IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) (WRIT PETITION (PIL)) NO. 9 of 2024

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RE-MANAGEMENT OF THE WATER BODIES SUCH AS RESERVOIRS/PONDS/RIVERS/LAKES IN THE STATE OF GUJARAT, & ANR.
Versus
STATE OF GUJARAT THROUGH THE SECRETARY HOME DEPARTMENT & ORS.
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Appearance:
LAW OFFICER BRANCH(420) for the Applicant(s) No. 1,2
MS E.SHAILAJA(2671) for the Applicant(s) No. 1,2
G H VIRK(7392) for the Opponent(s) No. 2
MR KAMAL TRIVEDI ADVOCATE GENERAL WITH MR VINAY BAIRAGRA ASSISTANT GOVERNMENT PLEADER for the Opponent(s) No. 1
MASUMI V NANAVATY(9321) for the Opponent(s) No. 6
MR SIDDHARTH H DAVE(5306) for the Opponent(s) No. 5
MR UTKARSH J DAVE(10620) for the Opponent(s) No. 3
MR VIBHUTI NANAVATI(513) for the Opponent(s) No. 6
MR NIRAV C. THAKKAR, ADVOCATE FOR MR. RADHESH Y VYAS(7060) for the Opponent(s) No. 4
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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 13/02/2026

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

1. At the outset, we may note that the contentions made by Mr. Nirav C. Thakkar for Mr. Radhesh Vyas, learned advocate for the respondent no.4, that the Insurance Company has not been impleaded in the writ petition and the reply filed by the Company is to be treated as reply to the application seeking for joining party, is liable to be rejected.

2. We may note that on the Civil Application (for joining party) No.2 of 2025, by the order dated 10.10.2025 we have allowed the prayer of respondent no.4 to implead the United India Insurance Company, as a party respondent no.6. The notice to the respondent no.6 – Insurance Company had also been issued in the Writ Petition (PIL) by order dated 28.11.2025 after it was incorporated as a respondent no.6 under the order dated 10.10.2025. By order dated 28.11.2025, we have issued a show-cause notice to the Insurance Company – respondent no.6 as to why the liability to pay compensation determined by the Sub Divisional Magistrate and Deputy Collector under the directions issued by this Court in favour of the family members of 14 deceased and 01 injured persons, be not fastened upon it.

3. In response to the said notice, an affidavit-in-reply dated 08.01.2026 has been filed by the Deputy Manager, United India Insurance Company Limited, Vadodara wherein it is admitted that there was an insurance policy purchased by M/s. Kotia Project, Vadodara, a registered Partnership Firm, the respondent no.4 herein, for the period commencing from

09.01.2024 to 08.01.2025, for the location of the property insured indicated therein, as 84 ft. No.135, Lake Zone, Montnath Talav, Harni Lake, Harni Road, Vadodara, a partly Amusement Park, Food Court, Marraige Hall, Community Hall etc. The description of the risk covered under the said policy, in paragraph–'3' of the affidavit reads as under:-

Description of risk	People visiting at food court, for amusement park, people coming at community hall-cum-marriage hall for dining, all different rides. Also visitors for lake zone and for social and religious other purposes.

Underwriting remarks about the liability accepted by the Insurance Company further reads as under:-

Underwriting remarks	Risk covered for people visiting at food court, amusement park, people coming a community hall for social and religious purpose, where dance and dining programes held, also people visiting for different rides, water rides, high rope rides and such other amusement rides. Also people visitors coming at lake zone for visiting only.

4. It is contended that the Insurance Company received claim intimation from respondent no.4 - M/s. Kotia Projects on 04.03.2025 with respect to the incident of capsizing of boat on 18.01.2024 at Harni Lake, Vadodara, whereby a request was made to lodge claim due to casualties under the subject public liability non-industrial policy issued in the name of the insured. During the processing of the claim, it was found that the insured namely M/s. Kotia Projects had entered into an agreement dated 26.03.2019 with one M/s. Tristar Enterprise for managing of boating and water based activities. The responsibility of maintenance, provision of safety devices, security and liability towards any accident therein was fastened on M/s. Tristar Enterprise.

5. It is stated that the insured – M/s. Kotia Projects has further entered into a tripartite agreement dated 08.06.2023 between the insured, M/s. Tristar Enterprise and M/s. Dolphin Entertainment for the management of the entire boating activities and safety, security, maintenance and operation, which then become the responsibility of M/s. Dolhin Entertainment including providing any compensation and

taking adequate insurance for the same. It is, then, contended that for the accident occurred on 18.01.2024, as per the understanding of the Insurance Company, the liability for payment of compensation may be fastened on M/s. Dolphin Entertainment.

6. Further, the stand of the Insurance Company is that the insured M/s. Kotia Projects respondent no.4 herein, has given written intimation of the claim on 04.03.2025, after undue delay of 411 days that too when the award towards compensation has already been adjudicated. Thus, the condition no.9.1 of the policy has been violated which provides that "the insured shall give written notice to the company as soon as reasonably practicable of any claims made against the insured (or any specific even of circumstances that may give rise to a claim being made against the insured) and which forms the subject of indemnity under this policy and shall give all such additional information as the Company may require. Every claim, writ, summons or process and all document relating to the event shall be forwarded to the company immediately they are received by the insured."

7. The further contention of the Insurance Company is based on the condition no.9.02 of the insurance policy which provides that the insured will not be making any admission or offer or promise and payment on or behalf of the Insurance Company without written consent of the Company.

8. The contention, thus, is that, on the one hand, the insured did not intimate about the accident within a reasonable time and no claims whatsoever had been put forth before the Insurance Company prior to the intimation of claim for the first time made on 04.03.2025. And, on the other, once the compensations determined under the directions issued by this Court by the competent authority, the liability for the same is sought to be fastened upon the Insurance Company.

9. Besides that, it is categorically stated that the policy does not cover liability arising out of deliberate, willful or intentional non-compliance of any statutory provision. Further, the insured namely M/s. Kotia Projects initially leased the operation of boating activity for 05 years to M/s. Tristar Enterprises on 29.03.2019 and later it was transferred

to M/s. Dolphin Entertainment. Under the tripartite agreement between the M/s. Kotia Projects, M/s. Tristar Enterprises and M/s. Dolphin Entertainment, the entire responsibility and liability if occurring will have to be subrogated to M/s. Dolphin Entertainment. The Insurance Company is not privy to the tripartite agreement and any liability arising out of the said agreement does not fall within the purview of coverage provided by the subject Public Liability Insurance Policy.

10. There is a reference to condition no.9.9 of the insurance policy which reads as under:-

> *"9.9 If at the time of happening of any event resulting into a liability under this policy, there by any other public liability Insurance or Insurance effected by the Insured or by any other person covering the same, liability, then the company shall not be liable to pay or contribute more than its ratable proportion of such liability."*

11. Placing the said clause of the Insurance Policy, the affidavit of the Insurance Company takes note of condition no.21 of the tender terms and condition which prohibits the assignment or sub-letting of the contract by the contractor

without the written approval of the Engineer-In-Charge. The stand of the Insurance Company is that it also transpired to the Company that the insured did not seek written approval as envisaged from 02 contracts entered into by and between M/s. Kotia Projects, M/s. Dolphin Entertainment and M/s. Tristar Enterprises and thus, disregard shown by the insured in all respects related to laws, rules and regulations, is sufficient to repudiate the claim made by it, lodged in writing on 04.03.2025.

12. It is categorically submitted in the affidavit that the Insurance Company has repudiated the claim by the letter dated 01.09.2025, a copy whereof has been appended as Annexure–'R/F' to the affidavit of the Insurance Company. The categorical stand of the Insurance Company, thus, is that it is not liable for any indemnity arising from the subject insurance policy and that the Company is neither necessary nor proper party in the present public interest litigation, and hence, may be deleted.

13. Taking note of the above, we may go through the reply submitted by M/s. Kotia Projects to the affidavit of the

Insurance Company. The contention therein on the merits of the contention made by the Insurance Company is that the Insurance Company be held liable to pay the share of the compensation as determined by the Deputy Collector in the present petition to prevent amelioration of families of victims and any *inter-se* disputes between the contracting parties namely the insurer and the insured can be adjudicated by giving liberty to the insured (respondent no.4) by pursuing other remedies that may be available to it. The contention is that the Insurance Company may pay the compensation amount to the families of the victims as of now and, if at all, may recover later from any party that it may be held liable for such payment. This would give succour to the families of the victims and they are not dragged into long arduous litigation before any court of law.

14. There are assertions made in the affidavit-in-reply filed by M/s. Kotia Projects about the delay in lodging its claim before the Insurance Company in order to submit that the procedural delay cannot defeat substantive indemnity, particularly in cases involving public liability and mass casualties. The contention of the Insurance Company about

the violation of the policy conditions are then denied.

15. Taking note of the above, we find it fit and proper to say that as regards the liability of the Insurance Company to indemnify the insured (respondent no.4 herein) under the insurance policy bearing No.1814002723P113009487 for the period commencing from 09.01.2024 to 08.01.2025, under the agreement signed between respondent no.4, namely, M/s. Kotia Projects and the Insurance Company, it is open for respondent no.4 to lay its claim of indemnification by availing the appropriate remedy, inasmuch as, the Insurance Company has repudiated all claims made by it vide written intimation of claim dated 04.03.2025, by passing the order dated 01.09.2025.

16. Considering the above, we are afraid to issue any direction to the Insurance Company to pay the compensation or any part of it, determined by the Deputy Collector under the directions issued by this Court in the present petition. The dispute between the insured namely respondent no.4 and the Insurance Company, as admitted to the insured M/s. Kotia Projects, itself is arising out of the contract between them. The adjudication of the liability of the Insurance Company can

only be made on an appropriate remedy availed by the insured namely M/s. Kotia Projects under the contract. The simpliciter prayer made by the respondent no.4, (insured) namely M/s. Kotia Projects to issue directions to the Insurance Company to pay the compensation or any part of it under the insurance policy, is rejected, accordingly.

17. It is, however, made clear that we have not entered into the merits of the claims arising out of the contract between M/s. Kotia Projects (respondent no.4) and the Insurance Company namely United India Insurance Company Limited, and, as such, none of the observations made herein-above shall have any bearing on any dispute arising out of the said contract before any authority/Court of law.

18. Further, on the issue of impleadment of two other entities as per the directions issued by the Apex Court, the matter is posted on ***20.02.2026***.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

A. B. VAGHELA