

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 63 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2019****In R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019****With****CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2019****In R/SPECIAL CIVIL APPLICATION NO. 7399 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2019****In R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019****With****CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2019****In R/SPECIAL CIVIL APPLICATION NO. 7404 of 2019**=====
VISHWAS SUDHANSHU BHAMBURKAR**Versus****UNION OF INDIA**
=====**WRIT PETITION (PIL) NO.63 OF 2019**

for the Applicant(s) No. 1

PARTY IN PERSON(5000) for the Applicant(s) No. 1

MR KSHITIJ AMIN FOR MR DEVANG VYAS(2794) for the Opponent(s) No. 1

MR DHAVAL G NANAVATI(2578) for the Opponent(s) No. 3

MR. BHADRISH S RAJU(6676) for the Opponent(s) No. 2

SPECIAL CIVIL APPLICATION NOS.7399 OF 2019 & 7404 OF 2019 :MR MIHIR JOSHI, SENIOR COUNSEL ASSISTED BY MR KUNAN NAIK for
the Applicants

MR DHAVAL G NANAVATI(2578) for the Opponent(s) No.1

MR KSHITIJ AMIN FOR MR DEVANG VYAS(2794) for the Opponent(s) No.2

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**and****HONOURABLE MR.JUSTICE A.J. SHASTRI****Date : 20/12/2019****CAV ORDER**

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. We have heard the petitioner in person in Writ Petition (PIL) No.63 of 2019, Shri Mihir Joshi, learned Senior Counsel assisted by Shri Kunan B. Naik, learned counsel appearing for the petitioners in Special Civil Application Nos.7399 of 2019 and 7404 of 2019, Shri Kshitij Amin, learned counsel representing Directorate General of Civil Aviation and Shri Bhadrish Raju, learned counsel representing Airports Authority of India.

2. Present set of proceedings led by Writ PIL raise an important issue, as such are taken up conjointly on the request of learned counsels. The issue raised is about construction and structures which surrounded the Surat Airport causing serious concerns for the safety of life and property.

3. Petitioner of Writ PIL stated to be a social activist, has espoused the cause in the public interest by filing Public Interest Litigation for seeking following reliefs :-

“A. Your Lordships may be pleased to allow the present Writ Petition (PIL).

B. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order / direction to all the respondents and the instrumentalities falling under their jurisdiction so as to ensure the safety and security of the travellers, crew and those in/around

the Surat Airport and ensure full safety and security of the users of the airports as well as the public using the structures that violate the heights prescribed in GSR 751 (E) in the interest of justice;

C. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order / direction to the respondents and the instrumentalities falling under their jurisdiction to forthwith and without any delay undertake the evacuation of persons using the structures in/around Surat Airports that have been identified as obstacles as per the provisions of Aircrafts Act, 1984, and the details provided by respondent No.2 through RTI as well as GSR 751 (E) and the rules made therein under in the interest of justice;

D. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order / direction to the respondents and the instrumentalities falling under their jurisdiction to forthwith and without any delay undertake the demolition of those structures in/around Surat Airports that have been identified as obstacles as per the provisions of Aircrafts Act, 1984, and the details provided by respondent No.2 through RTI as well as GSR 751 (E) and the rules made therein under in the interest of justice;

D.i). That buildings that are proving to be an obstruction in the path of flight, especially in view of their illegal construction at a spot which is not as per the latitudinal and longitudinal coordinates. Therefore all the operation of flights to and from Surat Airport be halted immediately.

E. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order / direction to the respondents and the instrumentalities falling under their jurisdiction to forthwith and without any delay undertake the survey of structures in/around Surat Airports that violate the Inner Horizontal Surface limits and are obstacles as per the provisions of Aircrafts Act, 1984, GSR 751 (E) and the rules made therein under;

F. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order /

direction to the respondents and the instrumentalities falling under their jurisdiction to forthwith and without any delay widely disseminate information about the obstacles in/around Surat Airport so that passengers can take an informed decision about flying to/from Surat Airport in view of the dangers posed by the obstacles therein and to forthwith and without any delay disseminate the information about the obstacles not just in Surat and its surrounding areas but even in cities that have an airport from where flights to and from Surat operate, by way of interim relief in the interest of justice;

G. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ / order / direction to the respondents and the instrumentalities falling under their jurisdiction, including but not limited to respondent No.2 herein, to forthwith and without any delay issue separate individual and detailed NOTAMs for each of the obstacles identified as well as forthwith and without any delay install anti-collision lights on the obstacles in/around Surat Airport so that the safety of the passengers can be ensured to some extent, by way of interim relief in the interest of justice;

H. Any other and further relief/s may kindly be granted in the interest of justice.

I. All those buildings that have been constructed at places which deviate from the spot defined as per the longitudinal and latitudinal coordinates mentioned in the NOC from respondent No.2, received for construction, may be declared as illegal constructions and the same completely demolished.

J. This Hon'ble Court may be pleased to direct the respondents to initiate the civil as well as criminal proceedings against the builders, officials of respondent No.2 and officials of respondent No.3, and all other concerned persons including under provisions of Suppression of Unlawful Acts against Safety of Civil Aviation (SUSCA) Act, 1982."

4. The prayers which have been sought are on the

background that the Government of Gujarat in the 1990s constructed Surat Domestic Airport with an airstrip of 1400 meters and transferred it to the Airport Authority of India i.e. respondent No.2 in the year 2003. The length of the airstrip was extended to 2250 meters somewhere in the year 2007 to enable the operations of larger aircrafts. The runway was further extended to a length of 2905 meters as it stands today. Surat Domestic Airport one of the busiest airport of Gujarat handles around 260 flights a week i.e. more than 37 flights a day. For the year April, 2016 to March, 2017, approximately 1,95,000 passengers travelled by this Domestic Airport, whereas during the period April, 2017 to March, 2018, Surat Airport catered to approximately 6,81,500 passengers.

5. According to the writ petitioner, among other things, the mandatory requirement for an operational area which is non-negotiable is 'airfield' - a large open space without any obstruction or impediment for aircrafts to land and take off and the same should be clearly visible from the sky and on account of this mandatory non-negotiable requirement, the heights of the buildings surrounding shall be as per the requirement of the Authority's Notification and strict adherence to these directions which are brought into force, must be scrupulously observed.

The directions earlier were by virtue of Government's Notification S.O.84 (E) and now, it is substituted by GSR 751 (E), dated 30.9.2015.

6. The Airport Authority of India, vide notice dated 31.1.2018 addressed to large number of builders, intimated about the violation of NOC for height clearance and also for removal of obstructions. These notices were based upon joint survey by the Airport Authority of India and the Surat Municipal Corporation which was carried out in July, 2017. Subsequent to the said notice, a joint meeting of officers of the Surat Municipal Corporation and the Airport Authority of India again took place on 19.3.2018 in which it came out that there were 90 buildings in 18 projects which were violating the NOC for height clearance and were penetrating the Approach Surface of Runway 22 of Surat Airport. In the said meeting, it was decided to carry out further detailed joint survey building-wise. A joint survey is said to have been carried out in June, 2018 and specific violations of all the buildings were noted. Thereafter, again, a fresh notice dated 10.8.2018 was issued by the Airport Authority of India to all the builders/societies. Majority of notices are dated 10.8.2018, to others, notices were issued in November, 2018. But at least, copies of 40 notices are collectively filed with the

petition (PIL as Annexure:E, from page 78 to 117). The facts mentioned in this paragraph are mentioned in the notice dated 10.8.2018.

7. According to the writ petitioner, pursuant to the probe having been made, the notices for demolition of such obstructions were issued way back in January, 2018 and August, 2018. The extent of violation ranges from 1 meter to 14.3 meters in height over and above the permissible limit. On account of these constructions which are in violation in the nearby vicinity of this area, serious concern was noted by the authorities. The area is without any anti-collision lights as well which was reported by the Times of India, dated 24.10.2018. Under the Right to Information Act, some additional information has been provided which is likely to create a serious problem in future, if not remedied immediately. Despite the aforesaid demolition notices delivered way back in 2018, till date such offending constructions are very much in existence which appears to have led the writ petitioner to approach this Court by means of the aforesaid Public Interest Litigation.

8. To strengthen his grievance in the interest of public at large, the petition is attached with detailed instructions and the

guidelines contained in the notification issued by Ministry of Civil Aviation, New Delhi dated 30.9.2015. The schedule attached to such notification indicates as to why the norms prescribed by Ministry of Civil Aviation, are very much necessary which are bound to be observed and followed. The diagrams which are attached from Page-58 to 72 indicate the significance of the issue which has been raised in the present Public Interest Litigation. By referring to these diagrams and the operation of the Domestic Airport and the manner of it, the writ petitioner has taken us at length which we find that issue raised is of immense importance to the public at large.

9. It appears from the record that although notices for demolition were issued by the authorities more than a year ago but, none of the authorities have taken it seriously and it further appears that inter-se the authorities are trying to dribble the issue. The proceedings pursuant to the notices are still pending final decision. They have not been brought to its logical conclusion.

10. It has been stated before us that in the meantime, on account of inaction on the part of authorities, the occupants of the buildings have come up before this Court by way of writ

petition being Special Civil Application No.7399 of 2019. The petitioners therein are seeking relief to quash and set aside the notices which have been issued by Surat Municipal Corporation dated 22.3.2019 and the communication dated 3.5.2017. It is also prayed directly to the authority i.e. Surat Municipal Corporation to grant Building Use Permission to the said properties. Now, these petitioners of the petition referred to above have occupied the premises in question without even getting the Building Use Permission. Originally, in this petition, Building Use Permission was sought by way of an application on 29.4.2017 which was rejected on 3.5.2017. However, these petitioners have occupied the building without any permission which led the petitioners to approach the Court for seeking issuance of Building Use Permission. So, from May, 2017 to March, 2019 till the impugned communication, though permission was not granted of building use, the corporation authorities have allowed these persons to occupy the premises. So much so that in between, the sale transactions have also been executed, despite the aforesaid situation as is reflected from the contents of this writ petition.

11. Similarly, another writ petition being Special Civil Application No.7404 of 2019 was also filed by several petitioners,

with almost similar reliefs. Taking this grievance of the petitioners in mind, since the Writ PIL is at large before the Division Bench, these petitions have been allowed to be tagged with present Writ Petition (PIL) No.63 of 2019. It has been stated before us that long back, the notices have been served even of this petition and the authorities are aware about these proceedings.

12. This Court issued notice on 1.4.2019 in the main Writ PIL. But then, from time to time the Standing Counsel appearing on behalf of the authorities have sought time on number of occasions. While these proceedings are pending, in the meantime, again the authorities appear to have woken up from slumber and issued further order in purported exercise of power under Section 268 of the Gujarat Provincial Municipal Corporations Act, 1949 to the occupants as well as the developer of the property in question. The mandate was to vacate the premises within a period of 7 days, as without obtaining Building Use Permission, the use of the building has been wrongly and illegally started. By referring to the previous notices, an order is passed to vacate the premises failing which appropriate steps will be taken to take assistance of police officers to implement this order. This service of an order dated

8.11.2019 has brought the original writ petitioners to approach this Court by way of Civil Application for seeking stay against the implementation of this restraint order. While examining this issue when proceedings came up before us on 14.11.2019, after hearing the learned counsel appearing on behalf of the applicants – original petitioners of Special Civil Application, we directed this Civil Application to be listed along with main writ petitions and with main Writ PIL. In the meantime, since the time was sought by the learned counsel appearing for the authorities, we directed the matters to be placed on 18.11.2019 with a clear indication that matters will not be adjourned. Simultaneously, we also directed the learned counsel representing Director General, Civil Aviation to obtain upto-date instructions in the matter with regard to the pending notices and at that juncture, Shri Kshitij Amin, learned counsel, had stated before us that the affidavit filed by the Airport Authority of India, the same stand would be adopted by him. On account of such situation, we requested the authorities from taking any coercive measure pursuant to the notices / order dated 8.11.2019, since the central authorities were not having upto-date instructions.

13. Later on, when on 18.11.2019, the proceedings were put up before us, Shri Kshitij Amin, learned counsel representing

DGCA and Shri Bhadresh S. Raju, learned counsel representing Airport Authority of India, again took time to get complete instructions from their respective authorities. Accordingly, the matters were heard and the party-in-person of Writ PIL was also heard and the matters were adjourned for 22.11.2019.

14. On 22.11.2019, an attention of the Court was drawn to the affidavit sworn by Shri Jivanbhai M. Patel, Deputy Municipal Commissioner (Planning and Development), Surat Municipal Corporation, which was affirmed on 12.7.2019 along with certain maps. In the said affidavit, it was seriously contended that these original petitioners have occupied the premises without obtaining Building Use Permission which is mandatory to be obtained as per the requirement of GPMC Act read with Regulations contained in General Development Control Regulations, 2004 and tried to justify the stand taken by them to vacate the premises. But then it has been submitted before us that Airport Authority of India has issued notice under its power under the Act and though several persons have replied before the Authority and counter replies are already submitted, but the final decision is yet not taken unfortunately by the Airport Authority of India.

15. From the record of present proceedings, it is evident that on earlier occasion, Building Use Permission was refused in case of petitioners of writ petitions referred to above way back on 3.5.2017. However, the petitioners in its absence have illegally started use of the properties in utter defiance of the orders and in violation have started occupying the premises and then, have come forward to ask for Building Use Permission which was refused way back in May, 2017. Simultaneously, we also see from the record that the Corporation also appears to have allowed such occupation to be tolerated and then, has finally passed an order after almost 2 years under Section 268 of the GPMC Act i.e. on 8.11.2019 to vacate the premises within 7 days. So, there also appears to be either a lethargy or convenient ignorance of statutory provisions. So, it is apparent that the Corporation authority has also not taken this issue seriously.

16. When we put the query to the learned counsel appearing on behalf of the Central Authorities, we have been posted with the status of the proceedings as on 20.11.2019 and to our surprise, we find that there appears to be complete insensitivity to such a serious issue. Shri Kshitij Amin, learned counsel for the DGCA, has placed a chart containing the present status of the proceedings against the builders / societies to whom notices

were issued by the Airport Authority of India. The chart contains list of 50 building projects. It has been brought to our notice that from August, 2018 onwards till March, 2019, the Airport Authority of India has issued such notices. The respective builders and the persons who have been given the notices, tendered their replies promptly as it appears from the status chart and almost within a month or two, the replies were tendered before the Authority. The status has further indicated that practically, for a period of several months, even counter replies have also not been submitted and then, at last after several months the counter replies have been submitted, the dates whereof is indicating in the said status report as of 20.11.2019. But then till date, the decision has not been taken finally by the authority i.e. DGCA where the matters are presently pending. This chart is seriously taken note of by this Court which clearly reflects the inaction on the part of Central Authorities even in such a serious issue concerning large chunk of population about their safety and security. The chart also indicates that with respect to the builders / societies listed at Serial Nos.35 to 50, no action is required as either they have removed the offending constructions or in the subsequent inspections, were found free from any objectionable

construction.

17. When we asked the learned counsels representing these Authorities, initially an upfront request is made before us that at least a minimum of six months are required by the Authorities to take a final decision, as large number of notices are to be adjudicated upon. At the same time, serious concern is projected by the Authorities regarding the unauthorized constructions of such large magnitude and use of such constructions.

18. Attention of the Court has also been drawn to several documents attached to the notification issued in September, 2015 which lays down the guidelines in all respects for airports including restrictions regarding constructions in the vicinity of the airports. These guidelines have mandatory force and are to be strictly adhered to without any violations and compromise.

19. The petitioner of Writ PIL has by way of draft amendment pointed out before us that despite the fact that these offending constructions and the obstructions which ought to have been monitored by taking appropriate steps and all the Authorities are under an obligation and responsible for ensuring the adherence of the safety standards prescribed by the authorities. On account of this lack of responsibility shown by the Authorities, even the

instances have also been narrated. For example, one aircraft SG 3722 of Spice Jet in which 43 passengers were on board from Bhopal to Surat on 30.6.2019, the pilot could not apply brakes on time on account of low visibility at the Airport Runway 22 of Surat Domestic Airport. Instead of taking measures against this offending construction, the runway which is otherwise of 2905 meters, the respondent No.1 authority is said to have displaced 615 meters of runway last year on account of illegal building heights which is the center of controversy.

20. As against this, Shri Mihir Joshi, learned Senior Counsel, has conveyed before us that since the runway has already been displaced by 615 meters with the approval of respondent No.1, the safety measures have already now been taken care of. As such, it is not open for the Corporation authority not to consider the request of Building Use Permission under the guise of proceedings having been pending before Airport Authority of India. But, we are not expressing our opinion in this regard at this stage on the issue of safety measures or the alternatives which is to be taken by the Authority, since the same would be in the exclusive domain of the Airport Authority of India. But having found that there is a complete lethargy on the part of Authorities in taking prompt action which has given rise to the

present set of petitions, we are of the opinion that respondent authorities must act promptly in this regard and take appropriate steps of finalizing the adjudicating process of notices which have already been issued long back, at the earliest.

21. This we are expressing in view of the specific assertion made before us that the notices which have been issued by the Airport Authority of India are under scrutiny and the said scrutiny process is on-going which involves different offices. As a result of this, we direct the respondent Nos.1 and 2 to forthwith take appropriate steps to conclude the adjudicating process of pending notices which have been referred to in the status report dated 20.11.2019.

22. The safety and security of the residents, travellers, aircrafts and properties cannot go unnoticed nor any latitude can be shown to such issue, as on account of such inactions and not taking stringent steps against violation of safety norms, there could be likelihood of serious accidents and consequently, may turn out to be substantial loss to the human lives as well as to the property. We expect that respondent Nos.1 and 2 and respondent No.3 will take prompt action in this regard, particularly when this Domestic Airport is having heavy air

traffic. We deprecate the inaction on the part of respondent No.2 – Authority in not concluding the notices even though the same have been issued almost one year back by now.

23. We have been informed that since in majority notices issued by Airport Authority of India, the pleadings have been completed i.e. filing of reply and rejoinder, as such we expect that the respondent Nos.1 and 2 will take final decision as early as possible, preferably within a period of two months. No justification for any further delays can be accepted. We accordingly direct the respondent Nos.1 and 2 to take a final decision on the notices in accordance with law and strictly in adherence to the safety norms which are prescribed by the expert in the form of notification within a period of 2 months.

24. Simultaneously, we also call upon the respondent No.3 – Corporation to inquire into the delay which has taken place at their end before issuing impugned order dated 8.11.2019 and as to why despite having refused the Building Use Permission in the month of May, 2017, how come these petitioners have been allowed to occupy the premises and utilizing unauthorizedly without Building Use Permission. As such, we seek explanation from respondent No.3 in this regard as to why steps were

appropriately not taken at the relevant point of time which has created a situation like irreversible. We direct the respondent – corporation to tender an explanation about this inaction and submit the report before this Hon'ble Court before the next date of hearing.

25. We expect concrete and prompt steps by respondent Nos.1 and 2 in this regard and to come up with upto-date instructions on the next date of hearing by filing appropriate affidavits along with the decisions that may be taken.

26. Stand over to 02nd March, 2020.

27. The interim order granted earlier to continue till the next date and to abide by the decision that may be taken by respondent Nos.1 and 2.

(VIKRAM NATH, CJ)

(A.J. SHASTRI, J)

V.J. SATWARA