

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 34 of 2024
 With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2024
 In R/WRIT PETITION (PIL) NO. 34 of 2024
 With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2024
 In R/WRIT PETITION (PIL) NO. 34 of 2024
 With
R/WRIT PETITION (PIL) NO. 118 of 2020
 With
CIVIL APPLICATION (DIRECTION) NO. 1 of 2024
 In R/WRIT PETITION (PIL) NO. 118 of 2020

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SUO MOTU
 Versus
 STATE OF GUJARAT & ORS.

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Appearance of WPPIL/34/2024:

MR DM DEVNANI(5880) as LD AMICUS CURIAE

SUO MOTU for the Applicant(s) No. 1

G H VIRK(7392) for the Opponent(s) No. 11,12,13,4,5,7

MR KAMAL TRIVEDI, LD ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR, LD ADDL. ADVOCATE GENERAL WITH MR. VINAY BAIRAGA, AGP for the Opponent(s) No. 1,10,2,3,8,9

MR HS MUNSHAW(495) for the Opponent(s) No. 15,16

MR KAUSHAL D PANDYA(2905) for the Opponent(s) No. 14,17,18,6

Appearance of WPPIL/118/2020:

MR AMIT M PANCHAL, PARTY-IN-PERSON WITH MR ANGESH A. PANCHAL for the Applicant

MR KAMAL TRIVEDI LD ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR LD. ADDL. ADVOCATE GENERAL WITH MR VINAY BAIRAGA AGP for the Respondent No(s). 1 and 2

MR G. H. VIRK(7392) for the Respondent No. 3

MR H. S. MUNSHAW(495) for the Respondent No(s). 5,6,8,9,10

MR DHAVAL G NANAVATI for the Respondent No(s). 7 and 11

MR CHINMAY M. GANDHI for the Respondent No. 10

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 13/06/2024

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

The Public Interest Litigation No. 34 of 2014 has been registered on 26.05.2024 in an unfortunate circumstance of a fire accident occurred in the city of Rajkot. As noted in the first order dated 26.05.2024 passed

by this Court, the T.R.P. gaming zone at Rajkot wherein fire incident had occurred claiming lives of about 25 persons including the children, was an illegal construction. Taking note of the newspaper reports and the facts brought before the Court by the learned *amicus* and further having taken judicial notice of the fact that several gaming zones have come up in the city of Ahmedabad as well, which may also pose threat to the public safety, the matter was posted on 27.05.2024 seeking presence of the panel advocates for the respective Municipal Corporations, to place before the Court the provisions of the laws whereunder the Corporations let these gaming zones, recreational facilities be set up or continued or put up to use. It was directed that the State as well as the respective Corporations shall place as to in what manner and whether the licence including the licence to use and compliance of fire safety regulations were undertaken by these gaming zones in their territorial jurisdiction.

2. On a note put by Mr. Amit Panchal, the learned petitioner advocate, an urgent circulation of Civil Application in Writ Petition (PIL) No. 118 of 2020, which deals with the issue of fire safety measures in buildings/schools etc., has been permitted. The Court has directed all the respondents to seek proper instructions on the Civil Application filed in the PIL of 2020, as well as the *suo motu* petition of 2024. On 27.05.2024,

the learned advocates on behalf of the respondent Corporations and the Chief Fire Officers of the Corporations in the State of Gujarat have put in appearances. Learned Additional Advocate Generals have assisted the Court on behalf of the State respondents. From the submissions of the learned counsels appearing for the Corporations, it was noted by the Court that blatant inaction on the part of the authorities of the Rajkot Municipal Corporation is apparent. It has recorded a *prima facie* satisfaction that the gaming zone, where the tragedy has occurred, could not have flourished, but for the connivance of the authorities within the Corporation, including its officers, police department and the authorities of the Roads and Building Department at the local level.

3. From the note submitted by the learned counsel appearing for the Rajkot Municipal Corporation, it was evident that the TRP gaming zone was developed in June, 2021. The owners had applied for regularisation of the constructions under the provisions of the Gujarat Regularisation of Unauthorised Development Act, 2022 (hereinafter referred to as 'the GRUDA Act') after three years of setting up of the gaming zone. The construction was a fabricated steel frame structure with the boundaries made of steel *patras*. The Corporation has taken a stand that permission was granted by the City Police. Certain queries were made by the

Corporation on an application filed by the owners dated 4.5.2024, and vide communication dated 09.05.2024, queries were made with regard to the structural stability certificate and fire NOC. The owners were asked to produce the relevant documents to claim benefit of regularisation.

4. It has further been noted that under the provisions of the Gujarat Fire Prevention and Life Safety Measures Act, 2013 read with GRUDA Act, an unauthorised development cannot be regularised, if it is inconsistent with the provisions of the Gujarat Fire Prevention and Life Safety Measure Act, 2013 or Structural Stability Requirement as per the CGDCR (Comprehensive General Development Control Regulations, 2017). It was, thus, noted that a gaming zone flourished for approximately three years without necessary permission purportedly under the guise of the temporary structure, *prima facie*, by obtaining permission only under the provisions of Section 33(x) of the Gujarat Police Act and even there was no required permission under the provisions of Section 33(w), which deals with licensing or controlling places of public amusement or entertainment, regulating the means of entrance and exit at places of public amusement or entertainment and providing for the maintenance of public safety and prevention of disturbance thereat, in order to prevent the obstruction, inconvenience,

annoyance, risk, danger or damage to the residents or the passengers in the vicinity. Section 33(x) of the Gujarat Police Act provides for regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement.

4.1 It is, thus, evident that the owners of the gaming zone had set up a structure which was termed as temporary structure in the submissions of the Corporation for amusement purposes for public and used it for a period of three years, without adhering to the norms of the Structural Stability and Fire Prevention & Life Safety Measures. It is difficult to comprehend as to how the police authorities could issue a license regulating the sale of tickets / passes for admission at a place of public amusement under Section 33(x), without adhering to the requirements of other clauses of the said provisions. The police authorities while issuing license for sale of tickets were required to ensure that norms for putting up the premises as a place of public amusement or place of public entertainment are adhered to. Section 33 of the Police Regulations contained in Chapter-IV of the Gujarat Police Act, 1951 provides for making of rules by the Commissioner and District Magistrate, for preservation of order in public places etc., Clause-(w) of which is relevant for our purposes, which reads as under,

“(w)(i) licensing or controlling places of public amusement or entertainment;
(ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;
(iii) regulating the means of entrance and exist at places of public amusement or entertainment or assembly, and providing for the maintenance of public safety and the prevention of disturbance thereat.”

5. From a reading of Clause-w(i) of Section 33 indicates that rules are required to be framed for licensing or controlling places of public amusement or entertainment. A response is required to be given by the State as to whether the rules are framed under Section 33 providing for the powers and duties of the licensing authority. The said rules are to be placed before us on the next date fixed in the matter.

6. We may further take note of the role of the Rajkot Municipal Corporation on the aspects of regulating such development within the area of its jurisdiction.

7. The Gujarat Provincial Municipal Corporation Act, 1949 in

Chapter-XV confers power on the Commissioner “means Municipal Commissioners of the city appointed under Section 36” to regulate development, i.e. constructions of building etc. in a municipal area defined under Section 2 (34)(b) of the Act, 1949. Sections 253 and 254 cast obligations on persons who intend to erect the buildings or make additions to the existing building in the municipal area to give notice to their intention to do so, as per the form prescribed in the bye-laws. Section 260 confers power to take action such as removal, alteration or pulling down of a building or work of construction done contrary to the rules or bye-laws. The power is again conferred on the Municipal Commissioner to take appropriate proceedings as per the rules or bye-laws. Section 261 states that if there are reasonable ground for suspecting that in the erection of any building or in execution of any work contrary to the rules or bye-laws as referred to in Section 260, if on inspection of such building or work, it is found that anything has been done contrary to the provisions of the Act, or of any rules or bye-laws anything required by such provisions, rules or bye-laws to be done, has been omitted to be done, the Municipal Commissioner may initiate action after issuance of written notice with the approval of the Standing Committee requiring the person who has erected such building or commenced such work to be cut into, laid open or pulled down to a sufficient extent to permit of the same

being ascertained. Section 262 mandates the Municipal Commissioner to enforce the provisions of concerning buildings and works bye-laws.

7.1 Section 263 talks of completion certificate, after erection of the building or the execution of any work of addition to the existing building, as permitted to occupy or use such building. Sub-Section (2)(a) of Section 263 states that no person shall be permitted to occupy any such building or use or permit to be used such building or a part thereof until permission has been received from the Commissioner (Municipal Commissioner in this behalf). Section 267 confers general power on the Commissioner to restrain or remove any building erected or the execution of any work of addition to the existing building unlawfully commenced or carried out and further to release the cost of any measures taken by it for the purpose from the person who is erecting or raising such construction. General power to regulate future construction of certain classes of buildings in particular streets or localities has been conferred under Section 269. Chapter XVII provides for maintaining a Municipal Fire Brigade with a view to discharge duties of the Corporation of extinguishing fire and protecting life and property in case of fire.

8. The Gujarat Fire Prevention and Life Safety Measures Act, 2013

has been framed and notified on 1st July, 2013 having received assent of the Governor, which has conferred power to the designated authority namely the Municipal Commissioner or the Chief Executive Officer of the Development Authority or Municipality in the State to regularise unauthorised development in the Municipal Corporation areas, Nagarpalikas area and development areas in the State. Section 8(3) of the GRUDA Act, 2022 states that an unauthorised development shall not be regularised if it is inconsistent with the provisions of, (a) the Gujarat Fire Prevention and Life Safety Measures Act, 2013 and (d) Structural Stability Requirements as per the CGDCR. Proviso to sub-section(3) of Section 8 further states that subject to the provisions of the GRUDA Act, on presentation of 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 Section Clause (a) or (d) or both, the designated authority may regularise the unauthorised development.

8.1 The Gujarat Fire Prevention and Life Safety Measures Act, 2013 (in short hereinafter referred to as 'the Act, 2013') in Chapter II provides for organisation, superintendence, control and maintenance of fire service and states that there shall be one State fire service for the whole of the

State and all officers and sub-ordinate ranks of the fire service shall be liable for posting to any office of the fire service. Section 6 talks of the appointment of Director and such other officers and staff to discharge duties and functions conferred under the Act. The primary function of the Director as head of the fire safety department, his duties, functions and powers are aligned in the Section 7. Chapter V contains provisions relating to fire prevention and life safety measure. Section 19 states that no authority empowered to issue Building Use Certificate shall issue the same, unless it is satisfied that the owner or the occupier, either individually or jointly, has complied with the provisions of Section 18 and has obtained fire safety certificate. Section 20 talks of consequences for non-compliance of Section 19. Section 21 says that the Regional Fire Safety Officer or the nominated officer is empowered to issue fire safety certificate after making necessary inquiry with regard to the compliance to the requirement of Section 18. Section 24 empowers the Director or the Regional Fire Officer or the Chief Fire Officer or any nominated officer to enter and inspect any building or place as per the provisions therein for ascertaining the adequacy or contravention of fire prevention and life safety measures. Provisions for regulating temporary structures are contained in Chapter VI under Section 27.

9. The Gujarat Town Planning and Urban Development Act, 1976, has been framed to consolidate and amend the laws relating to the making of development plans and town planning scheme in the State of Gujarat. The local authority, under Section 2(xiv) of the Act, means a Municipal Corporation, Municipality, Gram or Nagar Panchayat constituted under the relevant provisions. Section 122 of the Urban Development Act, 1976 provides for over all control of the State Government and states that every appropriate authority shall carry out the directions or instructions issued by the State Government from time to time for efficient administration of the Development Act. The Appropriate Authority as defined in Clause (iii) and Area Development Authority defined in Clause (iv) includes a local authority defined under the said Act.

10. A conjoint reading of all the above noted enactments indicates that though the Municipal Corporation and Municipalities such as Nagarpalikas and Municipal Corporations are constituted as a body corporate, but the overall control of the State Government to see that they function in a manner so as to ensure efficient administration of the Act and statutory provisions, cannot be undermined. It cannot be disputed that the disciplinary authority of the concerned department for such authorities, is the Principal Secretary, Urban Development and Urban

Housing Department. The Municipal Commissioners of the Corporations or the Commissioners of the Municipalities Administration, are being appointed by the State Government and are under the direct control and supervision of the State Government in so far as compliance of the directions of the State in discharge of their duties and responsibilities under the Act and the rules or bye-laws framed thereunder.

11. In the incident of fire occurred in the gaming zone at Rajkot, it is admitted from the affidavit filed on behalf of the Rajkot Municipal Corporation that there was no Building Use Permission with the owners or the occupiers of the building which was constructed of steel frame and steel *patras* and the building was continued to be occupied and used from June/July, 2021 till the ghastly incident has occurred. From a note submitted on behalf of the respondent no.7, the Rajkot Municipal Corporation, it is evident that owners and occupiers of TRP gaming zone at Rajkot started its operation merely with the permission granted by the City Police under Section 33(x) of the Gujarat Police Act, 1951, which provides for regulating the sale of ticket or pass for admission to a place of public amusement. It is also evident that even after submission of the application for regularisation of the structure at TRP gaming zone under the provisions of the GRUDA Act, 2022, as per the own admission of the

officer of the Rajkot Municipal Corporation, on 22.04.2024, the authorities did not initiate any action. The record also indicates that there was a report of a fire incident occurred at the same TRP gaming zone, Rajkot prior to the incident in question, wherein probably there was no loss of life.

12. From the above, it is atleast evident that the Municipal Commissioners of Rajkot Municipal Corporation who were holding charge during the erection of the building-in-question, i.e. the TRP gaming zone, and occupation and use thereof, have failed to discharge their duties and responsibilities to ensure that no unauthorised structure is occupied or permitted to be used by any person without a proper building use permission following structural and fire safety norms or erection of building. The response given on behalf of the Rajkot Municipal Corporation that the Municipal Commissioners were never made aware of any such erections or usage of such a huge structure from the year 2021, cannot be believed . The structure comprised of the fabricated steel frame with boundaries of steel *patras* having G+1 floor, cannot be considered to be an invisible structure, which was thriving in the city within the territorial jurisdiction of the Rajkot Municipal Corporation.

13. Having gone through the record, we find that though investigation by the SIT, i.e. Special Investigation Team, has been ordered on 25.05.2024 into the tragic incident of fire and the final report is awaited, however, no fact finding inquiry to fix the liability or responsibilities of erring officers for their inaction under the statutory enactments has been instituted so far. The State Government vide notification dated 27.05.2024 has ordered for transfer of the Municipal Commissioner who was posted at the time of the incident in question. In the affidavit filed on behalf of the State Government about the measures taken as a fallout of the incident, suspension orders have been passed initiating inquiry against the Assistant Town Planner, Assistant Engineer, Kalvad Road Fire Station Officer of the Rajkot Municipal Corporation; Executive Engineer, Assistant Engineer of the Roads and Buildings Department; the Police Inspector, Licensing Branch, Rajkot Police Commissionerate; Police Inspector, Rajkot Taluka Police Station, but there is complete silence for any fact-finding inquiry by the State Government to find out the specific role of the responsible Senior officers of the Corporation, who were posted from time to time and fixing their responsibilities, when they were at the helm of the affairs.

14. Mr. Amit Panchal, the learned petitioner advocate in the Writ

Petition No. 118 of 2020 has invited attention of the Court to the various orders passed by this Court issuing directions to the authorities to ensure that the fire safety measures are set in place, which include installations of adequate fire safety measures and life safety equipments, no building use permission without fire safety measures carried out periodically, surprise inspection of the building. He has also placed the Court to the order dated 15.12.2020 and 30.06.2022 issued by this Court in the Writ Petition (PIL) No. 118 of 2020, wherein slew of directions have been issued to ensure that the fire preventive and life safety measures are taken and implemented with a fire prevention and safety equipment installed in the buildings in the State of Gujarat, as is required under the Comprehensive General Development Control Regulations, 2017. The respondents were further directed to ensure that effective steps are taken for the fire prevention safety and for the protection for life and property of the citizen in various types of buildings, temporary structures in the State of Gujarat so as to serve the object and purpose of Gujarat Fire Prevention and Life Safety Measures Act, 2013 and the rules and regulations framed thereunder. A direction has been issued to grant occupancy certificate to the applicants/occupants of the buildings in the State only after consulting the concerned designated authority, which issues certificate after requisite inspection of the buildings, so as to ensure

that necessary requirements for the fire protection have been fulfilled as per the provisions of the Act, 2013 and the rules framed thereunder and that no objection certificate from the concerned fire department/authority shall have to be produced before the competent authority, which issues building use permission / occupancy certificate in conformity with the CGDCR (Regulations, 2017). The respondents have been directed to ensure compliance of the procedure for obtaining the permission of building use as is required under CGDCR (Regulations, 2017). The respondents were also directed to place on record by way of affidavit, the details of all such buildings, which exist as on the said date and require installation of fire prevention and protective system (FPPs) in the said buildings. They were directed to place on record by way of affidavit the details of such buildings situated within the jurisdictional limits of all the Municipal Corporations, Nagarpalikas and local bodies, not possessing the building use permission in the state of Gujarat. The respondents were also directed to file affidavit to bring the action taken by it in not holding the valid and subsisting building use permission and/or no objection certificate. The respondents were also directed to place on record by way of affidavit the details of all the schools, public and private, in the state of Gujarat indicating compliance of the directions contained in the judgment of the Apex Court in **Avinash Mehrotra vs. Union of India [(2009) 6**

SCC 398] (reference para 41 thereof). It has also taken note of the Division Bench of this Court in **Lok Adhikar Sangh vs. State of Gujarat and others (AIR 2002 Guj. 59]**, paragraph No. '69' thereof has been placed before us wherein directions have been issued to the AMC and Urban Development Authority to carry out periodical as well as surprise inspections of the fire safety system provided in high-rise buildings and to issue necessary notice and directions to ensure installation thereof. The State was also directed to ensure compliances of the said provisions.

15. Vide the order dated 30.06.2022, it was directed to the State Government to take immediate steps for ensuring compliance of the order dated 15.12.2020 and the AMC was also directed to submit report as to on whom the responsibility was to be fixed or the accountability was to be attributed for the fire incident in question, pursuant to which the said PIL was registered. It was noted that until and unless stringent and strict action is taken against those buildings, which do not have fire compliances, fire incidents may occur in future and unless and until the deterrent action is taken against such persons, such incidents would remain unchecked many a times. The untoward incident, which has led to registration of the said PIL therein was a fire incident occurred in a

private hospital designated as Covid-19 facility, which claimed lives of patients admitted therein. It is also demonstrated before us that in the said PIL by order dated 26.02.2021, seven Municipal Corporations in the State including the Rajkot Municipal Corporation have been impleaded and notice was issued to them to file their response by way of affidavits about the valid and subsisting NOC with regard to fire prevention and protection system in the state of Gujarat, with respect to all high rise buildings, special buildings, schools, hospitals, industries and factories within their jurisdictional limits and report the action taken by them.

15.1 It was, thus, submitted by Mr. Amit Panchal that the first direction issued by this Court in the year 2001 in **Lok Adhikar Sangh (supra)** and the issued by the Apex Court in **Avinash Mehrotra (supra)**, the orders passed by this court in pending PIL No. 118 of 2020 are continuing mandamus. The officers of the Corporations who have not complied with the orders passed by this Court in not ensuring the compliances of the directions therein, are guilty of contempt. With reference to the observations of the Apex Court noted in the order dated 15.12.2020 in the PIL of 2020, it was urged that infringement of law is worse than not enacting the law at all. Lawlessness cannot be tolerated in a Civil Society. It is contended that to ensure compliances of the orders passed

by this Court in PIL No. 118 of 2020, responsibility is to be fixed and accountability is to be attributed for the fire accident in-question.

16. We, thus, find that the Principal Secretary, Urban Development and Urban Housing Department being the disciplinary head of the Urban Development and Urban Housing Department is required to constitute a high level committee of three senior officers within a period of three days to conduct a fact-finding inquiry to find out fault of erring officers of the Rajkot Municipal Corporation including the Municipal Commissioners posted from time, i.e. the first date when the first pillar was installed of the TRP gaming zone, till the date when the tragic incident of fire has occurred. In the exhaustive inquiry, which is to be conducted by the Principal Secretary, Urban Development and Urban Housing Department through the aid of the committee constituted by him, he shall not spare anyone found guilty or being irresponsible and all aspects of dereliction of duties or inaction on the part of the officers of the Rajkot Municipal Corporation shall be brought into light. The report shall be submitted to this Court by 4.7.2024.

17. Taking note of the directions of the Apex Court in **Avinash Mehrotra** (supra), we further provide that the Principal Secretary,

Education Department shall ensure that physical inspection of all the categories of schools in the State namely pre-primary or pre-school wherein the children upto the age of 3 to 6 years are studying including play schools, and primary, secondary and higher secondary schools, wherein the children between age of 6 to 14 years are studying, both established by the State and the private management (Public & Private) shall be carried out to report the fire safety measures in such schools, the training of the teachers alongwith other staff to handle safety equipment, initiation emergency evacuations and protect their students in the event of fire and other emergencies by the Fire and Rescue Department. To ensure that the School Building Specifications; Clearance and Certificates are granted after mandatory fire inspection by the Fire and Rescue Service Department by issuance of NOC to the school as a mandatory requirement for granting permission for establishing or continuation of the school. In essence, inspection of all such schools is to be carried out strictly in compliance with the directions contained in para No. '41' of the directions contained **Avinash Mehrotra** (supra) passed by the Apex Court and the report be submitted to this Court within a period of one month from today.

18. The Principal Secretary, the Education Department is mandated to

see that the corrective measures are taken in respect of all the schools in the State of Gujarat for strict implementations of the directions contained in para '41' in **Avinash Mehrotra (supra)**.

19. We also require that in overall supervising role of the State Government, an inquiry be conducted into the working of the Municipal Corporations in the State in view of recent incidents reflecting dereliction of duties on the part of the Municipal Commissioners of the respective Corporations in the State of Gujarat, which have become evident with the unfortunate incidents such as Morbi Bridge Collpase, Harni Lake boat tragedy and Rajkot TRP gaming zone fire incident. Theses repeated incidents show that public places managed by the Corporations and the places of amusement where footfall of public is to a large extent, have been kept unsafe for human lives, because of dereliction in discharge of duties or inaction of the head of the institution. The Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat is required to take stringent action to put his house in order, inasmuch as, it is evident that the working of the Municipal Commissioners of the Corporations in the State has become aweigh. The Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat is required to take such stringent

actions which act as deterrent for any such lapse on the part of these officers in future. A report with regard to the said inquiry and action taken by the concerned Principal Secretary, Urban Development and Urban Housing Department, Government Gujarat, shall also be submitted within a period of one month from today.

20. In order to get the fact finding inquiry into the incident of fire at TRP gaming zone, Rajkot as directed hereinbefore, both the matters are posted on 4.7.2024.

21. The Principal Secretary, Urban Development and Urban Housing Department, Government of Gujarat shall file his personal affidavit to bring on record the aforesaid inquiry report.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

C.M. JOSHI