
2018 eGLR_HC 10006299

Before the Hon'ble MS BELA TRIVEDI, JUSTICE

BLB MALL MANAGEMENT COMPANY PVT LTD Vs. VADODARA MAHANAGAR SEVASADAN

SPECIAL CIVIL APPLICATION No: 12432 of 2018 , Decided On: 17/10/2018

(A) Headnotes are incorporated when published in GUJARAT LAW REPORTER.

Cases relied on :

- (1) Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal, 2013 (12) SCC 342
- (2) G. S. Dugal and Company (Pvt.) Ltd. v. (The) Municipal Corporation of the City of Ahmedabad, 1981 GLH 436,
- (3) Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017 (14) SCC 663
- (4) Ch. Madan Mohan and Others Vs. Municipal Corporation of Hyderabad, AIR 2003 AP 393
- (5) Swaran Singh and Ors. Vs. State through Standing Counsel and Anr., 2008 (8) SCC 435

SP MAJMUDAR for the PETITIONER(s) No. 1 TEJAS K MOTWANI for the PETITIONER(s) No. 1 NANDISH Y. CHUDGAR WITH KUNAL J. VYAS WITH HARD S. SONI for NANAVATI ASSOCIATES for the Petitioners SAURIN MEHTA for NANAVATI AND NANAVATI for the Petitioners MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER(1) with MS.JYOTI BHATT, AGP & TIRTHRAJ PANDYA, AGP for the State RESPONDENT(s) DHAVAL NANAVATI for NANAVATI AND CO. for the RESPONDENT(s) No. 1 SATYAM CHHAYA for Respondent No.3 (AMC)

BELA M. TRIVEDI, J. The main issue amongst other peripheral issues that falls for consideration before this Court is, whether the respondent Police Authorities could threaten the petitioners, who are the owners/managers of the malls/multiplexes to criminally prosecute them, if they collected parking fees from the visitors for parking their vehicles in the area earmarked for parking in their respective commercial complexes as required to be provided under the General Development Control Regulations, 2017 (hereinafter referred to as "the GDCR"). Considering the nature of issues involved in the petitions, they were heard together and are being finally decided at the admission stage, with the consent of the learned Advocates for the parties.

2. The facts in nutshell of each petition may be stated as under:-

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2.1 Special Civil Application No.12252 of 2018:- The petitioner is a Private Limited Company, running two Multiplexes by the name "Cinemark Theaters" at Vadodara. The first Multiplex situated at Pratapnagar, was opened in the year 2009 and the second Multiplex situated on VIP Road, was opened subsequently. According to the petitioner, both the properties were constructed after obtaining valid permissions (Raja Chitthis) and as per the building plans approved by the competent authorities. The petitioner was collecting parking charges from the visitors in order to facilitate the parking of their vehicles in the parking space provided by the petitioner. The said parking charges were being collected at a very nominal rate to meet with the expenditure incurred by the petitioner for deploying the security guards to manage the parking at the said multiplexes. The respondent Assistant Commissioner of Police, Vadodara City, however, issued a Notice (Annexure-C) to the Manager of the petitioner, informing him that the collection of parking charges was violative of the GDCR and the BU permission. He, therefore, was called upon to remain present in his office on 26.7.2018 along with the necessary documents to show as to under what authority the petitioner was collecting the parking charges. The manager of the petitioner accordingly had remained present before the authority and pointed out that there was no restriction under any law from collecting the parking charges, and that the notice was issued without jurisdiction. However, the petitioner was again served with the letter dated 26.7.2018 by the Police Inspector, Traffic Branch, Vadodara, informing the petitioner that if the petitioner collected the parking charges, necessary legal action shall be taken against the petitioner. The petitioner also received one notice dated 24.7.2018 from the Deputy Town Development Officer, Vadodara Municipal Corporation, directing the petitioner to take care that the visitors park their vehicles in the parking space. According to the petitioner, the issue with regard to the rates of parking charges, was earlier challenged in Special Civil Application No.17270 of 2014 and in Special Civil Application No.17552 of 2014, wherein the Court while admitting the petitions, and without prejudice to the rights and contentions of all the parties, had recorded the declaration made by the petitioners that they will charge Rs.10/- for two-wheelers and Rs.25/- for four-wheelers towards parking charges. The petitioner, therefore, has challenged the impugned notices issued by the Assistant Commissioner of Police and the Police Inspectors, Vadodara City, on the ground of being arbitrary and without any authority of law.

2.2 Special Civil Application No.12432 of 2018:- The petitioner in this petition is also a Private Limited Company, running a mall and multiplex by the name "Centre Square", near Genda Circle, Vadodara since 2009. According to the petitioner, the petitioner had put up construction of the said mall as per the valid permission (Raja Chitthi) issued by the Vadodara Corporation and as per the plans sanctioned by the competent authority. However, the petitioner was served with an undated notice by the Assistant Police Commissioner, Traffic Branch, Vadodara, (Annexure-C) informing inter alia that the collection of parking charges was violative of the GDCR and BU permission. The petitioner, vide the said notice was called upon to remain present on 26.7.2018 along with necessary documents to show as to under what authority the petitioner was collecting the parking charges. The said notice is under challenge in the petition, with a further prayer to declare that the respondent authorities have no legal authority to impose restrictions upon the petitioner for collecting parking fees for the mall and multiplex of the petitioner.

2.3 Special Civil Application No.14432 of 2018:- The petitioner No.1 in this petition is a Private Limited Company and the petitioner No.2 is the Senior Manager with the petitioner No.1

company. Pursuant to the invitation offered by the Ahmedabad Urban Development Authority (AUDA) for setting up an entertainment hub on the land situated opposite the Vastrapur Lake at Ahmedabad, the petitioner had offered its bid to construct/develop neighbourhood City Centre/Commercial Complex together with other amenities. In the bid, the offer of the petitioner having been accepted, the land was allotted to the petitioner, on which the petitioner constructed and developed a state-of-the-art shopping mall known as "Alpha One Mall" as per the permissions granted by the AUDA. The mall was opened for public use on 15.10.2011.

According to the petitioners, initially the petitioners did not charge any parking fees from the visitors, however, subsequently the petitioners having realized that the people visiting other places in the vicinity of their mall were also parking their vehicles in the parking area of their mall, which led to denial of the parking space to the visitors of the mall. The petitioners, therefore, decided to levy parking charges at Rs.10/- for two-wheelers and Rs.20/- for four-wheelers. The respondent No.3 Ahmedabad Municipal Corporation has assessed the said parking space and determined the rate of tax accordingly. However, the respondent No.2 Police Inspector, "A" Division Traffic Police Station, Shahibaug, Ahmedabad issued a notice on 21.7.2018 (Annexure-P/1), informing the petitioners inter alia that the collection of parking charges was violative of the GDCR and the BU permission granted to them, and calling upon them to remain present on 22.7.2018 along with the necessary documents to show as to under what authority they were collecting the parking charges. The petitioners were also threatened that if they continued to charge parking fees, necessary legal action shall be taken against them. The petitioners, therefore, gave reply on 22.7.2018 explaining the situation. The petitioners, thereafter, have challenged the legality and validity of the impugned notice dated 21.7.2018 (Annexure-P/1) issued by the respondent No.2.

2.4 Special Civil Application No.14508 of 2018:- The petitioner No.1 is a Private Limited Company incorporated under the Companies Act and the petitioner No.2 is the authorised signatory of the petitioner No.1 company. As per the case of these petitioners, they are running a shopping mall known as "V. R. Surat" situated at Final Plot No.29, T.P. Scheme No.4, Surat. The said mall was constructed after obtaining necessary permissions under the Gujarat Town Planning and Urban Development Act and also following the GDCR. The respondent No.2 Surat Municipal Corporation has been raising property tax bills since the year 2013-14 in the name of the petitioner No.1, assessing the property tax liable to be paid as the commercial use and specifically assessing the liability under the head "Pay and Park". Accordingly, the petitioners have been paying the property tax as per the bills raised by the respondent Corporation. It is further case of the petitioners that the petitioners have provided comfortable parking space in the mall as well as in the two plots hired by them adjoining the mall in question and are levying parking charges at a very reasonable rates. However, the petitioners received a show-cause notice dated 24.7.2018 from the respondent No.7 Assistant Deputy Commissioner of Police, Traffic, Surat City, calling upon the petitioners to submit explanation as to under what authority they were levying the parking charges from their visitors, as the GDCR and BU permission did not permit levying of parking charges. The petitioners, therefore, made a representation on 25.7.2018 explaining in detail about the permissions granted to the petitioners and about the property tax bills paid by the petitioners, however, the respondent No.6 Deputy Commissioner of Police issued another communication dated 28.8.2018 rejecting the representation of the petitioners and directing the petitioners not to levy any kind of parking charges. The said communication was challenged by the petitioners by filing Special Civil Application No.13459 of 2018, however, the said petition was disposed of by the Court observing that the impugned communication did not indicate about any coercive step or

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action to be taken against the petitioners. Thereafter, when the petitioners attended the office of the respondent No.6 i.e. Deputy Commissioner of Police, the petitioners were directed by the respondent No.6 not to collect parking charges from the visitors. The respondent No.6 thereafter passed the impugned order dated 7.9.2018 reiterating the earlier communication dated 28.8.2018, threatening the petitioners that criminal proceedings under Section 341 of IPC shall be filed against the petitioners, if they collected any parking fees. The petitioners in the meantime were also issued a communication dated 4.9.2018 by the respondent No.3 Executive Engineer, Surat Municipal Corporation calling upon the petitioner to show cause as to why their mall should not be sealed as the petitioners had failed to take any effective steps for stopping illegal parking being made outside their malls creating traffic nuisance. The petitioners, therefore, have prayed to quash and set aside the impugned orders/notices and sought further direction against the respondents not to prevent the petitioners from levying the parking charges upon the visitors visiting the premises of the petitioners.

3. All the petitions have been resisted by the respective respondents i.e. police authorities and the Municipal Corporations by filing their replies justifying the issuance of the impugned notices and passing of the impugned orders, and challenging the maintainability of the petitions. It has also been contended that due to the recovery of parking fees by the owners/managers of the mall most of the visitors who visit the malls park their vehicles on the public roads, which ultimately results into traffic congestion and accidents. According to the respondent authorities, they were acting pursuant to the directions issued by the Division Bench of this Court in Writ Petition (PIL) No.170 of 2017. It is also contended by the respondents that the petitioners are running the shopping malls, which are public places as defined in Sub-section 2(50) of the Municipal Corporation Act, and that if the mall management wrongfully restrained the people from having ingress of parking, such an act would tantamount to wrongful restraint constituting offence under Section 339 of IPC. It is also contended that by collecting parking charges, the petitioners are violating the GDCR as they have converted the use of parking area into commercial use and, therefore, the respondents authorities were duty bound to take legal action against them. As per the GDCR, the parking space is not counted towards computation of the floor space index, and therefore, it is incumbent on the part of the mall owners to leave such parking space open and free for the visitors. According to the respondents, the petitioners were also given opportunity of hearing before passing impugned orders.

4. Heard the learned Advocates Mr.Chudgar for Nanavati Associates, Mr.Saurin Mehta for Nanavati and Nanavati, and Mr.S.P. Majmudar for the petitioners, and the learned Government Pleader Ms.Manisha Lavkumar for the respondent State Authorities, as also Mr.Satyam Chhaya and Mr.Dhaval Nanavati for the respondent Corporations respectively.

5. The learned Advocates for the petitioners, assailing the impugned notices issued by the respondent Police Authorities vehemently submitted that the said respondents had no authority to issue the impugned notices or pass impugned orders prohibiting the petitioners from collecting the parking charges alleging violation of the GDCR. According to them, none of the provisions of the GDCR or of the Town Planning Act has been violated by the petitioners, as they have already provided the parking space in their respective malls as required under the GDCR and as per their sanctioned building plans. Placing reliance upon the decision of the Supreme Court in case of Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal, reported in (2013) 12 SCC 342 they submitted that nobody has a fundamental right to use the land belonging to another without the

latter's permission or paying for it, if demanded, and in the instant case the visitors of the mall can not claim as a matter of right to use the parking area free of charge. Highlighting the practical difficulties, they submitted that it is difficult to check whether the visitors would visit the shops or offices of their malls only, as sometimes people do park their vehicles in the parking space provided in the malls and multiplexes, and then visit the other surrounding places of the malls. They also submitted that when the GDCR do not mandate for free parking in the malls, the police authorities could not insist for providing free parking to the general public visiting the malls under the guise of regulating the traffic. Reliance is also placed on the judgement of the Division Bench in case of G. S. Dugal and Company (Pvt.) Ltd. Vs. (The) Municipal Corporation of the City of Ahmedabad, reported in 1981 GLH 436, to submit that there is no law or logic to prohibit the owner or occupier of the parking space from charging the necessary fees. Reliance is also placed on the latest decision of the Supreme Court in case of Mukund Dewangan Vs. Oriental Insurance Company Limited, reported in (2017) 14 SCC 663 to submit that the Court can not supply casus omissus. The words can not be read into an Act, unless the clear reason for it is to be found within the four corners of the Act itself. According to them, in the instant case, the word "free" having not been incorporated in the GDCR while mandating to provide parking space, neither the respondent authorities, nor the Courts can compel the petitioners to provide free parking to the public at large. According to them, the petitioners charge very nominal fees for parking to meet with the expenses incurred by them for deploying the security guards and for providing other services. They also pointed out that at certain places, the Municipal Corporation itself is charging property tax, under the head "pay and park" recognizing the use of the parking area. According to them, recently the Central Government has also exempted the service tax on the services provided by way of vehicle parking as per the Notification dated 20.6.2012 issued by the Ministry of Finance, Government of India.

6. Per contra, the learned Government Pleader Ms. Manisha Shah for the respondent State Authorities placing heavy reliance on the directions given by the Division Bench in Writ Petition (PIL) No.170 of 2017 submitted that the respondent police officers had issued the impugned notices pursuant to the said directions to tackle the traffic problems highlighted by the Division Bench in the said judgement. She has also pressed into service the provisions contained in the Gujarat Police Act, more particularly Section 33 thereof to submit that the police officers have the powers to pass orders to regulate the traffic on the roads. She further submitted that since the mall owners are recovering parking charges, their visitors tend to park their vehicles outside the malls and on the public roads, which create great traffic congestion in all the urban cities. When the GDCR mandates the shopping mall owners, who fall under the category of "Mercantile", to provide specific area for parking, and when the said parking area is also not included in the floor space index, the petitioners could not convert such parking area into commercial use by levying parking fees upon the visitors. She also submitted that the shopping malls and multiplexes are the public places having open access to the public at large, and therefore, the mall managers can not restrain people from having ingress of parking, which otherwise would tantamount to wrongful restraint constituting offence under Section 339 of the IPC. Right to entry in the shopping mall could not be made conditional, when GDCR mandates compulsory reservation of space for visitors' parking. She has relied upon the decision of the Andhra Pradesh High Court in case of Ch. Madan Mohan and Others Vs. Municipal Corporation of Hyderabad, reported in AIR 2003 AP 393 to submit that in multi-storied buildings meant for commercial use, the builder/owner impliedly accepts by reason of building permission and other provisions to keep parking space for the use by the visitors to the complex, and therefore, they can not charge any fees. It is always permissible, runs the submission of Ms. Shah, to the Municipal Corporation to regulate the use of common amenities like the

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parking area, by prohibiting the owners from collecting any parking fees from their visitors.

7. According to learned Government Pleader Ms.Shah, the genesis of the impugned notices/orders issued by the respondent authorities is the directions issued by the Division Bench in Writ Petition (PIL) No.170 of 2017, which read as under:-

"29. We issue the further directions as under: Re.: Problem of Public Roads/ Service Roads:

(1) to (10) xxx

(11) That the teams of the Estate Department shall ensure removal of all types of encroachment on roads which are obstructing free movement of vehicles as well as pedestrian movement. Footpaths and service roads are meant for smooth movement of traffic and pedestrians. Therefore, the Estate Department of the Corporation and the Traffic Police Department are hereby directed to ensure removal of all types of encroachments on roads/ service roads which are obstructing free movement of vehicular traffic. The concerned Departments of the State Government as well as the Corporation, more particularly, the Traffic Police Department and the Estate Department and the Commissioner of Police, Ahmedabad City, are directed to see that the vehicles are not parked on roads/ service roads surrounding the shopping centers, restaurants, clubs, hospitals, educational institutions, commercial/office complexes, malls, religious places, parks, theaters, PartyPlots etc. and they shall see to it that the vehicles of people visiting such places are parked in the Parking place in such buildings itself and that the roads/ service roads situated in front of or abutting such shopping centers, restaurants, clubs, hospitals, educational institutions, commercial/office complexes, malls, religious places, parks, theaters, PartyPlots etc. are not converted into their permanent parking place. Therefore, the concerned Departments shall first serve notice/ notices upon the management / owners / proprietors / trust etc. of the concerned shopping centers, restaurants, clubs, hospitals, educational institutions, commercial/office complexes, malls, religious places, parks, theaters, PartyPlots etc. which are having their buildings abutting the roads/ service roads with a specific mention that if any of the visitors to such places park their vehicles on road, it will be the responsibility of the concerned management/ owners/ proprietors / trust etc. to see to it that vehicles are not parked on public roads/ service roads."

8. In view of the afore-stated directions given by the Division Bench, to ensure removal of all types of encroachments made on the public roads, which obstruct the free movements of vehicles as well as of the pedestrians, the respondent authorities appear to have issued notices to a large number of mall owners and other owners/managers of the commercial complexes, multiplexes, etc. all over the State. However, only the present petitioners who are the owners/managers of the shopping malls and multiplexes, have challenged the authority of the respondent police officers to issue such notices prohibiting the petitioners from collecting the parking charges from the visitors on the ground that such collection was violative of the GDCR and the building use permissions granted to them.

9. As regards the power or the authority of the respondent Police authorities, much reliance is placed by the learned Government Pleader Ms. Shah on Section 33 of the Gujarat Police Act. The relevant part thereof reads as under:-

"33. Power to make rules or regulation of traffic and for presentation of order in public place, etc.

(1) The Commissioner, with respect to all or any of the following matters specified in this subsection, and the District Magistrate, with respect to all or any of the said matters except the matters referred to in subsection (1AA), may make, alter or rescind rules or orders not inconsistent with this Act, in areas under their respective charges or any part thereof, namely;

(a) xxx

(b) regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons riding, driving, cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public;

(c) regulating the conditions under which vehicles may remain standing in streets and public places, and the use of streets as halting places for vehicles or cattle;"

10. From the bare reading of the said provisions it appears that the Commissioner is empowered make, alter or rescind Rules or Orders not inconsistent with the said Act, in areas under which he is incharge, regulating the traffic of all kinds in the streets and the public places, and regulating the use of the streets and the public places by persons riding, driving, cycling, walking, leading or accompanying cattle, so as to prevent danger, obstruction, or inconvenience to the public. The Commissioner is also empowered to make order regulating the conditions under which the vehicles may remain standing in the streets and in the public places, and regulating the use of the streets as halting places for the vehicles or cattle. Hence, let us examine whether the parking area provided in the commercial buildings like malls and multiplexes owned and managed by private persons could be said to be the "public places" for the purpose of exercising powers by the Commissioner under Section 33 of the Gujarat Police Act.

11. "Public place" as defined in Section 2(13) of the Gujarat Police Act reads as under:-

"Section 2(13): "public place" includes the foreshore, the precincts of every public building or monument and all places accessible to the public for drawing water, washing or bathing or for the

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purpose of recreation."

12. "Public place" as defined in Section 2(50) of Gujarat Provisional Municipal Corporation Act, reads as under:-

"Section 2(50): "Public place" includes any public park or garden or any ground to which public have or are permitted to have access."

13. From the bare reading of both these definition clauses, it appears that the said definition is inclusive and not exhaustive in nature. It may further be noted that the Supreme Court while interpreting the expressions "place within public view" contained in Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in case of Swaran Singh and Ors. Vs. State through Standing Counsel and Anr., reported in (2008) 8 SCC 435 has observed inter alia that a "public place" would ordinarily mean a place which is owned or leased by the Government or the Municipality or other local body or gaon sabha or an instrumentality of the State Government, and not by private persons or private parties.

14. So far as the impugned notices are concerned, they have been issued by the Assistant Commissioner of Police and the Police Inspectors, inter alia directing the petitioners, who are the mall owners/managers not to collect the parking charges, or face the legal action that may be initiated by the said officers. Now, apart from the fact that the impugned notices/orders have not been issued or made by the Commissioner of Police invoking Section 33 of the Gujarat Police Act, it is difficult to hold that the parking areas earmarked in the shopping malls/multiplexes owned and managed by private persons to be the "public places" for the purposes of exercising powers under Section 33 of the said Act. Though the shopping malls or multiplexes have an open access for the public at large, they being the places owned and managed by the private persons or private bodies, and not by the Government or local authorities or by an instrumentality of the State, the Commissioner could not make orders regulating the use of the parking area or regulating the conditions of use of the parking area provided in the shopping malls or complexes treating them as "public places" for exercising powers under Section 33 of the said Act.

15. From the bare reading of clauses (b) and (c) of Sub-section (1) of Section 33 of the Gujarat Police Act, it clearly transpires that the Police Commissioner can make orders for regulating the traffic in the streets and public places, and for regulating the use of the streets and the public places by the persons riding, driving, cycling, walking or leading or accompanying the cattle, or for regulating the conditions under which the vehicles may remain standing in the streets or in the public places. The Police Commissioner or the respondent police officers, as such could not issue notices or pass orders regulating use of the parking areas or the conditions under which the vehicles may remain standing in the parking areas of the malls or multiplexes, which are owned by the private persons or private bodies. Hence, the reliance placed by the learned Government Pleader on the provisions contained in Section 33(1) of the Gujarat Police Act for the purposes of justifying the issuance of impugned notices does not appear to be legally sustainable, apart from the

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fact that the said provisions have neither been referred to in the impugned notices, nor in the affidavits-in-reply filed by the concerned respondents.

16. Even if it is presumed that the said notices were issued invoking Section 33 of the Gujarat Police Act, pursuant to the directions given by the Division Bench in Writ Petition (PIL) No.170 of 2017, for the purpose of ensuring that the vehicles are not parked on the public roads or service roads, then also the respondent police authorities could not have prohibited the petitioners from collecting the parking charges under the guise that such collection was violative of the provisions of GDCR. There can not be any disagreement to the proposition that all the builders/owners of the buildings are bound by the GDCR as well as by the conditions imposed on them by the concerned authorities while granting the Development Permissions under the Gujarat Town Planning and Urban Development Act. However, the moot question is, whether the petitioners could be said to have violated any of the provisions contained in the GDCR or the conditions of the B. U. Permissions, merely because they are collecting the parking fees from the visitors for using the parking area provided by them as per the GDCR. In order to appreciate the arguments canvassed by the learned Government Pleader let us have a bird's eye-view of the GDCR 2017.

17. The GDCR 2017 appear to have been framed by the Government of Gujarat in Urban Development and Urban Housing Department for regulating the development in the areas specified therein. Chapter-2 of the said Regulations pertains to the Development Permission and Building Use Permission. Paragraph 2.4 of the said Chapter makes it mandatory for the competent authority to examine for ensuring compliance of the development requirement that the arrangements of steps, lifts, corridors, and parking are made in the building while granting the development permission. Chapter-7 of the said Regulations pertains to General Planning and Development. Paragraph 7.4 thereof classifies the use of the buildings with their respective common use. Accordingly, shopping malls fall under the category of 'Mercantile' and multiplexes under the category "Assembly". Further, Chapter-8 pertains to the General Development Requirements for all the zones and categories and paragraph 8.12 thereof mandates for providing minimum parking area within a building unit. Accordingly, the buildings falling in 'Mercantile' category have to provide the minimum parking, and the visitors' parking as mentioned therein. It has also been stated in paragraph 8.12.1, which pertains to General Requirements for Parking, that the parking area shall be retained as effective parking space and shall be maintained with light and ventilator system if provided in an enclosed area. It is also pertinent to note that as per paragraph 8.5, the area used for parking at the basement or parking at any level are not counted towards the computation of Floor Space Index, i.e. the ratio between the built up area to the area of the plot on which the building stands.

18. Now, from the afore-stated provisions contained in the GDCR, it appears that though it is mandatory to provide parking area in all types of buildings, may they be used for residential, commercial, mercantile, educational, assembly, religious, hospitality, or industrial purposes, there is no specific provision made in the said regulations making it incumbent on the part of the owners or builders of such buildings to provide such parking area free of charge to the visitors of such buildings. In absence of any specific provision contained in the GDCR, it is difficult to accept the proposition that the petitioners have to provide free parking area to the visitors of their

residential/multiplexes. As rightly submitted by the learned Advocates for the petitioners, the Courts

can not supply casus omissus. Dealing with the principles governing the interpretation of statutes, the Supreme Court in the case of Mukund Dewangan Vs. Oriental Insurance Company Limited (supra) has discussed earlier judgements and held as under:-

"37. In Crawford v. Spooner which has been referred to in Nalinakhya Bysack v. Shyam Sunder Haldar it has been held that:

"9. ...the Court cannot ... aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act."

In British India General Insurance Co. Ltd. v. Itbar Singh while construing Section 96(2) of the Motor Vehicles Act, 1939, this Court refused to add the word "also" after the words "on any of the following grounds". It was observed that the rule of interpretation does not permit the Court to do so unless the section, as it stands, is meaningless or is of doubtful meaning. While interpreting Section 621A(1) of the Companies Act, 1956 in V.L.S. Finance Ltd. v. Union of India this Court held that the Court must avoid rejection or addition of words and resort to that only in exceptional circumstances.

38. The words cannot be read into an Act, unless the clear reason for it is to be found within the four corners of the Act itself. It is one of the principles of statutory interpretation that may matter which should have been, but has not been provided for in a statute, cannot be supplied by courts, as to do so will be legislation and not construction as held in Hansraj Gupta v. Dehra DunMussoorie Electric Tramway Co. Ltd., Kamalaranjan Roy v. Secy. Of State and Karnataka State Financial Corpn. v. N. Narasimahaiah. The Court cannot supply casus omissus."

19. In view of the above stated principles governing the interpretation of statutes, the Court can not add or read the word "free" before the words "parking area" in the GDCR and hold that the owners of buildings falling in the category 'Mercantile' or "Assembly" have to provide free parking area, when none of these regulations has mandated free parking area for the visitors in such buildings.

20. The submission of the learned Government Pleader that a presumption is required to be raised that the owner or the builder of multi- storied commercial building has to provide free parking space for their visitors as held by Andhra Pradesh High Court in case of Ch. Madan Mohan and Ors. Vs. Municipal Corporation of Hyderabad (supra), also could not be accepted. As transpiring from the said judgement, the Multi-storied Building Rules and Zoning Regulations issued by the Government mandated the owners of the commercial complexes to provide regular parking facilities for the owners as well as the visitors of the complex, and the Municipal Corporation of Hyderabad had also by issuing orders prohibited the owners from collecting the parking fees. The said action of Corporation was not challenged in the said petition. ~~Considering the building rules, regulations, and bye-laws framed under the~~
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Hyderabad Municipal Corporation Act, the said High Court had held that in the multi-storied building meant for commercial use, if any space is provided for the use of those visiting the complex in accordance with the building bye-laws of the Municipal Corporation or HUDA, it has to be presumed that the building permit itself was granted subject to such conditions for providing parking space and other facilities free of charge. Such is not the state of affairs in the State of Gujarat. Though it has been made incumbent on the part of the builders/owners of the commercial buildings to provide the parking area, there is no prohibition, express or implied contained in the GDCR, restraining the owners of the commercial complexes/malls from collecting parking charges from the visitors. Of course, if such parking area is used for the purpose other than parking purpose, it would certainly tantamount to breach of the GDCR, nonetheless levying of parking fees on the visitors for using such area for parking their vehicles could not be said to be prohibited under the GDCR.

21. The Division Bench of this Court in case of *G. S. Dugal and Company (Pvt.) Ltd. Vs. (The) Municipal Corporation of the City of Ahmedabad (supra)*, while dealing with the question as to whether a parking place which is required to be compulsorily kept by the owner of a commercial building can be subjected to the general tax leviable under Section 132 of the BPMC Act, observed inter alia that though such parking area could not be ordinarily let out, there is no law prohibiting the owner or occupier from charging necessary fees. It has been further observed as under:-

"13. Mr.Nanavati further urged that when under the municipal law, such car parkings are required to be set apart as a matter of statutory compulsion, the court should interpret this obligation in a broader perspective and should hold that this car parking is directed or ordained to be open to use the free of charges for parking. We have no objection to accepting the broader principle that interpretation of a particular statute in the absence of anything contrary suggested should take into account all the attendant circumstances. However, despite accepting this principle, we are unable to hold that a compulsorily required car parking must of necessity be free of charge. It will be militating against the conceivable charging of fees in the form of licence fees by those who are in charge of such parking places.

14. In the course of his submission, Mr.G. N. Desai, the learned advocate for the Corporation, had made one proposition which we would like to call astounding. We refer to it only for rejection. Mr.Desai urged that though under law a car parking is required to be compulsorily set apart, it may or may not be put to any such use, depending upon the volition of the man, who had put up that complex of office rooms and consulting rooms. When the local authority makes a compulsory provision for such car parking, it is reasonable to assume that such car parking is intended to be used by those who happen to occupy or go to those offices and consulting rooms. Whether it should be allowed to be done by charging some fees or not would depend upon the circumstances of the case. Neither in law nor in logic there is anything to prohibit the owner or occupier of such car parking place from charging the necessary fees."

22. The learned Advocates for the petitioners have submitted that the petitioners are charging very nominal parking fees and that too for meeting with the expenses incurred by them for providing

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services to the visitors by deploying security guards and maintaining the parking space. According to them, if such token fee is not recovered from the visitors, any outsider though not visiting the mall or complex would park his vehicle, and the genuine visitors of the mall may sometimes find it difficult to get the parking space. The Court finds substance in the said submissions. As such, recovery of parking fees from the outsiders would be for the services provided by the building owners on the principle of quid pro quo. The parking area in the privately owned commercial buildings or complexes being not owned by or leased out by the public authorities, could not be said to be a "public place". Though it is true that the public authorities by framing appropriate regulations may regulate or prohibit the use of such area, nonetheless nobody, as observed by the Supreme Court in case of Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal (supra), has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded. Therefore, no visitor of a commercial building could claim as a matter of right use of the parking space free of charge. It is also pertinent to note that in some cases, the Municipal authorities themselves have permitted the builders/owners to collect reasonable parking fees, and that at certain places the Municipal authorities themselves are collecting the parking charges from the public for parking their vehicles on the public road or service road, as the owners of some of such commercial buildings abutting on the public road have failed to provide parking area in their buildings. Hence, it does not lie in the mouth of the respondent authorities to say that the collection of parking fees by the petitioners is violative of the GDCR. It is needless to say that such fees can not be levied at an exorbitant or unreasonable rate and that they must commensurate with the services provided on the principle of quid pro quo.

23. Under the circumstances, and in absence of any specific regulation in the GDCR making it mandatory to provide free parking area in all commercial buildings or malls or multiplexes, it is difficult to vindicate the stand taken by the respondent authorities in the impugned notices that collection of parking fees being violative of the GDCR would entail legal action or penal consequences. Respondent authorities may frame appropriate Rules or Regulations, regulating or even prohibiting collection of parking fees in the privately owned/managed commercial buildings or multi-storied malls and complexes, where large number of footfalls take place everyday, and which cause lot of traffic congestion on the public roads. However, in absence of such regulations, the petitioners could not be restrained from collecting the parking fees. In that view of the matter, without undermining the authority of the respondent authorities, more particularly of the respondent police authorities to take action for regulating the traffic on the public roads or streets, the threatened actions contained in the impugned notices/orders deserve to be declared unwarranted and the impugned notices/orders deserve to be quashed and set aside.

24. Having said that, the Court could not be oblivious to the general tendency and mindsets of people to park their vehicles on the roads instead of parking at the earmarked parking areas to avoid payment of parking fees, resulting into severe traffic problems. In the opinion of the Court, it is absolutely incomprehensible that such traffic problem of such a great magnitude prevailing in the cities should be solved by the respondent authorities alone with their limited resources, and without any cooperation from the public at large. The sense of traffic discipline needs to be inculcated in the minds of people either by educating them or by legislating suitable Rules and Regulations by the respondent authorities. As stated earlier, the gravity of traffic problem has also been highlighted by the Division Bench in Writ Petition (PIL) No.170 of 2017 (supra), in which the Bench has issued number of directions including the directions to the

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respondent authorities to remove the encroachments and regulate the traffic on the public roads/service roads.

25. It can not be gainsaid that all public streets and roads vest in the State and that the members of the public are entitled as beneficiaries to use them as a matter of right. However, such rights would be limited to the similar rights possessed by every citizen to use such streets and roads. The State as a 'Trustee' on behalf of the public, therefore, is entitled to impose reasonable restrictions on the extent of the user, as may be requisite for protecting the rights of all the public in general. Having regard to the gravity of traffic problem prevailing in the urban areas, the Court is of the opinion that it would be desirable for the State Government to take a decision on the "parking policy" to rationalize and regulate the parking fees being collected at the commercial complexes/malls/multiplexes, as also at the public places/roads/streets, and appropriately amend the GDCR. However, till that is done, it would be appropriate to issue necessary directions for regulating the levy of parking fees at the commercial complexes, malls and multiplexes. It is needless to say that in exercise of writ jurisdiction, the Court may mould the reliefs and issue appropriate directions having regard to the facts and circumstances of the case.

26. In that view of the matter, following directions are given:-

- (i) The impugned notices/orders issued by the respondent authorities are quashed and set aside;
- (ii) The State Government, in Urban Development and Urban Housing Department shall, at the earliest take decision on the "parking policy" to rationalize and regulate the parking fees being collected at the commercial complexes/malls/multiplexes, as also at the public premises/roads/streets etc., and amend the GDCR appropriately if necessary to do so.
- (iii) Till the time appropriate decision is taken on the "parking policy" by the State Government, it is directed that the petitioners and other similarly situated owners/managers of the commercial buildings falling in "Mercantile" and "Assembly" categories mentioned in Regulation No.7.4 of the GDCR, shall provide free parking to all the visitors, at least for one hour of their entry, and thereafter may charge reasonable parking fees commensurable to the services provided by them. However, such fees shall not be more than Rs.30/- for four-wheelers and Rs.10/- for two-wheelers per day.
- (iv) It is clarified that the respondent authorities shall be at liberty to take appropriate action as may be permissible under the law for the removal of encroachments of all kinds and illegal parking of vehicles on the public roads/service roads or on the public streets.

27. Subject to the afore-stated directions, all the petitions stand disposed of. Copy of the order be sent to the Chief Secretary, and to the Principal Secretary, Urban Development and Urban

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22/03/2023

Housing Department, Government of Gujarat, Sachivalaya, Gandhinagar for perusal and action.

Petition disposed of.

