

HIGH COURT OF GUJARAT (D.B.)**RUCHI MALLS PVT LTD***Versus***STATE OF GUJARAT THROUGH THE SECRETARY****Date of Decision:** 10 July 2019**Citation:** 2019 LawSuit(Guj) 412**Hon'ble Judges:** [Anant S Dave](#), [Biren Vaishnav](#)**Case Type:** Letters Patent Appeal; Special Civil Application; Civil Application (For Stay)**Case No:** 1412 of 2018; 14432 of 2018; 1 of 2018**Subject:** Constitution**Editor's Note:**

Constitution of India, 1950, Articles 300A, 19 and 226 - Gujarat Cinemas Regulation Act, 2004, Section 12 - Gujarat Police Act, 1951, Section 33 - Letters Patent Appeal - Invitation for setting up an entertainment hub upon a parcel of land - Land allotted to the appellants - Constructed and developed a mall - Levy parking charges - Appropriate decision is taken on the "parking policy" by the State Government - Single Judge, has come to the conclusion that since there is no mention of word "free" before "parking area" in the GDCR or any other provision of law, the malls or commercial buildings falling in the category of "mercantile" or "assembly" cannot be restrained from charging parking fee from the visitors - Single Judge, has also opined that charging of parking fee is necessary even for the maintenance of the parking space - There is no necessity to rationalise and regulate the parking policy and/or parking fees - Impugned directions by Single Judge in Paragraph-26 cannot bind the State Government - Held, there is no provision at all in the GDCR to rationalise and regulate parking fees, and further, such direction to the State Government amounts to legislate, which is not permissible under Article 226 of the Constitution of India - Letters Patent Appeal stands disposed of. (Para 17, 19, 26)

Law Point- There is no provision at all in the GDCR to rationalise and regulate parking fees, and further, such direction to the State Government amounts to legislate, which is not permissible under Article 226 of the Constitution of India.

Acts Referred:

[Constitution Of India Art 300A](#), [Art 19\(1\)\(g\)](#), [Art 226](#), [Art 19](#)
[Gujarat Cinemas Regulation Act, 2004 Sec 12\(1\)](#), [Sec 12](#)
[Gujarat Police Act, 1951 Sec 33](#)
[Gujarat Cinema Rules, 2014 R 8](#)

Final Decision: Appeal disposed

Advocates: [Mihir H Joshi](#), [Nandish Y Chudgar](#), [Nanavati Associates](#), [Manisha Lavkumar](#), [Tirthraj Pandya](#), [Satyam Y Chhaya](#)

Cases Referred in (+): 3

Anant S. Dave, A.C.J.

[1] Appellant No.1 in this appeal is a Private Limited Company and appellant No.2 is the Senior Manager with the appellant No.1 Company. Pursuant to the invitation offered by the Ahmedabad Urban Development Authority (AUDA) for setting up an entertainment hub upon a parcel of land situated opposite the Vastrapur Lake at Ahmedabad, and upon interest being shown by appellants, it came to be allotted to the appellants, and the appellants have constructed and developed a state-of-the-art shopping mall upon the said land known as "Alpha One Mall" as per the permissions granted by the AUDA. The mall was opened for public use on 15.10.2011. Initially, the appellants did not charge any parking fees from the visitors. However, it is their case that subsequently, people visiting other places in the vicinity of their mall were also parking their vehicles in the parking area of the mall, which led to denial of the parking space to the visitors of the mall, hence they decided to levy parking charges at the rate of Rs.10/- for two-wheelers and Rs.20/- for four-wheelers. However, the respondent No.2 Police Inspector, "A" Division Traffic Police Station, Shahibaug, Ahmedabad, issued a notice on 21.7.2018, informing the appellants, inter alia, that the collection of parking charges was violative of the General Development Control Regulations, 2017, ("GDCR" for short) and the Building Use Permission ("BU Permission" for short) granted to them, calling upon them to remain present on 22.7.2018, along with necessary documents to show cause as to under what authority they were collecting the parking charges. It was the case of the appellants before learned Single Judge that they were also threatened that if they continued to charge parking fees, necessary legal action shall be taken against them. The appellants gave reply on 22.7.2018 explaining the situation and thereafter, challenged the legality and validity of the impugned notice dated 21.7.2018 issued by respondent No.2.

[2] Learned Single Judge, by a common CAV Judgment dated 17.10.2018, has disposed of the writ petition filed by the present appellants along with three other identical petitions, subject to the following directions:

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

The appellants feeling aggrieved by directions contained in Clauses (ii) and (iii) of Paragraph-26 of the judgment, quoted above, have filed the present appeal under Clause 15 of the Letters Patent.

[3] The appellants have parking capacity of 1500 two-wheelers and 1250 four-wheelers. The appellants were not levying parking charge till 31.05.2016. The say of the appellants is that new amusement park at Vastrapur Lake premises, another commercial complex constructed opposite the mall of the appellants and a religious

place known as Kalyan Pushti Haveli, led to congestion of traffic and visitors of other public places also started parking their vehicles in mall parking and therefore, the appellants had to start levying parking charges. Another reason given for levying such charge is that the appellants are incurring costs towards maintenance of parking facility.

[4] It is submitted by Mr.Mihir Joshi, learned Senior Advocate appearing with Mr.Nandish Chudgar, learned advocate for M/s.Nanavati Associates for the appellants that the directions issued by learned Single Judge in Paragraphs 26(ii) and (iii) of the impugned judgment are beyond the scope of writ petition and would fall within the domain of legislature, therefore, the same are contrary to settled principles of law. It is submitted that right to charge parking fees for use of its parking facility is part of appellants' right to carry on business under Article 19(1)(g) of the Constitution and there cannot be a law regulating parking fees that an entity can charge for use of its property and there cannot be a policy to regulate parking fee. It is submitted that the appellants do not charge fees at an exorbitant rate however, at what rate fees should be charged is a matter that is within the absolute discretion of the mall owners. Learned Single Judge has therefore committed a serious error of law and jurisdiction in directing the mall owners not to charge more than Rs.30/- for four-wheelers and Rs.10/- for two-wheelers per day. It is submitted that by directions given in Paragraph 26(iii) of the impugned judgment, the mall owners are forced to give free parking to visitors for one hour and give parking at rates which cannot be prescribed under law, as such, the said direction is violative of Article 300A of the Constitution as it deprives mall owners to use their property without authority of law.

[5] On behalf of respondents No.1 and 2, it is submitted by Ms.Manisha Lavkumar, learned Government Pleader appearing with Mr.Tirthraj Pandya, learned Assistant Government Pleader, that the appellants have violated the provisions of the GDCR in general and have also breached Clause 7 of the BU permission dated 31.03.2011, by changing the use of parking area into commercial activity by collecting parking charges without any prior permission of the authority and as the complex owners are collecting parking fees, people are parking their vehicles on road which has resulted in traffic congestion. It is submitted that in the receipt for parking, it is clearly mentioned that the parking is at owner's risk and therefore, the contention of the appellants that the parking fees are being collected towards the maintenance of the premises, security and safety of the vehicles of the visitors and to facilitate the parking, is ill founded. It is further the case on behalf of the State that the area reserved for parking does not include FSI. The mall management could collect maintenance charges from shop owners in the mall as per their lease agreement which may also include maintenance of parking area provided for the visitors and the same would help remove burden of

parking charges from people at large. That as per GDCR of 2017, it is mandatory for the owners of the commercial/ shopping complex and malls to provide regular parking facility for the owners as well as visitors of the complex.

[6] Mr.Satyam Chhaya, learned advocate appearing on behalf of respondent No.3 - Ahmedabad Municipal Corporation has adopted the submissions advanced by learned Government Pleader and has stated that in view of the provisions of the GDCR and conditions of BU Permission, the mall-owners have to provide the parking facilities to the visitors and they cannot charge for providing such parking facility to the visitors.

[7] On 05.12.2018, this Court directed the respondents to file an affidavit on two issues, viz. (i) whether there is any provision under any law which enables the appellants or likewise persons to charge parking fees, (ii) when the construction is carried out for which permission is granted initially and on completion of construction of the premises, BU permission is given, does it contain any specific conditions for usage of the structure constructed for a specific purpose and (iii) whether there is any mandatory requirement for the owner/ occupier of the premises to keep minimum open margin land and place for parking of vehicles for visitors/ customers?

In response thereto, respondent No.1 - State of Gujarat filed an affidavit-in-reply, sworn on 20.12.2018, inter alia stating that the State Government has enacted Comprehensive General Development Control Regulation 2017 (GDCR) which is a compendium of comprehensive regulations across the State of Gujarat in respect of development activity of any land under the Gujarat Town Planning and Urban Development Act, 1976. Referring to several regulations of the GDCR, which shall be referred to hereinafter, it is stated that parking facility is to be made available as stipulated under the GDCR. That the superstructure constructed by the appellants falls in the category of 'mercantile' and as per the GDCR, the appellants are required to reserve and provide a minimum of 20% of space as parking for visitors. That Building Use Permission is granted after the plans are sanctioned and construction is carried out and after ascertaining whether the parking facilities are provided and as such, the conditions stipulated for granting BU Permission are to be strictly adhered to. It is stated in the affidavit that over and above obtaining the BU Permission, the owners of such buildings are under a statutory obligation to follow the requirements of the GDCR as per Regulation 6, more particularly, Regulation 6.2 thereof. As regards the query whether the owner of a commercial premise has to keep minimum open margin land and place for parking of vehicles by visitors/ customers, it is stated by the State that as per Regulation 8.12.1, minimum 20% space is to be earmarked as visitors' parking.

The Ahmedabad Municipal Corporation also filed compliance affidavit pursuant to our directions dated 05.12.2018, inter alia, stating that as per the provisions of the Gujarat Provincial Municipal Corporations Act, 1948, Gujarat Town Planning and Urban Development Act, 1976 and the GDCR, there is no provision which authorizes the appellants or likewise persons to charge parking fees from visitors of malls/ theaters and that at least 20% of space is required to be reserved for visitors' parking.

In response to the compliance affidavits, referred above, the appellants have stated by way of an affidavit dated 09.01.2019, that none of the provisions of GDCR prohibit levying of parking charges nor does any provision mandates providing free parking to the visitors of the mall. It is stated that even the AMC and other public bodies charge parking fees from public at large when they park their vehicles at public places.

[8] At this stage, it would be fruitful to refer to certain provisions of the GDCR. Regulation 7.4 pertains to "Use Classification" and "mercantile-2" covers shopping mall, laboratory, nursing home, maternity home, kerosene depot, corporate offices, call centres, training centres. Regulation 8.5 is regarding Floor Space Index ("FSI") and Regulation 8.5.1 deals with "Areas not counted towards computation of FSI", and as per clause-2 thereof, area used for parking at basement or hollow-plinth or parking at any level shall not be counted towards computation of FSI. Regulation 8.12 deals with parking and the relevant clauses thereof read thus:

"8.12 Parking

Parking spaces for vehicles shall be provided within the Building-unit for every new Building and/ or extension in existing building constructed for the first use and/ or when the use of old building is changed to any of the uses mentioned in the table below:

Table 8.12.1: Parking requirement

No.	Type of Use	Minimum Parking Required	Visitor's Parking and Remarks
(1)	(2)	(3)	(4)
1	Dwelling-1D, welling-2	1car parking for more than 80 sq. mt and upto 300 sq. mt of plinth area per unit. Additional 1car parking for every100.00sq.mt	Nil

		additional plin th area per unit. This shall be permitted within the marginal space	
	Dwelling-3	20% of Total Utilized FSI	10%,of the required parking space shall be provided as visitors parking
2	Mixed Use(Residentia+I Commercial) Mercantile, Religious, Hospitality, Transport	(a) For respective Residential use, parking shall be provided as Dwelling-1, 2 or 3, as the case may be. 30% of utilized F.S.I. for building unit up to 750 sq.mts. 40%of utilized F.S.I. for building unit above750 to 2000sq.mt. 50% of utilized F.S.I. moreth an 2000 sq.mt.	10% of Residential parking requirement (a); and 20% of the Commercial parking in (b) shall be provided as visitors parking.
3	Assembly-1,2 & 3	50% of Total Utilized FSI	20% of the required parking shall be provided as visitors parking
3a	Assembly-4	50% of Building-unit Area	
3b	Assembly-Stadium I	1.25sq.mt of parking area per person	
		of the Total stadium capacity	
4	Institutional Buildings, Public-InstitutionaBI uildings	50% of Total Utilised FSI	In case of Hospitals and nursing homes , additionalp arking of Ambulance shall be provided at the ground level.
5	Industrial-1,2,3&4; Storage,	10% of the Total Utilised FSI	Nil
6	Educational	(a) Primary & Pre	Facility for drop-off

		schools- 25% of the Total Utilised FSI Secondary & Higher Secondary Schools -40% of the Total Utilised FSI Colleges and coaching classes -40% of the Total Utilised FSI	and Pick-up shall be provided within the premise. 10% of the required parking shall be provided as visitors parking
7	Sports & Leisure	25% of Building-unit Area	
8	Recreation	10% of Building-unit Area	
Note:-50% of the visitor parking shall be provided at ground level.			

8.12.1 General Requirements for Parking

1. Parking requirement for a Mixed-Use development shall be calculated on prorated basis of the FSI consumed specific to the different uses.
2. Parking is permitted at any floor level above ground and at more levels of basement as per required parking, with provision of vehicular ramp.
3. 50% of the required visitors parking shall be provided at the ground level.
4. 50% of all required parking shall be provided for cars.
5. Parking area includes parking space, driveway and aisles but excludes approach road, vehicular lift and vehicular ramps.
6. Parking layouts with minimum size requirements for parking space, driveways and access lanes shall be provided as prescribed in Section D: Performance Regulation No. 21.2 and Regulation No. 21.1.15.
7. Parking shall be permitted in side or rear margins except in Approach Road as per Regulation 8.4.7.
8. Parking shall also be permitted in road-side margin after leaving clear margin of 4.Sq.mts. from the building-unit boundary towards road-side. In case of building unit abutting more than one road and having area up to 1000 sq. mt shall be permitted to utilize narrow road side margin for parking. Provided that, parking

shall be allowed in any road side margin having building unit area up to 750 sq.mts.

9. Parking area should be retained as effective parking space and shall be maintained with light and ventilation system if provided in an enclosed area

10. In cases where misuse of parking space is noticed, the use of the entire building shall be discontinued by the Competent Authority. Building use shall be permitted only after the required parking spaces are provided. High penalty shall be levied considering the period of misuse of the parking space and the benefit derived out of misuse as decided by the Competent Authority from time to time.

11. For multi-level parking, a vehicular ramp shall be necessary.

12. If parking is provided on a terrace with vehicular elevator, vehicular ramp is not necessary if parking space is provided with provision of floor sprinklers.

13. Parking shall not be permitted within an Atrium.

14. In case the maximum permissible FSI is not utilized, for any extension or additions in the future, additional parking as per regulation shall have to be provided as required for this additional utilized FSI."

[9] Since the mall in question also consists of multiplex cinema, it may also not be out of place to make a reference to a provision contained in the Gujarat Cinema Rules, 2014, which pertains to parking to be provided by a cinema. The Gujarat Cinema Rules, 2014, have been enacted in exercise of powers under Section 12(1) of the Gujarat Cinemas (Regulations) Act, 2004. Rule 8 of these Rules is relevant for the purpose and it reads as under:

"8. Parking Space:-

In every cinema other than Drive-in-Cinema and Touring Cinema, parking space for vehicle shall be provided on the following scale, namely:

(a) In the area of municipal corporation:-

(i) parking space for forty motor cars for every one hundred seats in the auditorium;

(ii) parking space for fifty motor cycles or scooters for every hundred seats in the auditorium;

(iii) parking space for two cycles for every hundred seats in the auditorium;.....

Provided that, in the case of municipal corporation, if the bye-laws or rules of the corporation of such city or the town planning scheme of such city prescribes parking space on a higher scale and in other places, if the bye-laws or rules of the local authority of such place or the town planning scheme of such place prescribes parking space, whether on a higher scale or a lower-scale, the provisions of such bye-laws, rules or town planning scheme shall prevail....."

[10] Before the learned Single, the Notice dated 21.07.2018, issued by Police Inspector, A-Division Traffic Police Station, Ahmedabad - respondent No.2, was under challenge on the ground that the said respondent had no authority to issue the the same or to pass consequential orders prohibiting the mall owners from collecting the parking charges on the ground of violation of the provisions of GDCR, whereas, on behalf of the respondent - authorities, issuance of such Notice/ orders was sought to be justified on the ground that under Section 33 of the Gujarat Police Act, 1951, the respondent-authority has the power to pass orders to regulate traffic on roads and it was stated that the impugned notices came to be issued because the visitors of such malls had started parking their vehicles on public roads outside malls to avoid payment of parking charges to mall-owners, resulting in traffic congestion in cities.

In the above context, it would be fruitful to refer to Section 33 of the Gujarat Police Act, 1951:

"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 sub-section, and the District Magistrate, with respect to all or any of the said matters except the matters referred to in sub-section

(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;"

[11] Apart from making submissions on behalf of respondents No.1 and 2, at the request of the Court, Ms. Manisha Lavkumar, learned Government Pleader has assisted the Court and has submitted that though the State Government has not preferred any appeal against the impugned judgment of the learned Single Judge, the directions contained therein are beyond the scope of Article 226 of the Constitution of India, therefore, the same may be appropriately modified.

[12] Adverting to the impugned judgment, learned Single Judge came to the conclusion in paragraph-14 that "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". Learned Single Judge, in Paragraph-18 has observed 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 areas free of charge to the visitors of such building...".

[13] Learned Single Judge, relying upon the decision in [Mukund Dewangan v. Oriental Insurance Company Limited](#), 2017 14 SCC 663, which is on the principles governing interpretation of statutes, came to conclusion that the Court cannot 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 of 'mercantile' or 'assembly' have to provide free parking when none of these regulations mandate free parking area for the visitors in such buildings. In the ultimate analysis, the learned Single Judge in Paragraph-23 came to the conclusion that the impugned Notice issued by respondent No.2 deserves to be quashed and set aside.

[14] However, having come to the aforesaid conclusion, though the impugned Notice has ultimately been quashed and set aside, certain directions have been issued by learned Single Judge in Paragraph-26, which have been reproduced hereinabove, some of which have aggrieved the appellants. Learned Single Judge has, in substance, directed the State Government to take a decision on "parking policy" to rationalise the regulate parking fee 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. Learned Single Judge has also directed that till such time appropriate decision is taken on "parking policy" by the State, the appellants and other

similarly situated entities falling in the category of 'mercantile' or 'assembly' 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. It is these directions which have resulted in filing of the present Letters Patent Appeal.

[15] The mall of the appellants was opened for public use on 15.10.2011. The appellants have parking capacity of 1500 two-wheelers and 1250 four-wheelers. The appellants were not levying parking charge till 31.05.2016. The justification that is sought to be given by the appellants for charging parking fee thereafter is that because people visiting adjoining places and premises also started using their parking facility, they were compelled to levy parking charges. In fact, the genesis of the issue of parking and issuance of Notice to the appellants appears to be various directions issued by a Division Bench of this Court (Coram: Hon'ble Mr. Justice M.R. Shah [as His Lordship then was] and Hon'ble Mr. Justice A.Y. Kogje) in the case of *Mustak Hussain Mehndi Hussain Kadri v. State of Gujarat* in Writ Petition (PIL) No.170/2017, though the appellants, in the writ petition, have thought it fit not to state so. In the said Public Interest Litigation, number of interim as well as final directions came to be issued. Said Public Interest Litigation covered several issues, one of which was parking. By an interim order dated 11.05.2018, following directions came to be issued in said PIL as regards parking:

"Re.: Traffic Problem:

1 Now so far as traffic problem faced by the citizens/ residents of the city is concerned, it is directed that there shall be a proper study conducted by the State Government and the Corporation. There shall be an in-depth study of the traffic problem, more particularly, congestion of traffic and the bottlenecks in smooth movement of traffic is required to be studied and found out so that further corrective measures can be taken. In many cases, important junctions are required to be redesigned using in-house expertise or with the help of external experts to bring out the solution relating to the problem of traffic. The Traffic Engineering Department of the Corporation therefore shall extend complete cooperation to the Traffic Police Department to ensure smooth movement of traffic at all important junctions in the city. If required, important junctions shall be redesigned using in-house expertise or with the help of external experts to bring out the solutions of the problems related to traffic and for which there shall be an expert opinion of the Committee consisting of experts.

2 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, Party-Plots 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, Party-Plots 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, Party-Plots 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.

3 The teams of the Estate Department of the Corporation shall also ensure that adequate parking spaces are provided at the time of issuing Building Use Permissions as per the GDCR. Correspondingly, it shall be ensured by timely inspections that the allocated parking spaces in the structures are not encroached after the issuance of Building Use Permissions.

4 Strict action shall be taken against those who park their vehicles on public roads, more particularly, in "No Parking Zone". No parking shall be allowed, at least on cross- roads /junctions. If ultimately, the parking is found on cross-roads and No Parking Zones, the concerned Police Officer on duty at the particular point shall be held personally responsible for allowing such parking for which such officer shall be liable for disciplinary proceedings for dereliction in duty,etc.

5 The speed breakers/ bumps on the roads shall be constructed as per the design and size as per the rules and regulations of the Indian Road Congress as far as possible however, subject to the requirements and need.

6 The Commissioner of Police (Traffic) and the Commissioner, Ahmedabad Municipal Corporation are directed to see that the aforesaid directions are complied with in its true spirit.

7 Comprehensive Mobility Plan for Gujarat metros shall have to be prepared by the Government of Gujarat as per Ministry of Urban Development Guidelines.

8 To ensure safe and smooth mobility in the city, the Mantra of "E-E-E", that is:

Engineering,

Education of People and

Enforcement of laws, has to be followed.

9 There shall be coordination between different Departments of the Government and there shall be periodical high level joint committee meetings once in a month to ensure appropriate solutions to the problems."

It appears that the impugned Notices came to be issued by respondent No.2 in view of aforesaid directions. Thereafter, the said PIL came to be disposed of by an judgment dated 07.08.2018, reiterating various directions issued earlier and further observing as under:

"[10.3] To ease the traffic problem, State Government and Ahmedabad Municipal Corporation to increase the public parking places and see to it that more and more public parking places are made available. State Government and /or Ahmedabad Municipal Corporation may also consider and /or reconsider, of course after following due procedure of law, the decisions regularizing the parking places in the commercial buildings and to consider whether the regularization was permissible under the law or not. State Government and the Ahmedabad Municipal Corporation also to increase the public transport facilities to ease the traffic problem in the city of Ahmedabad and other cities. State Government may also consider to implement the present directions in other cities of the State also, which are also reported to be having the same problems and the citizens of those cities are also facing similar difficulties.

[10.4] It is further observed that the State Government and the Ahmedabad Municipal Corporation may seriously consider to utilize and use the amount of

penalty /fine collected for traffic violation rules for the better facilities like public transportation, public parking places and other like facilities.

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[12.0] Shri Kamal Trivedi, learned Senior Advocate appearing on behalf of Ahmedabad Municipal Corporation and Ms Manisha Lavkumar, learned Government Pleader appearing on behalf of the respondent - State as well as Traffic Department have stated at the Bar that they have assured the Court that the directions issued by this Court issued from time to time, more particularly, the directions issued in the earlier order dated 11/05/2018 and the directions issued today shall be complied with in its true spirit and the steps, which are taken, are not temporary steps, which they shall continue till the ultimate goal /result is achieved i.e. smooth traffic on the public road /streets, which shall be in the larger public interest. Both of them have stated at the Bar that all efforts shall be made by the concerned Department and the Officers of the State Government to make the city of Ahmedabad a smart city in the real sense and in line with the status as a heritage city. With the hope and trust that all will perform their duties in the right earnest to make the city of Ahmedabad smart city, clean city and in real sense heritage city, Writ Petition No.170/2017 stands disposed of, however, with a direction that periodically bi-monthly action taken report /reports shall be placed on record of the present proceedings, which shall be placed before the Bench of which one of us be a party to the Bench."

[16] Examining the impugned Notice in the context of the aforesaid directions issued in a PIL, we are of considered view that it cannot be said that such Notices are de-hors the rules and are issued in absence of any specific requisition in the GDCR making it mandatory to provide free parking in all commercial buildings or malls or multiplexes. However, in the present appeal, the grievance of the appellants is only qua directions contained in Paragraph 26(ii) and (iii) quoted hereinabove.

[17] Therefore, the issue for consideration in the present appeal would be whether learned Single Judge could have issued directions in Paragraph-26. In the writ petition, learned Single Judge, as stated above, has come to the conclusion that since there is no mention of word "free" before "parking area" in the GDCR or any other provision of law, the malls or commercial buildings falling in the category of "mercantile" or "assembly" cannot be restrained from charging parking fee from the visitors. Learned Single Judge, has also opined that charging of parking fee is necessary even for the maintenance of the parking space. Based on such conclusion, learned Single Judge has issued certain directions in Paragraph-26 of the judgment which are assailed in this appeal.

In light of above, before adverting to the impugned directions issued by learned Single Judge, it becomes relevant to first embark upon the core issue, namely, whether the mall-owners or management such as the appellants can levy parking fee from visitors or public at large?

[18] "Parking" in common parlance is an act of stopping a vehicle at a place and leaving it there for a period of time whereas "amenity" is a desirable or useful feature or facility of a building or place. In a city like Ahmedabad, parking and amenities have become most essential feature or amenity to live or to carry on business. As per GDCR, particularly, Regulation 7.4, shopping mall falls within the category of 'mercantile-2' and as per Regulation 8.12, for mercantile, there shall be 50% of utilised FSI, more than 2000 sq.mtrs. and 20% of the commercial parking of such FSI of commercial parking shall be provided as visitors' parking. As per Regulation 8.5.1, area used for parking at basement or hollow-plinth or parking at any level is not to be counted towards computation of Floor Space Index (FSI). Regulation 8.12.1 which pertains to general requirements of parking, provides that parking area should be retained as effective parking space and in cases where misuse of parking space is noticed, the use of entire building shall be discontinued by the Competent Authority. Clause 10 of said Regulation further provides that "Building Use" shall be permitted only after the required parking spaces are provided and high penalty shall be levied considering the period of misuse of the parking space and the benefit derived out of misuse as decided by the Competent Authority from time to time. Even while granting Building Use Permission, the owner of a building is required to undertake that ample parking facility is available in such building and upon inspection of the property, permission to occupy or use such building is granted by the Competent Authority. From a conjoint reading of the above Regulations and other provisions of law, the only conclusion that can be drawn is that parking space is to be provided by the owner of a mercantile. Word 'provide' connotes "to make available for use; supply". In Regulation 8.12 of the GDCR, the term 'provide' is frequently used. Hence, it can safely be inferred that parking is to be 'made available for use' to visitors by the owners of a mall or the respective shop/ establishments, as the case may be, without charging any fee for the same.

[19] One another aspect is required to be noticed as justification sought to be made by the appellants for charging parking fee for the maintenance of parking space, etc. It is not unknown that in every building, housing society, or commercial building, being constructed after the GDCR came into being, the onus of providing parking is upon the buyers / occupants of such dwelling units, shops, offices etc. and they are required to bear charges towards parking while executing a contract with the vendor. Such contract or agreement between the owner of a building and occupants of establishments is ordinarily part of the deed or is entered into while executing sale/ lease of the property

in a mercantile for the obvious reason to meet with maintenance cost of amenities. The mall constructed by the appellants also consists of number of shops, multiplexes, restaurants, etc. and therefore, at the most, it can be said that the maintenance cost for the parking space, which is to be mandatorily provided as per GDCR, may be proportionately borne by the owner of the mall and occupant/ owner of such shops, multiplexes, restaurants, etc. depending upon the nature of contract they have undergone, but by no stretch of imagination can it be said that the visitors of such shops, multiplexes, restaurants, etc. will have to be fastened with the burden of parking-fee. This is exactly what is sought to be suggested by virtue of the directions issued by learned Single Judge as they give an impression or convey that the "parking policy" is to be framed by the State Government for rationalizing and regulating parking fee from the visitors of malls or commercial complexes. Such directions, in our considered view, are not warranted. We are also of the view that such parking charges upon the visitors would also not be in the interest of business of the shops, multiplexes, restaurants, etc. Therefore, the conclusion reached by learned Single Judge that since there is no provision of free-parking in the GDCR, the mall owners cannot be restrained from charging parking fee, in our opinion, is not a sound one. Learned Single Judge, based on such conclusion has issued the directions to the State Government in Paragraph-26 to take a decision on "parking policy" to rationalize and regulate the parking fees", which, in our opinion, could not have been issued, in view of the fact that there is no provision at all in the GDCR to rationalise and regulate parking fees, and further, such direction to the State Government amounts to legislate, which is not permissible under Article 226 of the Constitution of India. For same set of reasons as recorded above, learned Single Judge has also fallen in error in issuing consequential directions in clause (iii) of Paragraph-26.

[20] It is a settled position of law that only when a body or authority omits to decide a matter which it is bound to decide, it can be commanded to decide the same, or where the Government denies to itself a jurisdiction which it has under the law or where an authority vested with the power improperly refuses to exercise it, mandamus can be issued and a mandamus will not be issued unless the petitioner has a legal right to the performance of legal duty of a public nature and the party against whom the writ is sought is bound to perform such duty. It is also settled law that rule of locus standi is to be strictly followed while issuing writ of mandamus. The petitioner has to establish that he has a right to enforce public duty in his favour. In our view, none of the above ingredients are satisfied in the present case so as to issue the direction of the nature that have been issued to the State. In the present case, we do not find an error of jurisdiction or lack of jurisdiction or excess of jurisdiction or even abuse of jurisdiction on the part of the authority so as to warrant the directions so issued.

[21] As regards powers and functions of Court while reviewing administrative action of the State, the Hon'ble Supreme Court, in [Divisional Manager, Aravali Golf Club and Ors. Vs. Chander Hass and Ors.](#), 2008 1 SCC 683, held:

"19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

(emphasis supplied)

In [Union of India & Anr. v. Deoki Nandan Aggarwal.](#), 1992 AIR(SC) 96, a three Judge Bench of the Hon'ble Supreme Court observed (vide paragraph 14):

"14.It is not the duty of the Court to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or re-frame the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities..... Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by Courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power".

(emphasis supplied)

Applying the settled principles and ratio of law laid down by Hon'ble Supreme Court in the above judgments and even the analogy laid down in the case of Mukund

Dewangan v. Oriental Insurance Company Limited (supra), which has been relied upon by Single Judge to hold the Court cannot add or read the word 'free' before the words "parking area", we are of the considered view that learned Single Judge could not have observed and held that "recovery of parking fees from the outsiders would be for the services provided by the building owners on the principle of 'quid pro quo'" or that "it is needless to say that such fees cannot be levied at an exorbitant or unreasonable rate and that they must commensurate with the services provides" or that "it would be desirable for the State Government to take a decision on the "parking policy" to rationalize and regulate the parking fee being collected at the commercial complexes...". The observations and directions by learned Single Judge, in fact, would amount to legislate and direct the State Government to frame a "parking policy" only in a particular manner by "rationalizing and regulating the parking fees being collected by the malls", which in our considered view, is not permissible in exercise of powers under Article 226 of the Constitution of India.

[22] As regards decision relied upon on behalf of the appellants in the case of Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh & Ors. v. Brijlal Tibrewal & Ors. - Civil Appeal Nos.12088-12089 of 2018 decided on 14.12.2018, there cannot be any dispute with the the principle of law enunciated therein, however, in the facts and circumstances, the same will not have any applicability to the present case.

[23] Adverting to other contentions raised on behalf of the appellants, in view of the above discussion, we do not find any substance in submission advanced on behalf of the appellants that the right to charge parking fees for use of its parking facility is part of appellants' right to carry on business under Article 19(1)(g) of the Constitution. Further, the issue is not whether the appellants are charging parking fees exorbitantly or not, as is sought to be canvassed before us, and lastly, the submission on behalf of the appellants that providing free of charge parking will deprive the mall owners to use their property in accordance with law is also devoid of any substance. Likewise, for reasons stated above, the appellants, cannot equate their case with the parking-fees being charged by the Municipal Corporation and its authorities for allowing parking in open plots owned by it, because unlike the malls owners, such statutory authority is solely burdened to incur expenses for maintenance and providing parking on open plots. The the mall owners, on the other hand, even before erecting the superstructure, avail the benefit of exclusion of the FSI towards parking and further undertake to provide parking space in such excluded FSI and even while obtaining Building Use Permission they undertake to provide parking facility to visitors. Hence such benefit of FSI towards parking is ultimately required is to be passed on to public at large.

[24] It, therefore, unequivocally appears from the record that since GDCR framed under the provisions of the Gujarat Town Planning and Urban Development Act, 1976, and the Gujarat Nagarpalika Act, 1963, do not provide any parking fees in case of mall and multiplexes and duty is cast upon them to provide parking, meaning thereby, no charge is to be levied for providing parking to visitors under the garb of providing safety, security, etc., we are of the view that there is no necessity to rationalise and regulate the parking policy and/or parking fees.

[25] In view of the above discussion, we hold that the provisions of the Comprehensive General Development Control Regulation 2017, or the Gujarat Provincial Municipal Corporations Act, 1948, and the Gujarat Town Planning and Urban Development Act, 1976, do not contemplate "parking-fee" or "parking-charges" to be levied from the visitors of a mercantile or malls or multiplexes or commercial complexes and the State Government cannot be directed 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", as has been directed by learned Single Judge, in the Writ Petition at the instance of Mall owners under Article 226 of the Constitution of India.

[26] For the foregoing discussion and reasons, the impugned directions contained in CAV Judgment dated 17.10.2018, rendered by learned Single Judge in Paragraph-26, in our considered opinion cannot bind the State Government, inasmuch as in exercise of powers under Article 226 of the Constitution of India, a Writ Court is ordinarily not expected to direct the State and its authorities to undertake any legislative exercise and enactment of legislation in the form of Act/ Rules/ Regulations is in exclusive domain of the legislature. Even the observations and conclusions arrived by learned Single Judge in the impugned judgment, which are based on an incorrect assumption that the owners of malls/ multiplexes can charge parking fees from the visitors as per GDCR shall not be binding upon the respondent - authorities. Therefore, the directions contained in Paragraph-26 of the judgment impugned in this appeal to rationalise and regulate the parking fees and prescription of rates for fixation of parking rates for malls/ multiplexes till appropriate decision is taken by State Government, are not to be implemented. Liberty is reserved upon the respondent-authority to act upon Notices and orders impugned before the learned Single Judge.

With the above observations and directions, the Letters Patent Appeal stands disposed of. In view of disposal of appeal, Civil Application for interim relief also stands disposed of.