as amended by the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003 (Gujarat 12 of 2003), shall also be applicable where certificate referred to in sub-section (3) of section 3 has not been issued on the date of commencement of the said Act.(2)The notice issued to the person under sub-section (2) of section 3 shall be deemed to be a notice issued under the provisions of this Act as amended by the Gujarat Regularisation of Unauthorised Development (Amendment) Act, 2003 (Gujarat 12 of 2003.)

4. Circumstances in which unauthorised development may or may not be regularised.

(1)An unauthorised development shall not be regularised under sub-section (2) of section 3 in the case where unauthorised development is carried out on any of the following lands, namely:-(i)land belonging to Government, local authority or statutory body or land in respect of which a dispute exists in relation to its title or tenure,(ii)land allotted by the Government, local authority or statutory body for a specific purpose,(iii)land under alignment of roads indicated in development plan or a

town planning scheme or under alignment of a public road or an internal road, of approved lay out,(iv)land designated or reserved under a development plan or a town planning scheme,(v)water courses and water bodies like tank beds, river beds, natural drainage and such other places,(vi)areas earmarked for the purpose of obnoxious and hazardous industrial development.(2)Unauthorised development may not be regularised if it is inconsistent with-(a)any law other than the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949), and the Gujarat Town Planning and Urban Development Act, 1976 President's Act NO. 27 of 1976), and any rules, bye-laws, regulations, standing orders or orders made thereunder (hereinafter in clause (b) referred to as "the relevant laws") for the time being in force relating to control or regulation of development,(b)fire safety measures under the relevant law, and(c)structural stability requirements as per the National Building Code and the Indian Standard Specifications (prescribed by the Bureau of Indian Standards) for the time being in force:Provided that a certificate from the structural engineer authorised by the designated authority certifying compliance of provisions of clause (c) is obtained and submitted to that authority.(3)(a)The designated authority may regularise any unauthorised development in respect of the following matters, namely:-(i)Margins and setbacks,(ii)Floor space index,(iii)Covered projection,(iv)Change of use,(v)A common plot and a consolidated open plot,(vi)Height of a building(b)The designated authority may regularise any unauthorised development in so far as parking and sanitary facilities are connected subject to the following conditions, namely:-(i)A person shall provide such necessary parking facilities in unauthorised development and where it is not so feasible, within such distance not exceeding five hundred metres from the unauthorised development as directed by the designated authority within a period of six months from such direction:Provided that the designated authority may permit provision of parking facilities at a common place by more than one person.[Provided further that in case where it is not feasible to provide the parking facilities as mentioned above, the designated authorities may charge parking creation fee, as may be decided by the designated authority and facilitate in providing the required facilities or may provide for the same on the basis of build, own, operate and transfer on behalf of the defaulters.] [Proviso inserted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).](ii)A person shall provide such necessary sanitary facilities in unauthorised development as directed by the designated authority within a period of three months from such direction.(4)Notwithstanding anything contained in clause (b) of sub-section (2), the designated authority may for the purpose of regularisation direct 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, direct the person 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 person 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.(c)In the case of high-rise buildings having the height of fifteen metres or exceeding fifteen metres, the designated authority may permit a person to install diesel-generating set instead of electric supply to the main fire pump within a period of three months.

5. Appeal.

- [(1) (i) Any person aggrieved by the notice served upon him or notice published under sub-section (2) of section 3 may, within sixty days from the date of the receipt or, as the case may be, the publication of the notice, or(ii)the owner or occupier aggrieved by an order made under clause (aa) of sub-section (2) of section 3, may, within sixty days from the date of the order, prefer an appeal to an Appellate Officer, who shall be a person who has held the office of District Judge for a period not less than three years and appointed in this behalf by the State Government for each City or development area: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.] [Sub-section (1) substituted by Gujarat 10 of 2002, dated 6th April 2002 (w.r.e.f 25-11-2001)](2)On receipt of an appeal under sub-section (1), the Appellate Officer may, after giving the appellant an opportunity of being heard, pass an order modifying or cancelling the notice [or the case may be, the order made under clause (aa) of sub-section (2) of section 3] [These words inserted by Gujarat 10 of 2002, dated 6th April, 2002 (w.r.e.f. 25-11-2001).] as expeditiously as possible.(3)The decision of the Appellate Officer under sub-section (2) shall be final and shall not be questioned in any court of law.(4)No appeal under this section by a person who is served with the notice shall be entertained by the Appellate Officer unless the amount of fees payable by him under the notice is deposited with the designated authority:Provided that where in the opinion of the Appellate Officer deposit of the amount 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 deposited so however that the part of amount so dispensed with shall not exceed fifty per cent, of the amount deposited or required to be deposited.(5)The Appellate Officer shall receive from the Municipal Fund of the Municipal Corporation of the City or, as the case may be, the Fund of the area development authority or the urban development authority, such monthly salary and allowances as the State Government may from time to time after consultation with the Corporation of the City or, as the case may be, the authority of the development area for which he is appointed, determine.Explanation. - For the purposes of this section, the expression "City" shall have the meaning assigned to it in clause (8) of section 2 of the Bombay Provincial Municipal Corporations Act, 1949 (Bombay LIX of 1949).

6. Constitution of Infrastructure Development Fund.

- Subject to the rules made under this Act, all fees received under this Act shall be credited to a fund which shall be called the Infrastructure Development Fund and which shall be held by the designated authority in trust for the purpose of augmentation, improvement or creation of an infrastructure facility.

7. Protection of action taken under the Act.

(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.

8. Removal of doubt.

- It is hereby clarified that regularisation of unauthorised development under this Act shall be without prejudice to any civil or the criminal liability to which a person may be subject to under any law.

9. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, and subject to 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:-(a)the period within which and the manner in which a notice shall be served under sub-section (2) of section 3 and the manner of publication of substance of notice under clause (c) of that sub-section;(aa)[the rates of fees under sub-section (2) of section 3;] [Clause (aa) inserted by Gujarat 12 of 2003, dated 31st March 2003 (w.e.f. 12-05-2003).](b)the form in which a certificate shall be issued under sub-section (3) of section 3;(c)the period within which a certificate shall be obtained under sub-section (3) of section 3;(cc)[the terms and conditions subject to which unauthorised development may be allowed to carry out and regularised under clause (aa) of sub-section (2) of Section 3.] [Clause (cc) inserted by Gujarat 10 of 2002, dated 6th April 2002 (w.r.e.f 25-11-2001)](d)any other matter, which is to be or may be prescribed.(3)All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after 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.

10. Repeal and savings.

(1)The Gujarat Regularisation of Unauthorised Development Ordinance, 2001 (Gujarat Ordinance 3 of 2001), is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance, 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.