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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 42 of 2020

With

MISC. CIVIL APPLICATION (FOR REVIEW) NO. 1 of 2021

In R/WRIT PETITION (PIL) NO. 42 of 2020

With

R/WRIT PETITION (PIL) NO. 207 of 2020

With

CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2021

In R/WRIT PETITION (PIL) NO. 207 of 2020

SUO MOTU

Versus

STATE OF GUJARAT & 2 other(s)

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Appearance:

SUO MOTU(25) for the Applicant(s) No. 1

for the Opponent(s) No. 5,7,8,9

MR KAMAL TRIVEDI, ADVOCATE GENERAL WITH MS MANISHA LAVKUMAR, GOVERNMENT PLEADER and MS DHARMESH DEVNANI, AGP (1) for the Opponent(s) No. 1,2,3

MR NM KAPADIA(394) for the Opponent(s) No. 4

NOTICE SERVED(4) for the Opponent(s) No. 10

MR ROHAN A SHAH(7497) for the Opponent(s) No. 6

MR RUSHABH H SHAH(7594) for the Opponent(s) No. 6

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH
and

HONOURABLE MR. JUSTICE J.B.PARDIWALA

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Date : 08/01/2021

COMMON ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)

1. We had posted this matter for consideration of the Government stand with regard to the Uttarayan festival which is celebrated with great pomp and show on 14th January, 2020.

2. Mr.Kamal Trivedi, learned Advocate General has placed before us the possible measures / instructions which according to him have been decided at the level

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of the Government to ensure the containment of the spread of COVID-19 during the festival of Uttarayan and such instructions to be strictly followed and implemented. The said instructions are reproduced below :

"POSSIBLE MEASURES / INSTRUCTIONS

To contain the spread of COVID-19 during the Festival of Uttarayan, the following instructions are required to be strictly implemented:

- 1. No gathering and flying of kites at public places/open grounds/roads are allowed.*
- 2. It is advisable that this time, the Festival of Uttarayan is celebrated in restrictive manner with the close family members only.*
- 3. Without mask nobody is allowed to gather on terrace of building/flat for kite flying. It is also mandatory that they should strictly follow the norm of social distancing and keep arrangement of sanitizers there.*
- 4. No person other than the residents of the flats or society shall be allowed on terraces of building/flat or open grounds in the residential societies.*
- 5. Large gathering of People on terraces of building/flat or open grounds in the residential societies is prohibited.*
- 6. Use of loud speakers, DJs and music systems are prohibited as it may attract large gathering on terrace of building/flat or open grounds, which may increase the risk of infection of Covid-19.*
- 7. Persons above 65 years of age, persons with comorbidities, pregnant women and children below*

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the age of 10 years are advised to stay at home.

8. No one is allowed to display any writing/slogans/pictures on kites that can affect the sentiments of society and disturb public tranquillity.

9. Use of Chinese Sky Lantern, Chinese Tukkals, synthetic/glass coated Manja, Plastic Manja is strictly prohibited in accordance with the directives of the Hon'ble Supreme Court and the National Green Tribunal (NGT). The guidelines issued vide the letter No.SB-II/DSM/132016/H.C.-02 (Part File), dated 29.12.2020 of the Home Department, Government of Gujarat shall be strictly followed.

10. Persons visiting the kite-markets located at various places in the State, like at Raipur, Tankshal, Naroda, etc. in the City of Ahmedabad, are directed to strictly observe all Covid-19 protocols and assist the police personnel for regulating their presence.

11. The directives issued vide notifications/guidelines by the Central Government and the State Government with respect to the Covid-19 shall be strictly followed.

12. Directions published vide the order No.SB-I/KAV/102020/482 dated 09.10.2020 of the Home Department, Government of Gujarat shall be strictly adhere to.

13. Curfew imposed in the Police Commissionerate areas of Ahmedabad, Vadodara, Rajkot and Surat cities in the State shall be strictly implemented.

Effective implementation of the above instruction would be ensured by the deployment of adequate "Police Bandobast", Patrolling and Surveillance by using technology like Drone & CCTV as case may be.

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Any person breaching any of the above instructions would be liable for penal action under the prevailing law including the Disaster Management Act, 2005 and the Indian Penal Code, 1860."

3. Shri Trivedi has submitted that the Government intends to issue appropriate circular / orders in the light of the above and which should according to him take care of all the stakeholders.

4. Shri N.M.Kapadia, learned advocate appearing for Shri Nisarg Shah, learned counsel in Writ Petition (PIL) No.207 of 2020 has made submissions to the effect that there should be a complete ban / prohibition on kite flying and use of crackers on the festival of Uttarayan as otherwise it would again create a situation where there could be spread of COVID-19 which has since been well controlled in the State of Gujarat.

5. Shri K.R.Koshti, learned counsel appearing for the Gujarat Patang Manufacturing and Traders Association through Civil Application No.1 of 2021 has submitted that there should a sustainable existence for all stakeholders and if kite flying is completely banned and prohibited, the entire kite manufacturing industry would suffer at large comprising of lakhs of workers and their families. He therefore submits that the suggestions given by the Government to implement the instructions as read out by the learned Advocate General would be good enough

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to take care of all stakeholders.

6. In response Shri Trivedi, learned Advocate General submitted that the kite flying business in the 2020 Uttarayan festival was of more than Rs.600 Crores and caters to 1,25,000 families and it is their single crop in a year. He therefore submitted that keeping in mind the interest of the kite flying manufacturing also, the kite flying may be permitted subject to the restrictions as have been mentioned in the instructions passed on today.

7. Having considered the submissions, we feel that the instructions as placed before us on behalf of the State are reasonable. The State may accordingly issue necessary circulars and orders with an only modification in Clause No.4. It may be added in Clause No.4 that : "In case of breach of any of the conditions, the Secretary / Resident Welfare Association (R.W.A.) of the concerned society would be held responsible and accountable."

8. In view of the above, the Writ Petition (PIL) No.207 of 2020, the Misc. Civil Application No.01 of 2021 and Civil Application No.01 of 2021 stand disposed of. The Writ Petition (PIL) No.42 of 2020 may be listed for further consideration on 26th February, 2021.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

GAURAV J THAKER

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