

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2017****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2020****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR JOINING PARTY) NO. 2 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 3 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 4 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 5 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 10 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR STAY) NO. 11 of 2015****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 12 of 2016****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 13 of 2015****In R/WRIT PETITION (PIL) NO. 350 of 2013****With****CIVIL APPLICATION (FOR DIRECTION) NO. 14 of 2015****In R/WRIT PETITION (PIL) NO. 350 of 2013****With**

CIVIL APPLICATION (FOR AMENDMENT) NO. 15 of 2015
In R/WRIT PETITION (PIL) NO. 350 of 2013
With
CIVIL APPLICATION (FOR DIRECTION) NO. 19 of 2015
In R/WRIT PETITION (PIL) NO. 350 of 2013
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 20 of 2015
In R/WRIT PETITION (PIL) NO. 350 of 2013
With
R/WRIT PETITION (PIL) NO. 8 of 2012

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BHAVIK SHAILESHBHAI SHAH

Versus

STATE OF GUJARAT & ORS.

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Appearance:

WRIT PETITION (PIL) NO. 350 of 2013

MR YOGESH G KANADE(3114) for the Applicant(s) No. 1
 MR G H VIRK(7392) with MS NANCY SHETH for the Opponent(s) No. 2
 MR APURVA R KAPADIA(5012) for the Opponent(s) No. 6,9
 MR AR THACKER(888) for the Opponent(s) No. 8
 MR CHETAN K PANDYA(1973) for the Opponent(s) No. 5
 MR PJ MEHTA(467) for the Opponent(s) No. 1
 MR PRAFULL K PATHAK(2748) for the Opponent(s) No. 7
 MR SP MAJMUDAR(3456) for the Opponent(s) No. 11
 MS DHARMISHTA RAVAL(707) for the Opponent(s) No. 10
 RULE SERVED for the Opponent(s) No. 3,4,5

WRIT PETITION (PIL) NO. 8 of 2012

MR RAMNANDAN SINGH(1126) for the Applicant(s) No. 1
 MR GH VIRK, GOVERNMENT PLEADER with MS DHARITRI PANCHOLI, AGP for the Opponent(s) No. 1
 M/S TRIVEDI & GUPTA(949) for the Opponent(s) No. 2
 NOTICE SERVED for the Opponent(s) No. 3
 RULE SERVED for the Opponent(s) No. 2
 RULE UNSERVED for the Opponent(s) No. 1

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS.

JUSTICE SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 06/09/2024

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

1. The present petition filed in the nature of Public Interest Litigation is pending since more than 10 years. The reliefs sought in the Writ petition are pertinent to be noted hereinunder :-
 - A) To put complete ban on the any construction without parking facility, "Change of Use Permission", "Business Use Permission" from Respondents and without permission from respective authority in the residential zone Manekchowk of Ahmedabad City.
 - B) To establish parking center for the illegal commercial buildings from the fine-penalty recovered from the persons who had constructed building without complying the law and from the Respondents, to solve the problem of traffic and parking.
 - C) Pending hearing, admission and final disposal of this petition be pleased to direct authorities to inquiry and take legal action on the addresses mentioned in Annexure "B" herewith by Petitioner and other victim's affidavit."
2. The petitioner is raising dispute with respect to Manekchowk area, which is located in old walled city known as old city in Ahmedabad. The issue, however, gradually boiled down to addressing the grievances pertaining to the units engaged in making gold and silver ornaments in the old walled city of Ahmedabad,

known as Manekchowk area.

3. Vide order dated 02.05.2016, taking note of the list of different manufacturing units, broadly categorised in three parts, the Court has sought the response of the Gujarat Pollution Control Board. As noted from the order dated 02.05.2016, a total of 70 units were categorised in the first category where according to the Corporation, the nature of activity was innocuous and, therefore, would not require any licensing control by such units. The second category was pertaining to the units where licences subject to verification can be granted. The Corporation has clubbed 2063 units in the said category. Third category included 88 units, which according to the Corporation, due to some reason or the other, may not be permitted to operate. The reasons pointed out by the Corporation with respect to the said units are noted in the order dated 02.05.2016 as under :-

"(i) In units where silver/gold melting is being carried out through electric furnace, the said unit/units require NOC from GPCB/Appropriate Authority.

(ii) In units where silver/gold melting is being carried out through diesel and/or charcoal, the said unit/units must be sealed.

(iii) In case of units where small amount of acid/chemical is being used, the said unit/units need to obtain NOC from appropriate committee (which is formed as per the order issued from Honourable High Court.)"

4. The learned advocate appearing for the GPCB, however, in response would submit that none of the units were

required any license from the Pollution Control Board. In order to bring the response of GPCB, time was granted to file affidavit to narrate as to whether any of the activities by 88 units falling in the third category would require consent, no objection or license from GPCB.

5. It seems that on a Civil Application (For Direction) No. 8762 of 2016, seeking direction to the respondents to open the seal of the House bearing No. 1317, Raja Mehta-ni-Pol, Kanji Divan no Khancho, Ahmedabad by order dated 19.09.2016, a direction was issued to the Corporation to remove the seal on the premises in question subject to the conditions that the applicant therein shall file an undertaking before the Court that the premises in question would be used only for residential purposes and no commercial or non-residential activities would be carried out and in case of any breach of the said condition, it would be open for the Corporation to seal the premises in question in addition to taking further steps for breach of such undertaking.
6. It was noted by this Court in the order dated 19.09.2016 that the petitioner herein filed the Writ petition in the nature of PIL with a prayer to put complete ban on construction and usage of such premises for commercial use, inasmuch as, many buildings which are constructed for residential use, according to the petitioner, are being unauthorisedly used for commercial purposes, mainly for making jewelry. The main grievance raised by the

petitioner was that such activities of commercial use was causing pollution.

7. It seems that pursuant to the orders passed by this Court, Ahmedabad Municipal Corporation has effected seal on buildings which were used unauthorized for commercial purposes and the buildings in question were sealed only on the ground that there were shops on the ground floor, which were used for commercial purposes for the manufacture of jewelry.
8. Taking note of the above facts and the main prayer made in the Writ petition, we may note that the petitioner has filed the instant petition with the wrong premise that the area which is known as Manekchowk existing in walled city known as Pole is an area of purely residential use and the commercial activities in the constructions which were raised initially for residential purposes cannot be carried out.
9. We may note that as per the assertion made by Mr. G.H. Virk, learned counsel appearing for the Ahmedabad Municipal Corporation, the area known as Manekchowk in the old city, which is old walled city is of mixed use and contains many heritage structures. There are residences and shops of the people in the locality. There are many structures where people have shops at the ground floor and residing on the first or second floor. In such scenario, a vague prayer made by the petitioner to remove all illegal construction for providing parking

facility in the Manekchowk area or to address the parking problem, cannot be granted.

10. In the connected PIL being Writ Petition (PIL) No. 8 of 2012, filed by one person stated to be the President of the Society known as Khadia Jan Seva Samiti, a registered society under the Societies Act, 1860, prayer has been made to issue directions to the respondents to take necessary action either to demolish the construction of commercial premises on House Nos. 129, 139, 154/2, 158 and 248 in Gusa Parekh ni Pol, Khadia, Ahmedabad or to take any other legal action where under direction be issued not to use the newly constructed premises for any commercial activity. The area known as Gusa Parekh ni Pol, Khadia, Ahmedabad is also located inside the walled city and as per the submission of Mr. G.H. Virk, learned advocate appearing for the Municipal Corporation, the area is of mixed use. For any particular constructions raised by any one illegally, it would always be open for the Corporation to initiate action by issuance of a proper notice.
11. Vague assertions made in the Writ petition with regard to constructions raised by the owners of the houses in question and using the premises for commercial purposes cannot be a reason to grant any relief.
12. Moreover, the last order in the PIL is of the year 2016. For more than 8 years, the petitioner has not pressed the prayer in the PIL into service. The current status

and position of the area has not been brought on record by means of any affidavit filed in the recent past. We, therefore, dismiss both the PILs on the ground that the reliefs prayed therein cannot be granted. Interim relief, if any, granted earlier shall stand vacated.

13. All pending Civil Applications stand disposed of.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI