

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 118 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 14157 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**=====

AMIT MANILAL PANCHAL**Versus****STATE OF GUJARAT**

=====**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 WITH MS MANISHA****LAVKUMAR, GP WITH VIJAY BAIRAGRA, 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**

=====**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE**
ARAVIND KUMAR**and****HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI****Date : 04/04/2022****COMMON ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)**

1. Learned Advocate General would submit that earlier order passed by this Court on 15.2.2022 has been complied in its entirety namely, hospitals which are coming under compliance category with BU permission have not been

permitted to be occupied or continued to be used. He would also hasten to add that survey has been commenced in respect of buildings located in all the Nagarpalikas to ascertain as to which of those buildings can be brought under compliance category and those buildings which cannot be brought under compliance category namely, with reference to high-rise buildings. He would also submit that said survey is on the verge of completion and a report in this regard would be filed before this Court and prays for some time being granted. His submission is placed on record.

2. Shri Munshaw, learned panel counsel appearing for Jamnagar Municipal Corporation has drawn attention of this Court to the affidavit dated 3.3.2022 of the Municipal Commissioner to contend that there are 99 Schools located within the Municipal Corporation limits out of which, 98 schools are in compliance category and one Government school, which is without fire safety compliance, has been sealed by the authority namely, 1st and 2nd floor has been sealed. He would also contend that out of 112 hospitals located within the Municipal Corporation limits, 111 are in compliance category

and one hospital, namely, Government Mental Hospital, which is not having Fire Safety Certificate, has already undertaken steps for ensuring fire compliance and probably by this time, it would have even met fire safety compliance also.

9

3. Municipal Commissioner, Jamnagar Municipal Corporation has filed a further affidavit whereunder it is stated that, there are 20 high-rise buildings in the city of Jamnagar and 18 buildings are approved with Building Usage Permission and of remaining two, one high-rise building namely, Kanchanjanga Apartment is not having NOC/Fire Safety Certificate from the competent authority of Jamnagar Municipal Corporation and it has not opted for Building Usage Permission though Building Development Permission has been obtained as back as in September, 1980 from the then Jamnagar Municipal Commissioner. Hence, individual notice to 28 flat owners is said to have been issued on 22.2.2022. In so far as the second building namely, Shree Gurunanak Co-operative Housing Society is concerned, the affidavit states that Building Usage Permission from Jamnagar Municipal Corporation is not obtained though NOC/Fire Safety Certificate from the competent authority of Jamnagar Municipal Corporation has

been obtained. Thus, both these buildings are not possessing Building Usage Permission and it is rather intriguing that though development permission appears to have been given decades back, Jamnagar Municipal Corporation seems to have gone into deep sleep by not taking any action against these two buildings and thereby driving the occupants to a great risk. As such, we reserve liberty to the appropriate Government to take immediate action against the concerned erring officials for not having taken any steps. Though it is stated that Shree Gurunanak Co-operative Housing Society is now within the territorial jurisdiction of Gujarat Industrial Development Corporation and a letter has been addressed by Municipal Corporation on 21.2.2022 to comply with orders of this Court, the affidavit is silent with regard to what steps the Municipal Corporation had taken till writing of such letter. In other words, the affidavit is silent with regard to any action having been taken against such of those buildings till 21.2.2022. Hence, it is open for the appropriate Government to initiate appropriate proceedings against the concerned erring officials for their inaction, if any.

4. In the further affidavit filed on behalf of Municipal

Commissioner, Vadodara Municipal Corporation, it is stated that there are 687 school buildings out of which, 685 school buildings have received fire NOC and two buildings are yet to receive NOC and it is stated that two schools namely, Shreerang Avdhut Vidyalaya and Shree Balkalyan Kendra have installed proper fire safety system but NOC is not provided due to accessibility of roadways. If it were to be so, it is for those schools to take appropriate steps. Municipal Commissioner, Vadodara Municipal Corporation shall take immediate steps in this regard, since in these schools, children of tender age would be studying and any mishap if occurred, would not only be disastrous but would be a hurricane task for the fire safety authorities to take any reasonable steps as there is lack of accessibility to these buildings. Hence, it would be in the interest of these young students studying in these two schools that authorities will take steps and interest of the children is not sacrificed. The Municipal Commissioner, Vadodara Municipal Corporation shall immediately take all such reasonable steps as expected of a normal prudent administrator to protect and safeguard the interest of young students. Insofar as high-rise buildings are concerned, said affidavit would disclose that there

are in all 737 high-rise buildings in the limits of Vadodara Municipal Corporation which are having height of 15 meters and above. It further states that 725 buildings are having No Objection Certificate/Fire Safety Certificate out of which, 11 are without such certificates and out of 11, 4 buildings namely, Hardik Chamber, Vraj Siddhi Tower, Citadel Complex and Kankavati are said to have taken steps to install fire safety measures and have commenced installation in order to obtain No Objection Certificate (Fire Safety Certificate), after the said buildings were partially sealed. Affidavit further discloses that remaining seven high-rise buildings (residential and non-residential) have been issued with notices in the months of January and February, 2022 as per Annexure-E (collectively) and further steps to disconnect water supply, electricity supply and drainage connection and even sealing the properties would be taken in the event of there being no compliance at the end of occupants of said buildings of obtaining NOC/Fire Safety Certificates within a short period.

5. We trust and hope that the Municipal Commissioner, Vadodara Municipal Corporation would take steps for ensuring safety of the students studying in the aforesaid two schools and

if any of the schools were failing to meet the prescribed standards or report compliance, he may take steps of sealing such of those schools and/or ensuring shifting of those schools to appropriate buildings which would be in compliance of fire safety measures.

6. Further affidavit filed by the Municipal Commissioner, Rajkot Municipal Corporation, respondent No.8 would also disclose that all 1021 high-rise buildings (residential and non-residential) located in the city of Rajkot are issued with NOC/Fire Safety Certificate and two applications namely, relating to Government Hospital and Railway Hospital have been received and compliance is said to be progressing and it is stated that same would be completed within a week. Said affidavit would also disclose that 580 schools and colleges are issued with NOC/Fire Safety Certificate. Said affidavit is placed on record.

7. Further affidavit of the Municipal Commissioner, Rajkot Municipal Corporation dated 8.3.2022 would disclose that, there are 52 high-rise buildings reported to be without BU permission as enumerated in Annexure-A appended to said

affidavit. Amongst them, owners/occupants/developers of 24 buildings are said to have approached competent authority of Rajkot Municipal Corporation for BU permission after being issued with notices and it is stated that they are being issued BU Permission between 21.12.2021 and 5.3.2022 as per list appended to the affidavit at Annexure-B. Insofar as four high-rise buildings are concerned, water connections are said to have been disconnected of those buildings as indicated in Annexure-C and seven high-rise buildings as indicated in the statement at Annexure-D, which is without BU Permission, are said to have been sealed. In respect of remaining 17 high-rise buildings, notices are said to have been issued under Section 268 of the Gujarat Provincial Municipal Corporations Act, 1949 vide Annexure-E (collectively). Eight hospitals are partially or fully sealed by the Town Planning Department vide Annexure-F. Said affidavit is placed on record.

8. Affidavit filed by In-Charge Fire Officer, Gandhinagar Municipal Corporation would disclose that in all, 240 buildings are required to obtain NOC/Fire Safety Certificate from the competent authority which includes high-rise buildings

(residential and non-residential), hospitals (Government and private) as well as schools and colleges and in all, 234 buildings are said to have been duly issued with said certificate by the competent authority and 6 residential buildings are said to have submitted applications for renewal of NOC/Fire Safety Certificates. The deponent further states that said certificates would be issued after due compliance by the concerned applicants and in the event any of the applicants failing to meet the norms, further action including disconnection of water supply and sewage connection as well as electricity connection would be taken. Said affidavit is placed on record.

9. The Municipal Commissioner, Gandhinagar has filed an affidavit dated 05.03.2022 whereunder it is stated that there are, in all, 412 high rise buildings within the territorial limits of Gandhinagar Municipal Corporation, out of which, 14 buildings are without any Building Usage Permission from the competent authority of Gandhinagar Municipal Corporation. It further states that 9 applications have been received from the developers / building owners for grant of Building Usage Permission and a list of the same is appended to the affidavit at

Annexure-B. The affidavit also states that notices have been issued in respect of four high rise buildings as per Annexure-C and three out of four have responded to the said notice. It further discloses that as far as Skyline Builders are concerned, Gandhinagar Municipal Corporation has sealed 8th to 11th Floors of the building. Though averments made in the affidavit are to the effect that Writ Petition (PIL) No. 27 of 2021 is pending before this Court and Skyline Builders have also preferred Special Civil Application No.3329 of 2022 against sealing and non-grant of Building Usage Permission, no steps seem to have been taken. The affidavit is silent with regard to any order of restraint being imposed by any Courts on the Gandhinagar Municipal Corporation from taking further steps in the matter. In other words, GMC seems to be dragging its feet in not taking any serious action and/or the proceedings relating to issuance of notices are not being taken to its logical end. As such, the appropriate Government is directed to examine the issue as to how officials who are responsible for allowing the building being constructed in contravention of the approved plan are not being proceeded with and take such steps as he deems fit. The affidavit also states that superstructure known as "Pratik Mall"

is being used without Building Usage Permission and notices issued on 04.01.2022 and 03.03.2022 have not been responded. This again is a classic case where the officials of Gandhinagar Municipal Corporation seem to be turning a blind eye to the illegality being perpetrated and continued. We do hope and trust that the State would step-in and take appropriate steps to prevent recurrence of such incidents. At this juncture, Mr. H. S. Munshaw, learned counsel appearing for the corporation would submit that he would obtain further instructions in the matter and if necessary, would place on record the developments that have taken place by way of additional affidavit and he seeks for short accommodation.

10. In the further affidavit dated 10.03.2022 filed by the Municipal Commissioner, Gandhinagar, it is stated that two hospitals are not having Building Usage Permission and as such, they were issued with notices on 09.09.2021, 11.10.2021 and 09.03.2022 and also notices under Section 268 of the Act have been issued. As to whether said notices which were issued way back on 09.09.2021 has been taken to its logical end remains as a moot question and averments made in the affidavit are silent

about these aspects. Hence, the Municipal Commissioner, Gandhinagar is directed to place on record as to what steps have been taken in this regard and make available the original records for perusal by this Court. Said affidavit also discloses that there are 61 school / college buildings and all are having NOCs / Fire Safety Certificate and 28 schools and colleges are said to be without Building Usage Permission. Hence, notices are said to have been issued on 09.03.2022 calling upon said institutions to furnish proof of possessing Building Usage Permission. The deponent has assured this Court of action being taken against the management of two hospitals as well as 28 schools / colleges not having Building Use Permission and yet continuing to operate. Hence, to enable said authority to place on record further steps taken in this regard, we grant further time.

11. Mr. H. S. Munshaw, learned counsel appearing for the corporation would also submit that he would place on record the action taken against the erring officials. His submission is placed on record.

12. The Additional City Engineer (Civil), Surat Municipal Corporation has filed an affidavit on behalf of Surat Municipal Corporation stating thereunder that insofar as Building Usage Permission certificate by the hospitals are concerned, there are 165 hospitals without such Building Usage Permission and 159 hospitals are said to have been sealed by the competent authority and out of the remaining 6 hospitals, 4 hospitals are operating as OPD only and 2 hospitals have been found to be regularized under GRUDA Act and issued certificate of regularization. It also further discloses that in all 580 buildings with Building Usage Permission are located in Surat City, out of which, 384 are high- rise buildings (15 meters height or above) and all these buildings are not in compliance zone and even in the past, said buildings were sealed and certain buildings which did not fall in line with the prescribed parameters had been demolished.

13. It further states that 384 high rise buildings have been issued with statutory notices to comply with the requirement of Building Usage Permission and 7 buildings have been demolished and 74 such buildings which do not possess

Building Usage Permission have been sealed. In respect of 53 buildings, water / drainage supply is said to have been disconnected and 59 buildings are either being used or being issued Building Usage Permission after ensuring their compatibility with the regulations and 6 buildings / complexes are said to have applied for obtaining Building Usage Permission which are under scrutiny. Affidavit further discloses that in respect of 5 buildings, matters are pending before various courts of law and status quo order has been passed and as such, no punitive action is said to have been taken. The details thereof are produced by way of a Chart at Annexure-R2 appended to said affidavit. The affidavit discloses that 563 schools are located in the city of Surat, which possess "Fire NOC". There are 879 Private Hospitals and 5 Government Hospitals out of which, two are without Fire NOC and in respect of the Civil Hospital, tender process is said to have been already carried out and work order is being issued shortly. It further states that in Maskati Hospital, only limited access to ground, first and second floor is permitted, whereas floors starting from third upto seven are sealed in accordance with Fire Act and Gujarat Provincial Municipal Corporation Act. Even, Maskati

Hospital is stated to be underway for installation of fire safety equipment.

14. Insofar as high-rise buildings are concerned, it is stated that there are in all, 2,193 buildings out of which, all possess Fire NOC and they are in full compliance. Likewise, 9,356 Assembly Buildings are also said to have Fire NOC and being in compliance zone.

15. As far as storage buildings and hazardous buildings are concerned, there are 134 such buildings in the City of Surat, as stated in affidavit at paragraph 5.3.3, out of which, all the 132 buildings have obtained Fire NOC and are in full compliance. As far as other buildings like Banks, Offices, Laboratories and Mercantile Building are concerned, they are 210 in number which do possess Fire NOC.

16. The said affidavit is placed on record and the coercive steps are taken against the erring persons shall be placed on record by the next date of hearing.

17. The Deputy Municipal Commissioner (General), Bhavnagar Municipal Corporation has filed an affidavit stating thereunder that there are 126 schools out of which, 120 schools have Fire NOC and 6 Government Schools and Colleges do not possess Fire NOC. Since we have come across in the affidavits filed by the respective Municipal Corporations or Nagarpalikas that certain school and college buildings do not possess Fire NOC or they are not in compliance category under the Fire Safety Act, we direct the State Government to place on record, by next date of hearing, the number of schools and colleges belonging to Government, District-wise, and said affidavit shall disclose as to whether they would fall under the compliance category or otherwise and if not, time frame within which they would be made to fall within the compliance category.

18. The affidavit of Bhavnagar Municipal Corporation would disclose that all the 154 hospitals located in the City are possessing Fire NOC and as far as high-rise buildings are concerned, out of 320 buildings, 149 buildings possess Fire NOC and 171 buildings do not possess Fire NOC and as such, 16 buildings were either sealed or water connection has been

disconnected and installation is said to be under way for the remaining 155 high rise buildings. Hence, the Municipal Corporation shall place on record by the next date of hearing as to whether all these buildings have complied with Fire NOC or otherwise.

19. Though, aforesaid affidavit discloses that out of 52 buildings, 9 buildings have Fire NOC and 10 buildings are underway to fall within the category of Fire compliance, it would clearly indicate that still 33 buildings do not possess Fire NOC and no steps have been taken by the Municipal Corporation either under Section 268 of the GPMC Act or steps having been taken to close down / seal those buildings. Hence, it is high time that the Municipal Corporation takes immediate steps in this regard.

20. As regards hazardous buildings are concerned, which is said to be 25 in number, 23 buildings are said to be possessing Fire NOC and out of the 2 buildings which do not have Fire NOC, the installation is said to be under way. Out of 270 business buildings, only 122 buildings have Fire NOC and

out of 148 buildings, only 12 buildings have been sealed and 136 buildings have been issued notices. As to the details of the notices so issued, steps taken pursuant to it and follow up actions, if any, taken by the officials of the Corporation, affidavit is silent. The details therefor be placed on record by the said Corporation by next date of hearing.

21. Insofar as Building Usage Permission is concerned, there are said to be 836 buildings out of which, 548 buildings have been issued Building Usage Permission and 84 buildings were also issued for Building Usage Permission between 01.01.2021 and 05.03.2022. Thus, total number of buildings which have been granted Building Usage Permission comes to 632 till 05.03.2022. Details of steps taken for sealing and issuance of notices are enumerated in paragraph 5.1 and the Chart relating to the same is appended to the affidavit at Annexure-R2. The said affidavit is placed on record.

22. Insofar as Ahmedabad Municipal Corporation is concerned, by our order dated 15.02.2022, we had called upon the Municipal Corporations of the State to place on record

through the affidavits of respective Chief Officers / Commissioners / Chief Fire Officers, as the case may be, highlighting the steps taken including the prosecution, if any, launched.

23. The affidavits referred hereinabove would disclose the steps taken by various Nagarpalikas/Municipal Corporations except Ahmedabad Municipal Corporation. Hence, we direct Ahmedabad Municipal Corporation to place on record by way of an affidavit steps that have been taken against such of those buildings which do not possess Building Usage Permission or Fire NOCs which still continue to be used or occupied.

24. We are of the considered view that it is high time that Ahmedabad Municipal Corporation takes penal action against such of those persons who have not obtained the permission and are still using the building by exploring the possibility of launching criminal prosecution against those persons, who have not responded to the notices issued by Corporation which necessarily would be in accordance with law.

25. At the request of Shri Kamal Trivedi, learned Advocate General, we direct the Registry to re-list these matters on 04.05.2022.

(ARAVIND KUMAR,CJ)

RADHAKRISHNAN K.V.

(ASHUTOSH J. SHASTRI, J)