

7. The Police Inspector

Sarthana Police Station, Nr. Viraj Chowk,

Surat.

...Respondents

TO,
THE HONOURABLE CHIEF JUSTICE
AND THE COMPANION JUDGES OF THE
HIGH COURT OF GUJARAT AT AHMEDABAD.

The humble petition of the Petitioner
above named;

MOST RESPECTFULLY SHEWETH THAT:-

1. The present Writ Petition under Article 226 of the Constitution of India is being filed by the Petitioner seeking issuance of writ of Mandamus, or direction or order or any other writ thereby issuing necessary directions to the respondents herein to prevent further fire accident tragedies by implementing the National Building Code, as amended, and other relevant central and state laws in the field of construction of any buildings as it is the fundamental rights guaranteed under Articles 14, 19, 21 and 21A of the Constitution of India. That the petitioner is a law abiding citizen of this country and filling the instant writ petition for the issuance of a writ of mandamus or any other appropriate writ to respondent to frame guidelines or policy or constitute committee to look into the instant issue keeping in mind the recent fire tragedy occurred at Takshashila Arcade in Surat on 24.05.2019 where 22 students died in the devastating fire that engulfed the four storey building at Sarthana, Surat. So far as the present Petitioner is concerned, the Petitioner is a public spirited person and a law abiding citizen and is actively involved in the issues of public importance and the present Petition is filed after getting information under the Right to Information Act 2005 with the authorities and through various other sources with regard to the above mentioned issues.

Hence, there is no personal interest in the litigation except for the benefit of the public at large. The Petitioner has not filed any other Public Interest Litigation with regard to the present subject matter.

2. The Petitioner is a resident of Surat City and the Petitioner has also filed three Public Interest Litigation being Writ Petition No.66 of 2016 (PIL) before this Hon'ble Court with regard to air connectivity at Surat Airport, Writ Petition (PIL) No.94 of 2018 with regard to mall parking and Writ Petition (PIL) No.32 of 2019 with regard to prohibition for movie goers to take outside food in cinema and multi-plex which is pending for adjudication. It is submitted that no contempt proceedings is ever initiated against the Petitioner. It is submitted that, the Petitioner had conducted various public awareness programs such as organizing drawing competition on Surat airport, also by displaying hoardings within the city containing valuable information for the awareness among the people of Surat and also by creating public awareness through social media platforms with regard to social issues. That considering the background of the present Petitioner, he is having his own business relating to civil construction under the banner of M/s. S.S. Construction Company in Surat. That in the Public Interest Litigations preferred by the Petitioner earlier before this Hon'ble Court, no cost has been awarded on the Petitioner nor any stricture has been passed against the Petitioner at any relevant point of time.
3. The Petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. The litigation cost, including the travelling expenses and other expenses are being borne by the Petitioner himself. The Petitioner also submits that the source of income of

the petitioner is from its business, so the Petitioner has not mentioned any fixed income. It is also submitted that, the learned Advocates for the Petitioners are doing *pro bono* litigation for the present Petition and therefore, except some costs, there will be no further expenses to be borne by the Petitioner. The Petitioner is a law abiding citizen and there is no contempt proceedings till today against the present Petitioner.

4. **Facts of the Case:-**

- 4.1 At the outset the Petitioner states and submits that he is constrained to approach this Hon'ble Court through this present Public Interest Litigation as he is deeply aggrieved by the willful, negligent and neglectful attitude/acts/omissions of the Respondents and the Owners/licensees/occupiers jointly and/or severally and/or singularly resulting in the fatal incident of fire taking place at Takshashila Arcade in Surat on 24.05.2019 where 22 students died in the devastating fire that engulfed the four storey building at Sarthana, Surat (hereinafter referred to as the "said incident").
- 4.2 The Petitioner through various live reporting/newspaper reports/ also personally visited the place of incident came to understand that nearly 22 persons have lost their lives due to asphyxiation and jumping off the building to escape due to lack of any sort of fire evacuation plan as the fire intensified and blocked all exits. It also came to the knowledge of the Petitioner that the fire broke out as a result of short circuit and during the incident nearly 40 students were present in the building when the fire broke out.
- 4.3 The Petitioner states and submits that in the aftermath of the said incident the Petitioner came across various news articles and reports/also personally

visited the place of incident exposing the gross negligence and neglectful omission of the duties cast upon on the public officers/servants under several statutory enactments/guidelines/circulars/notifications/rules/regulations/notcess issued by the appropriate authorities under various Acts.

4.4 The Petitioner after going through these newspapers and articles and also after personally visiting the place of incident was shocked, anguished and surprised at the glaring negligence and deliberate omissions by the public officers/servants in compliance of the various fire safety norms laid down under various acts and issued by appropriate authorities thereby causing death of 22 innocent students.

4.5 The Petitioner while going through the said reports and articles came to understand that it appears that the Respondent No. 3 and 4 were in complete knowledge of the illegalities and flouting of the norms by the owner of the said building. Furthermore the Petitioner also came to understand that the officers of Respondent No. 3 had knowledge that an alternate staircase in Takshashila commercial building was sealed and the structure was regularized despite the illegal dome on the roof in 2012. It is submitted that the illegal dome structure of approximately 12-feet in height on the roof, where the Smart Design Studio (a coaching institute) classes were being held, was in existence since 2012 when the building was regularised under the Impact Fee Act for the commercial buildings. The fire brigade wing of the Surat Municipal Corporation conducted a fire safety survey of the commercial buildings in the city in December 2018 but no notice for the illegal structure (the dome over the roof) was served which was in

complete violation of Regulations governing them. It also appears that the electrical spark in the outdoor air-conditioning in north-western side of the building caused the fire. The fire spread very fast due to highly combustible materials such as multiple flex banners put up across the building. The fire had further spread to the upper floors through wooden panel of iron ladder between third and fourth. The false roof-ceiling and the designer tyres being used for students to sit accentuated the flames.

- 4.6 It is submitted that the second staircase, which was not made of iron or wood but of relatively less combustible concrete material, was permanently sealed at both the ends on third and fourth floor. This was a criminal act. It is submitted that, even the fire engines were not equipped with hydraulic lifts, the students were forced to jump off or either stay back in floor filled with massive fire and smoke. Hence it is utmost necessary for this Hon'ble Court, in public interest to take cognizance and monitor the whole process of investigation and ancillary issues in or in relation to the inquiry/investigation by the various Respondents.
- 4.7 The Petitioner while going through one such report/article came to know that the Respondent No.1 have started conducting preliminary inquiry and First Information Report has been registered by the Police and it has also come to the knowledge that fire audit is ordered to be conducted in schools and colleges whether fire equipments and facilities are there or not till then coaching class will be remained closed till then which is a major "crackdown" after the occurrence of the said incident. It is stated that it is glaringly clear after going through the said report/article that the Respondent No. 3 appears to have had prior knowledge of the illegalities and flouting of fire safety

norms in these places as such a huge "crackdown" on the said illegal structures was done within a day or so of the incident. Vicariously also the Respondent No. 3 is deemed to have the knowledge. It also appears to be clear that the Respondent No 3 even after having prior knowledge had taken no action whatsoever until the occurrence of the said incident, which took lives of 22 students. However Respondent No. 3 took no action on the same. It is also pertinent to mention that, one student namely Sarad Zalawadia who is living near Sarthana Area filed 5 complaints against the illegal construction and encroachment of Takshashila Arcade to the Respondent No.3 through complaint application of the Respondent No.3 but unfortunately the Respondent No.3 did not take any action whatsoever to the said complaint. The convenient lethargy shows clear collusion and malafide intent. Copy of the all 5 complaints is annexed hereto and marked as **Annexure-A**.

- 4.8 It is further stated that the Petitioner has also raised an issue of illegal constructions whereby in the residential zone most of the occupiers convert their residential building into commercial building which is situated on the road side wherein no fire safety norms are being followed by them. It is further submitted that the Respondent No.3 only collects commercial tax from such buildings but no action taken against such unauthorized constructions which are more prone to such more incidents in future. It is also submitted that the Petitioner also made various complaints against such unauthorized constructions to the Municipal Commissioner and Vigilance department but till date no authorities took action against such complaints as stated above clearly exposes the conduct of the officials of the Respondent No. 3. Copy of the information obtained by the Petitioner under the RTI and Copy of the Complaints by the Petitioner is annexed hereto and marked as

Annexure-B Colly and C Colly.

4.9 It is learnt by the Petitioner that the eye-witnesses and the families of the victims have stated before the Media that the Fire Brigade Officials who had arrived at the place of the incident did not have with them a proper safety gear to wear, neither were they aware of the protocols to follow. They also seemed lost as to where to start the evacuation process from. All of this resulted in loss of the most essential and critical time, which could have been utilized in saving lives of students. Further there was no extendable ladder with the fire department up to third floor and fourth floor even there was no net with them to save the student falling from the floor and even the water got extinct soon, therefore, the hydraulic crane was to be called which reached the place of incident after 40 minutes which wasted the critical time by then most of the students died. Further the Varachha area having 13.80 sq Km area with about 10 town planning scheme (approved) approximately and as per the norms one town planning scheme should have at least one fire station in each town planning scheme but surprisingly in Varachha area having more than 10 town planning scheme was having only 2 fire station constructed which is again in gross violation of established norms and also there are only 14 Fire Stations against the 128 town planning schemes (total) in the Surat City which shows there are no sufficient fire stations to counter any kind of emergency fire casualties. This also shows incompetency and unpreparedness of the Fire Department in coping with emergent situations, which led to the unfortunate deaths of innocent lives. In depth investigation is required as regards the preparedness and capacity of the existing Fire Brigade Infrastructure to deal with any type of Fire in the entire State and whether while the permissions were granted of proper audit and inspection

was carried out by the Respondents.

4.10 The Petitioner submits that it seems that there have been no Audits or Certificate issued within the framework as required under the provisions of the the Gujarat Fire Prevention and Life Safety Measures Act, 2013 by the licensed agencies in their respective areas. There has been a gross negligence and misconduct on the part of Respondent No. 3, 5 and 6 in not supervising and/or looking into timely Audits required to be done under the statute. Since the structure was entirely illegal then also it is surprisingly that the Respondent No.6 gave electricity connection to the said structure because of over load in connection which led to short circuit in occurrence to the said incident. This Hon'ble Court may also call for an examine the FIR lodged against the concerned persons as it is apprehended that even top officials must have been involved in the said incident which may not be scot free from the liability and conduct.

4.11 As per the BPMC Act, 1949 Chapter –VI , Duties and Power of the Municipal Authorities and Officers , Sub Section- 23, *The Securing and Removal of Dangerous Building and Places*. So its very clear that the entire responsibility to remove the Dangerous Illegal Construction within the Scope of Surat Municipal Corporation. On 26.11.2018 Police have registered a case of accidental death in the fire in Aagam Arcade commercial complex of Vesu, Surat city which claimed the life of a seven-year-old boy in the massive fire. The boy lost his life due to human error of absence of Fire Safety Equipments and Exit plans. The Building which is Occurred Fire tragedy on 24.05.2019 was not also maintained as per the CGDCR rule of Gujarat Government. And was not a valid Building Use Certificate (BUC) also.

- 4.12 That in 1970 The Indian Standard Institution, at the instance of the Planning Commission, published a National Building Code, being a national instrument to provide for uniform norms for construction of building across the country. Each state was expected to enact bye-law/ regulations governing building activity and development work in the respective state in accordance with the norms as laid down in the National Building Code. In 2005, the National Building Code of India 1983 was revised and replaced by the National Building Code of India, 2005 which is set out detailed norms for fire safety and life safety measures in the construction of buildings across the country. Though the fire safety and life safety measures were revised by way of National Building Code of India, 2005, however, none of those measures has been effectively implemented by the authorities.
- 4.13 The development regulations and various other statutory rules enjoin performance of various statutory duties and statutory obligations in respect to development of building which are to house hundreds of occupants. The life and safety of occupants is a matter of public importance and the issue raise relate to public concern & safety, which need to be decided at the earliest. "
- 4.14 That many of the code provisions have been incorporated by various State Governments and Local Bodies in their own building regulations. The Gujarat Fire Prevention and Life Safety Measures Rules 2009, framed under the Gujarat Fire Prevention and Life Safety Measures Act 2006, is an example to this, and is aimed to improve the status of fire safety measures in Gujarat. It is submitted that the acts and rules enacted by the State of Gujarat has well

defined on these points. According to Section 3 of the Gujarat Fire Prevention and Life Safety Measures Act, 2006, the developer, owner, occupier or whatever name called shall comply with all the fire and safety measures adhering to the National Building Code and as amended from time to time, failing which it shall be treated as a violation of the Act. It means that the onus of maintaining the fire safety installations in a building or in occupancy is the responsibility of the owner or occupier.

- 4.15 That in 1970 the Indian Standard Institution, at the instance of the Planning Commission, published a National Building Code, being a national instrument to provide for uniform norms for construction of building across the country. Each state was expected to enact bye-law/ regulations governing building activity and development work in the respective state in accordance with the norms as laid down in the National Building Code. That in 1983, the National Building Code of India was revised for the 1st time. That on 23.12.1995 the Dabwali fire accident occurred at Mandi Dabwali in Haryana. 540 people were killed due to fire caused by an electric generator short-circuited and the stampede. That in Feb. 1997 in Odisha religious in a congregation at Baripada Odisha, A calamitous fire broke out in which 206 people were dead and 148 were injured. The Uphaar Cinema fire, occurred on June 13, 1997 at Uphaar Cinema near Green Park in Delhi. It was the one of the worst fire tragedies in recent Indian history, killing 59 people and 103 were seriously injured. That on 23.01.2004 in Tamilnadu 49 people were killed and 40 were injured in fire at a marriage hall in Srirangam. That on 16.07.2004 In Tamilnadu, 94 school children killed in a fire accident in Kumba Konam. In 2005, the National Building Code of India 1983 was revised and replaced by the National Building Code of India, 2005 which is set out detailed norms for fire safety and life

safety measures in the construction of buildings across the country. Though the fire safety and life safety measures were revised by way of National Building Code of India, 2005, however, none of those measures has been effectively implemented by the authorities. That on 10.04.2006 the last day of the Indian Brand Consumer Show organized by Mrinal Events and Expositions at Victoria Park, Meerut witnessed the dawn of the day with hope, aspiration, pleasure and festivity at the Victoria Park Meerut, but as ill fortune (man-made) would have it, as the evening set in, it became the mute spectator to a devastating fire inside the covered premises of the brand show area which extinguished the life spark of 64 persons and left more than 100s as injured. That on 10.04.2006 In Kolkata, 24 persons killed in fire accidents at their residential cum office building.

4.16 In the introductory materials for the Code, the Bureau of Indian Standards affirms "The hazards of fire in educational buildings can be considerably lowered by adoption of certain predetermined fire safety measures with regard to proper planning of buildings, choice of proper materials and components, electrical equipments and making suitable provisions for fire detection and suppression system." That in 2016 a project for comprehensive revision of the code was taken up under the aegis of the National Building Code sectional committee of bureau of Indian Standards and its 22 expert panels, involving around 1000 experts. As a culmination of the project, the National Building Code of India, 2005 was revised, and the National Building Code of India, 2016 was brought into existence.

4.17 That on 15.03.2017, the ministry of consumer affairs of the Union of India passed a notification by which the Bureau of Indian Standards brought in

force the National Building Code of India, 2016, and cancelled the earlier National Building Code of India, 2005. That as per the New Code Refuge areas are such areas in a building where people can take shelter in case of a fire. As per the building and construction norms these areas are clearly demarcated in building plans itself. Refuge area provision applies to both commercial and residential buildings which fall under the high rise category for fire safety regulations. That the following provisions are extremely important in regard to the refuge area:-

1. The Refuge Area shall have a door which shall be painted or fixed with a sign in luminous paint mentioning "REFUGE AREA". The lift/ s shall not be permitted to open into the refuge areas.
2. It is further states that refuge areas will be designated exclusively for the use of occupants as temporary shelter and for the use of Fire Brigade Department or any other Organization dealing with fire or other emergencies and also for exercises/ drills if conducted by the Fire Brigade Department.
3. The proposed 'refuge area' shall be planned on the area facing the main road to allow access for Fire Engine.

4.18 The Petitioner respectfully submitted that the errant Developers / builders in Surat and almost in all cities in the State are selling spaces on super area basis in flagrant violation of the Court's directions to sell the spaces on carpet area. The areas free of FSI such as flower beds, voids, ducts, lobbies gardens, swimming pools, refuge areas etc. in all the projects are being sold by the

Developers.

- 4.19 It is further submitted that the provisions of refuge area blatantly violating all over the State and therefore, the lack of open space, verandas and terraces are meant for the people to exit in emergency but illegal stores, food courts and other commercial complexes have been erected. Such illicit constructions affect evacuation plans during an urgent situation are posing safety concerns and life threats. Escalators or lifts can't be taken as reliable sources to evacuate as early as possible as compared to staircases at the time of emergency. But, hardly any one finds sufficient staircases in an building.
- 4.20 It is submitted that the Refuge Area and its Misuse in High Rise Buildings is an another factor to be considered. "Refuge" areas are the areas in a building where people can take shelter in case of any fire, earthquake and natural disasters. These sections or areas are completely demarcated in building plans itself according to the building and construction norms. For fire safety regulations, the provisions of Refuge area apply on both residential and commercial buildings falling under the high-rise category. It is pertinent to note that the purpose of refuge area in a high rise building is to provide shelter and a place of congregation for occupant during egress from such high rise building in case of a calamity like fire etc. The refuge areas are therefore, permitted to be provided free of FSI as per norms either as part refuge or full independent refuge floors in a building after certain intervals accessible to the common staircase. However, many builders and developers are misusing this provision to gain undue commercial gains by seeking permission to build huge areas as refuge areas far in excess of norms

completely free of FSI and then merging them with the apartments to be used as habitable areas in the form of decks and terraces. This mal-practice is prevalent in the major cities of the State where maximum high-rise buildings have come up.

- 4.21 It is submitted that Unauthorized Construction is a Menace. The law is well settled that it is the right of every citizen to see that building by-laws are followed and Unauthorized construction is a menace and in fact there is a need to curb the evil of unauthorized construction which is quite rampant these days solely due to the appalling conduct / attitude of the concerned authorities. These unauthorized occupancies are very risky & dangerous for the occupants & public who visit these premises. That in the case of, Rumors of fire or bomb scare, Electric short circuit, Fire, Natural disasters like earthquake, storm and thunders, Water logging or flooding and Leakage of gas connection The above arias are highly required to meet the situation. It is respectfully submitted that time bound Fire Safety Audit is required in the field. Fire Safety Audit is found to be an effective tool for assessing fire Safety standards of an organization or occupancy. In other words, it is aimed to assess the building for compliance with the National Building Code of India, relevant Indian Standards and the legislations enacted by State Governments and Local Bodies, on fire prevention, fire protection and life safety measures.

- 4.22 Though a comprehensive fire safety audit can address the inherent fire hazards associated with the day to day activities in an occupancy and recommend measures to reduce the potential fire hazards, there is no clear cut provisions in any of the safety legislations in India regarding the scope,

objectives, methodology and periodicity of a fire safety audit. However, NBC of India recommends for periodical fire safety inspection by the key personnel of the occupants of the building to ensure fire safety standards. In case of industrial building, the statutory authorities insist for fire safety audit by external agencies depending on the type of activity and the nature of the materials handled in the building.

5. It is submitted that, the Petitioner has made representations to the authorities for taking an immediate and prompt action for the reasons stated therein but till not action has been taken by the respondent authorities, therefore, the Petitioner has been constrained to approach this Hon'ble Court seeking appropriate relief. Copy of the representations of the Petitioner is annexed hereto and marked as **Annexure-D Colly**.
6. That to the best of the knowledge and information of the present petitioner, no public interest litigation raising the same issue is filed before this Hon'ble Court or before any other Court.
7. The Present petition has been filed on the following amongst other grounds:-

GROUNDS

- (a) Because of that the rights of the school going children guaranteed under Articles 14, 19, 21 & 21 A of the Constitution of the India has been violated, especially in view of the directions issued by the Hon'ble Supreme Court in the case of Avinash Mehrotra Vs Union of India.
- (b) Because of in the case of S.P. Gupta Vs. U.O.I. reported in 1981 Supp. SCC 87 held that at page 210 authority it will defined PIL in the Indian Context and held that it would relaxed the rules of locus —standing and entertain cases by

third persons if the petition was in public interest. However, the Hon'ble Supreme Court by relaxing the rules of locus-standi allowed public spirited persons to approach the court for redressal of grievances on behalf of the silent suffering oppressed. Justice Bhagwati observed in the same judgment at ".....whenever there is a public wrong or Page 212: public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddling interloper but one who has sufficient interest in the proceeding.

(c) Because of the Hon'ble Supreme Court in Comptroller and Auditor General of India Vs. K.S. Jagannathan, AIR 1986-2- 679SCC has held that the courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred."

(d) Because of that the provisions of the National building code as amended time to time upto 2016 is blatantly violating by the speculative developers /

contractors / owners in connivance with the govt. authorities and thereby about 25 lacs people were losing their lives in different type of fire accidents tragedies.

- (e) Because of that the Hon'ble Supreme Court in the case in Civil Appeal No. 4741 of 2007 has observed that "Indeed, we can take judicial notice of an incident occurred in recent past in a restaurant in Mumbai where life of several innocent people sitting in the restaurant were lost due to lapses in ensuring compliance of safety measures. Yet another incident of the similar nature occurred few years in Upahar Theatre in Delhi where several innocent people lost their life due to non-observances of safety measures."
- (f) Because of that the Hon'ble Supreme Court in the case in Transferred Case No. 271 of 2017 has observed "as the important issue, pertaining to refuge area, FSI are engaging the attention of the Hon'ble Supreme Court. The developments carried out by the builders in building, which is to house hundreds of people are not question of rights of developers alone. The development regulations and various other statutory rules enjoin performance of various statutory duties and statutory obligations in respect to development of building which are to house hundreds of occupants. The life and safety of occupants is a matter of public importance and the issue raise relate to public concern & safety which need to be decided at the earliest."
- (g) Because of that the State should strictly implement the local laws and center laws in consonance or in accordance with the national building code for having complete protection to prevent the fire accidents tragedies.

- (h) Because of that the Hon'ble Supreme Court in friends colony developers committee Ltd. Vs. State of Orissa reported in 2004 (8) SCC 733 held only such deviations to be condoned as are bonafide.. .only can be excluded". Therefore, in the present scenario the above-mentioned tragedies are happening due to the clear and intentional violations of the provisions of the national building code and other local laws in the field.
- (i) Because of that the speculative builders blatantly violating the orders of the high courts as well as the Hon'ble Supreme court and constructing the buildings without following any orders of the constitutional courts as well as the provisions of national building code and other laws time being in force.
- (j) Because of that it is the need of the hour to bring the appropriate law and amendments in the existing law and the periodical survey in the construction field and there must have a verifications system time to time to prevent illegal construction and thereby to prevent the further tragedies like Kamala Mill tragedy, UPHAR Cinema tragedy and Meerut exhibition tragedy, Surat Takshilla Tragedy etc.
- (k) Because the life of every citizen is put into continuous danger due to non compliance to laws & rules so established and the right to life enshrined and protected under Article 21 of the Constitution needs to be interpreted again in the terms of the Fire Safety rule and the strict interpretation of laws so the calamities and mishaps can be prevented at the earliest.
- (l) Because the combined reading of eternal words of Preamble of Constitution of India, fundamental right of Freedom to speech and expression and

fundamental duties enshrined in Article 51A, Locus of a Citizen of India, in matters apparently in the nature of Public interest, is fairly established.

- (m) Because the existing guidelines, acts, codes, bye laws and rules are stale in the absence of proper implementing authorities, and also the existing authorities have failed honour their duties in the utmost respect of the constitutional provisions, therefore the justice demands a proper, fair and impartial system to regulate the misuse of fire safety rules and guideline and to insure the strict implementation of laws.
- (n) Because the violation of provisions of the Constitution and the laws enforced in the territory, including the non- enforcement of their provisions, endangers the order embodied in them is subjecting to the danger of life and liberty of the people at large and so becomes a fit subject on which a citizen may approach to the Courts.
- (o) Constitutional right of safety: every person has a constitutional right to safety and this right is not buried in some obscure constitutional amendment; it is found in Article 21, Article 19 read with the preamble of the constitution of India.
- (p) Principal of absolute liability; According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any person due to any accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be held absolutely liable.

- (q) The exception to the strict liability rule also wouldn't be considered. The rule laid down in the case of *MC Mehta v UOI* was also followed by the Supreme Court while deciding the case of Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the Public Liability Insurance Act in the year 1991.
- (r) 'Doctrine of *Parens patriae*': The State regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves. It is stated that *parens patriae* is the inherent power and authority of a State to provide protection to the person and property of persons non Sui juris, such as minor, insane, and incompetent persons. Also "The State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable to care for themselves." The Directive Principles as well as the Fundamental Rights enshrined in our Constitution make it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert these rights, the State comes into picture and protects the rights of such Citizens.
- (s) That the definition in Article 12 is only for the purpose of application of the provisions contained in Part III. Hence, even though a body of persons may not constitute 'State' within the instant definition, a writ under Article 226 may lie against it on non-constitutional grounds or on grounds of contravention of some provision of the Constitution outside Part III, e.g., where such body has a public duty to perform or where its acts are supported by the State or public officials. In *Ujjain Bai v. State of UP*, the Supreme Court observed that Article 12 winds up the list of authorities falling within the definition by referring to "other authorities" within the territory of India which cannot, obviously, be read

as ejusdem generis with either the Government or the Legislature or Local authorities. The word "State" is of wide amplitude and capable of comprehending every authority created under the statute and functioning within the territory of India. There is no characterization of the nature of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws.

- (t) The preponderant considerations for pronouncing an entity as a State agency or instrumentality are: financial resources of the state being the Chief finding source; the functional character being governmental in essence; plenary control residing in government; prior history of the same activity having been carried on by the government and made over to the new body; some element of authority or command. Whether the legal person is a corporation created by a statute, as distinguished from under a statute, is not an important criterion although it may be an indicium

9. That the Petitioner is seeking interim relief on the following grounds:-

GROUND FOR INTERIM RELIEF

- (a) The grounds for interim relief have been narrated in the present petition showing the required urgency.
- (b) Petitioner has a prima facie case. Balance of Convenience is in favour of the Petitioner. No irritable damage will cause to the respondent and also it is in the interest of the respondents also if interim relief prayed for is granted.
10. The Petitioner submits that, no other application or petition is filed or pending

before any other Tribunal, Court, Authority or Hon'ble High Court or Hon'ble Supreme Court of India in respect to the subject matter of this Petition except this petition before this Hon'ble Court.

11. The Petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this Petition.
12. That the Petitioner prays that this Hon'ble Court may be pleased to:-
 - (a) this Hon'ble Court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to ensure that fire safety and life safety measures in building are in accordance with the requirements of the national building code of India, 2016, as amended, and other existing local laws in the entire State;
 - (b) this Hon'ble Court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/ or directing the respondents for developing an "Centralized Audit Mechanism" so that quarterly or an yearly audit can be conducted over the existing buildings in regard to maintenance of updated status of the buildings of the public access, shopping complexes, malls, schools and educational institutions and courts etc;
 - (c) this Hon'ble Court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to implement the third party audit mechanism of the high rise buildings within the entire State after completion of the construction work;

- (d) this Hon'ble Court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to seal the entire constructed buildings which have violated the building bye laws norms and supported the illegal construction and carryout an investigation about granting sanction/ permission or issuance of NOC in the said projects by the government officials;
- (e) this Hon'ble Court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to fix the liability upon the erring officials, developer and owners of the such buildings for the appropriate compensation to the victims in view of the judgment of the Hon'ble Supreme Court in the case of Nila Behera (Smt.) vs. State of Orissa reported in 1993 (2) SCC 746 wherein the Hon'ble Supreme Court held "*acclaimed public law for compensation for contravention of human rights and fundamental freedoms is an acknowledged remedy for enforcement and protection of such right*"
- (f) this Hon'ble court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondent that no completion certificate or occupation certificate should be issued for any building unless the developer obtains a certificate from the concerned authority to the effect that the building has been constructed in accordance with the requirements of the National Building Code of India, 2016 and all applicable local laws;
- (g) this Hon'ble court be pleased to issue a Writ of Mandamus, a Writ in the

nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to seal the entire constructed buildings which have violated the building bye-laws norms and supported the illegal constructions;

- (h) this Hon'ble court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to make appropriate Fire insurance coverage and to be made it mandatory for all Shopping Complexes, Buildings, Malls, banquet, coaching classes and schools;
- (i) this Hon'ble court be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the respondents to amend such rule If anyone caught of violating these must needed rules and regulations on fire safety and building construction during checking, then rather penalizing them, their license must be cancelled temporarily or permanently on the basis of level of violation;
- (j) This Hon'ble Court may be pleased to set up a Judicial Commission under the Commission of Inquiries Act, 1956 for fixing up the accountability of Public Officers and Private Persons involved in the said tragic incident and the terms and conditions of reference for the inquiry may be decided as per the directions of this Hon'ble Court and further be pleased to direct the Judicial Commission to submit its report before this Hon'ble Court in time-bound manner;
- (k) This Hon'ble Court may be pleased to order setting up of a Special Investigation Team (SIT), comprising of IPS Officers not below the rank

of Additional Commissioner of Police (Crime) for continuing the present investigation in all the FIR which have been registered by the Respondent No.5 with regards to the said Incident and also investigate as to how and what basis the FIR have been filed invoking certain provisions and submit its report in a time bound manner for scrutiny of this Hon'ble Court;

- (l) This Hon'ble Court may be pleased to direct the Respondents to hand over the investigation/reports/documents/files pertaining to all the FIR to the said SIT within three days of forming of the said SIT;
- (m) Your Lordships may be pleased to grant any other relief or reliefs' as this Hon'ble Court may deem just, fit and expedient be granted in favour of the Petitioner;

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND SHALL FOREVER PRAY.

Place:

Date:

Drawn & filed by

[VISHAL J. DAVE & NIPUN SINGHVI]
ADVOCATES FOR THE PETITIONER