

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 118 of 2020

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2020
In R/WRIT PETITION (PIL) NO. 118 of 2020**

With

**CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2020
In R/WRIT PETITION (PIL) NO. 118 of 2020**

With

**CIVIL APPLICATION (FOR DIRECTION) NO. 5 of 2021
In R/WRIT PETITION (PIL) NO. 118 of 2020**

With

R/SPECIAL CIVIL APPLICATION NO. 9506 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 14157 of 2020

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AMIT MANILAL PANCHAL

Versus

STATE OF GUJARAT

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Appearance:

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

for the Opponent(s) No. 12,13,14,15

MR. KAMAL TRIVEDI, ADVOCATE GENERAL ASSISTED BY MS. MANISHA
LUVKUMAR SHAH, GOVERNMENT PLEADER WITH MR. D.M.DEVNANI, AGP
for the Opponent(s) No. 1,2

MR DHAVAL G NANAVATI(2578) for the Opponent(s) No. 11,7

MR HS MUNSHAW(495) for the Opponent(s) No. 10,5,6,8,9

MR SATYAM Y CHHAYA(3242) for the Opponent(s) No. 3

NOTICE SERVED for the Opponent(s) No. 4

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 15/02/2022

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

[1] We have heard Shri Amit M. Panchal, Advocate who is party-in-person and Shri Kamal Trivedi, learned Advocate General with Ms. Manisha Luvkumar Shah, learned Government Pleader assisted by Shri D. M. Devnani, learned Assistant Government Pleader.

[2] This Court, by order dated 18.11.2021 has directed to place on record by way of a Chart showing as to how the issues relating to non compliance of Building Use Permission, Fire Safety norms would be dealt or tackled by the State in a phased manner by specifying the short term and long term plan proposed or envisaged for safeguarding the interests of all the stakeholders and for preventing any untoward incident occurring which may result in the loss of life, which, otherwise could be avoided by implementing the enactments by the enforcing agencies.

[3] Subsequently, by our order dated 29.11.2021, after having taken note of the affidavits filed before the Hon'ble Supreme Court (with reference to Nagarpalikas) and by referring to the affidavit dated 06.10.2021 filed by Shri R. H. Vasava, Joint Secretary, Urban Development and Urban Housing Department, whereunder it was stated that on an extensive survey of buildings without "Building Use Permission" was carried out and it revealed that an average, 48% of the hospitals in the State do not have a valid Building Use Permission. We had directed that action be taken by taking immediate steps by sealing such of those buildings, if necessary, so as to save the precious life of the people. Accordingly, the affidavit dated 22.12.2021 filed by the said official, namely, Shri Ratilal H. Vasava has been brought to our notice. A perusal of the said affidavit would disclose that in Nagarpalika areas, as per the latest data provided by the concerned departments, as on 20.12.2021, there are 104 hospitals and 301 schools without valid fire NOCs.

[4] Shri Kamal Trivedi, learned Advocate General has

submitted that the said figures may be read as 71 and 229 as on date. As against the said non compliant hospitals, the department is said to have sealed 52 hospitals, disconnected water supply in case of 34 hospitals and disconnected sewage in case of 7 hospitals. Similarly, in case of the schools, the concerned departments are said to have sealed 127 schools, disconnected water supply in case of 83 schools and disconnected sewage in case of 6 schools. These figures can be either individually or cumulatively. Be that as it may. The fact remains that the State being alive to the situation, has taken steps in this regard which would partially allayed the apprehension expressed by the petitioners. However, the fact remains that there are several hospitals in the Nagarpalika areas and the schools are still non compliant. In the event of there being untoward fire accident, the possibilities of precious lives of citizens being lost cannot be ruled out. As such, it would be not only in the interest of the citizens but also in the interest of the State, which is a welfare State that steps preventing the said hospitals from being put to use in toto should be taken. For instance, those

hospitals which are being run without fire NOCs can be allowed to operate with OPD services till such steps of obtaining valid fire NOCs take place so as to ensure that the needy patients are not left in the lurch. Likewise, the schools where the children would be attending the classes, now particularly in the wake of the schools having been opened physically or being attended to by the students, it would be apt and appropriate that the State should strictly enforce that such of those schools which do not possess the fire NOCs would not operate till compliance as it would not only protect the children but also the teachers and all other stakeholders in the system of dispensation of education in those schools. We do hope and trust that the State would take immediate steps in this regard for prohibiting such of those hospitals from operating except for OPD till compliant of fire NOCs and same is also extended to the schools.

[5] Insofar as the high rise buildings without Building Use Permission are concerned, the affidavit filed by the Joint Secretary, Urban Development and Urban Housing

Department would disclose that there are around 1,863 high rise buildings without Building Use Permission as on 20.12.2021 and a miniscule 28 high rise buildings have been sealed. Water supply in respect of 60 high rise buildings have been disconnected and sewage connection has been disconnected in case of 78 high rise buildings. These figures can be disjunctive and conjunctive. The learned Advocate General has made a statement that the speed with which the officials for proceeding to seal down such of those buildings which did not possess the Building Use Permission had got slowed down due to the prevalent pandemic or surge of the third wave resulting in officials being diverted for the said COVID work being carried out cannot be brushed aside or in other words, the reason for enforcing for sealing of such of those buildings has to be accepted as a reasonable cause for not enforcing the same. However, the State shall take immediate steps to seal such of those buildings which lack Building Use Permission as it would fall within the category of unauthorized construction or unauthorized building or unsafe buildings attracting Regulation 3.8.1 of GDCR and

the State shall place on record by next date of hearing the number of buildings which would have been either made or ensured that they would fall within the category of compliance / compliant of building regulations or alternatively sealing of such of those buildings which would otherwise fall outside the said category so as to ensure that due to any untoward incidents that would happen in case of high rise buildings would prevent the precious lives of the citizens are saved.

[6] Having perused the affidavits filed by the Municipal Corporations of Jamnagar, Vadodara, Gandhinagar, Junagadh and Rajkot, we are of the considered view that the steps taken by the said corporations seem to be not with utmost seriousness. We say so for the simple reason that in respect of Jamnagar Municipal Corporation even according to the said authority five high rise buildings are without fire NOCs. Except stating that they have been issued with three notices and water works departments having been directed to disconnect the water supply, there is no material placed on record to establish as to whether the Municipal Corporation has taken steps to seal

down the said building as sub-section 1 of Section 25 of the Gujarat Fire Prevention and Life Safety Measures Act, 2013 empowers the Director or the Regional Fire Officer or the Chief Fire Officer as the case may be to take such steps without prejudice to initiating prosecution against the offenders. In fact, no steps have also been taken against the persons who were non compliant by initiating appropriate prosecution before the jurisdictional courts. Mere shedding of the tears without any sincerity would not be an answer to accept the plea of reasonable steps having been taken by the Municipal Corporations. Yet another incident which is glaring on the face is relating to Jamnagar Municipal Corporation whereunder the number of high rise buildings without Building Use Permission certificate are 20 in number and only in respect of one high rise building that too a Gymnasium room has been sealed which *prima facie* seems to be an eye wash. This Court is not required to remind the authorities of what steps they are required to take under the Act as the provisions of the Act and the rules are expressive, clear and unambiguous. As such the State would be at liberty

to proceed against such of those erring officers who have failed to take steps, which would be in the best interest of protecting the precious life of the citizens. By the next date of hearing, the Municipal Corporations of the State shall place on record through the affidavits of the respective Chief Officers / Commissioners / Chief Fire Officers, as the case may be, highlighting the steps taken including the prosecution, if any, launched.

[7] Mr. Mihir Joshi, learned senior counsel appearing on behalf of Ahmedabad Municipal Corporation has drawn the attention of the Court to the affidavit filed by the fourth respondent dated 12.02.2021 and 07.02.2022 whereunder the steps that have been taken have been explained in detail, enclosing therewith the statistics relating to the number of premises which have been sealed for non furnishing of Building Use Permission (unauthorized use) extent of illegal construction removal, the schools not possessing the requisite permissions having been sealed, closure notices is issued to the hospitals and schools and the follow action taken as well as the implementation of the directions issued. The

counsel for the petitioner can respond to the same, if so advised.

[8] Re-list on **10.03.2022**.

(ARAVIND KUMAR,CJ)

DHARMENDRA KUMAR

(ASHUTOSH J. SHASTRI, J)