

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

DISTRICT: SURAT

WRIT PETITION NO. \_\_\_\_\_ OF 2018 (PIL)

(EXTRA ORDINARY JURISDICTION)

Ref: In the matter of Public Interest Litigation related to collection and levy of parking fee from the visitors in commercial complexes like Malls in the city of Surat, Gujarat.

In the matter under Article 14, 21 & 226 of the Constitution of India, 1950;

And

In the matter of the Gujarat Town & Urban Development Act, 1976;

And

In the matter between;

Sajeev Bhargav Ezhava

Age: 41 years, Occupation: Business, Male,

Having address at: B-403, Saneswar Complex,

Mahadev faliya, Katargam, Surat-395004.

...Petitioner

Versus

1. The State of Gujarat  
(Notice to be served upon  
The Secretary,  
Home Department, 2nd Floor, Swarnim Sankul – 2,  
New Sachivalay, Gandhinagar.
2. The Municipal Commissioner  
Surat Mahanagar Seva Sadan"  
Gordhandas Chokhawala Marg,  
Muglisara, Surat – 395003.
3. Virtuous Retail-(VR) Mall  
Notice to be served its Authorized Representative  
Dumas Road, Magdalla, Surat, Gujarat 395007.

4. RahulRaj Mall

Notice to be served upon its Authorized Representative  
Notice to be served its Authorized Representative  
Dumas Road, Magdalla, Surat, Gujarat 395007.

5. The Town Development Officer  
Surat Mahanagar Seva Sadan"  
Gordhandas Chokhawala Marg,  
Muglisara, Surat – 395003.

...Respondents

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

The humble petition of the  
Petitioner above named;

**MOST RESPECTFULLY SHEWETH THAT:-**

1. That this petition is filed under Article 14, 21 and 226 of the Constitution of India by way of Public Interest Litigation. The present issue is with regard to the collection and levy of parking fee from the visitors in commercial complexes like Malls in the city of Surat, Gujarat which is illegal, arbitrary and unjust. So far as the present Petitioner is concerned, the Petitioner is a public spirited person and a law abiding citizen and is actively involved in the issues of public importance and the present Petition is filed after getting information under the Right to Information Act 2005 with the authorities with regard to the above mentioned issues. Hence, there is no personal interest in the litigation except for the benefit of the public at large. Hence, this petition is filed in the interest of general public for collection and levy of parking fee from the visitors in commercial complex

es like Malls in the city of Surat, Gujarat which is illegal, arbitrary and unjust. The Petitioner has not filed any other Public Interest Litigation except the present subject matter.

2. The Petitioner is a resident of Surat City and has also filed one Public Interest Litigation being Writ Petition No.\_\_\_\_ of 2016 (PIL) before this Hon'ble Court with regard to air connectivity at Surat Airport which is pending for adjudication. It is submitted that no contempt proceedings are ever initiated against the petitioner. It is submitted that, the Petitioner had conducted various public awareness programs such as organizing drawing competition on Surat airport, also by displaying hoardings within the city containing valuable information for the awareness among the people of surat and also by creating public awareness through social media platforms with regard to social issues.

3. The Petitioner is filing the present petition purely in public interest on his own and not at the instance of any other person or organization. The litigation cost, including the travelling expenses and other expenses are being borne by the petitioner himself. The Petitioner also submits that the source of income of the petitioner is from its business, so the petitioner has not mentioned any fixed income. It is also submitted that, the learned Advocate is doing *pro bono* litigation for the present Petition and therefore, except some costs, there will be no further expenses to be borne by the petitioner. The Petitioner is a law abiding citizen and there are no contempt proceedings till today against the present Petitioner.

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

- 4.1 The Petitioner submits that, the Respondent No.3 and 4 who owns and manages the shopping malls known as VR Mall and Rahulraj Mall are levying and collecting parking fees for the vehicles parked in their shopping mall. The Petitioner submits that, the collection and levying of parking fee from the visitors in commercial complexes such as VR Mall and Rahulraj Mall is totally illegal and arbitrary as the Respondent No.3 and 4 have no authority to collect parking fee from visitors who come to the commercial complex for their business as well as other needs.
- 4.2 The Petitioner submits that, the Petitioner made an application under the Right to Information Act to the Respondent No.2 authority to provide details whether there is any provision or law whereby the shopping malls can charge parking fee for the vehicles parked in the said malls from their customers. The Respondent No.2 vide its reply dated 23.01.18 to the Petitioner that there is no provision in Comprehensive General Development Control Regulations, 2017 (CGDCR) for taking of parking fees for any shopping malls/complex in city limit from their customers. Copy of the RTI dated 23.01.18 is annexed hereto and marked as **Annexure-A**.
- 4.3 The Petitioner submits that, under the Right to Information Act, the Respondent No.2 authority has provided information that the place earmarked for parking in Respondent No.3 and 4 is place meant for parking by public without any fee and if any commercial activities are being operated in the parking area then such activities are considered as illegal except if any commercial activities are being carried out after taking prior permission of the Respondent No.2 authority. It is also further provided that the sanctioned building plans of Respondent 3

and 4, the area reserved for parking does not include F.S.I and even exempted from levy of property tax by the Respondent No.2. It was also provided that, if any parking fee is being levied or collected by any mall from their customers being commercial activity, it is mandatory for such malls to register as pay and park with the Respondent No.2 authority and on such commercial activity property tax would be levied by the Respondent No.2. Copy of the RTI dated 08.03.18 and 27.03.18 is annexed hereto and marked as **Annexure-B** and **C** respectively.

4.4 The Petitioner submits that, under the Right to Information Act, the Respondent No.2 authority has not granted any permission to any commercial shopping mall in the Surat City to collect or levy of parking fee for parking of vehicles from their customers. Copy of the RTI dated 13.04.18 is annexed hereto and marked as **Annexure-D**.

4.5 The Petitioner submits that, based upon the information obtained under the Right to Information Act and other materials the Petitioner made detailed representation to the District Collector, Surat, Municipal Commissioner, Surat and to the Respondent No.3 and 4 whereby collection of parking fee by the owners of commercial complexes i.e. Respondent No.3 and 4 being commercial activity is illegal and contrary to the building plan sanctioned by the Respondent No.2 authority, that due to collection of parking fee by the owners of the complexes, all the visitors are parking their vehicles on the outside road margin resulting in traffic problems and that the various authorities such as District Collector and Municipal Commissioner shall take immediate and appropriate action against the Respondent No.3 and 4 for doing commercial activities of

collecting parking fee illegally. It is also submitted that, nearly 2000 visitors vehicles per day visit the malls and they are compel to pay the parking fee of Rs. 30/- on weekdays and Rs.40/- during weekends and thereby collecting an exorbitant fee of Rs. 20 Lakh per month amounting to Rs.2.4 Crore approximately from the customers. Copy of the representation dated 07.02.18 and 09.04.18 of the Petitioner along with postal receipts and receipts of parking fees are annexed hereto and marked as **Annexure-E Colly**.

- 4.6 That in lieu of these circumstances, the Petitioner is filing the present Writ Petition with a humble prayer that keeping in view the fact that collection of parking fee by the owners of commercial complexes i.e. Respondent No.3 and 4 being commercial activity is illegal and contrary to the building plan sanctioned by the Respondent No.2 authority, that due to collection of parking fee by the owners of the complexes, all the visitors are parking their vehicles on the outside road margin resulting in traffic problems and that the various authorities such as District Collector and Municipal Commissioner shall take immediate and appropriate action against the Respondent No.3 and 4 for doing commercial activities of collecting parking fee illegally
5. The need for filing the petition arose because in view of the above facts and circumstances of the case the matter requires immediate consideration of the respondent authorities and to take immediate action and to frame a uniform policy with regard to the issue mentioned hereinabove. Hence, on the basis of the information as stated hereinabove which is collected by way of information from various sources and Right to Information, therefore, for the purpose of

protection of public at large and violation of the policy and the rules by the respondent 3 and 4, this petition is filed for the protection of the fundamental rights and for effective implementation of rule of law.

6. It is submitted that, the Petitioner has made several representations to the authorities for taking an immediate and prompt action for the reasons stated therein but till not action has been taken by the respondent authorities, therefore, the Petitioner has been constrained to approach this Hon'ble Court seeking appropriate relief.
7. That to the best of the knowledge and information of the present petitioner, no public interest litigation raising the same issue with regard to collection and levy of parking fee from the visitors in commercial complexes like Malls in the city of Surat, Gujarat is filed before this Hon'ble Court or before any other Court.
8. The Present petition has been filed on the following amongst other grounds:-

#### **G R O U N D S**

- (a) The entire fact and history clearly indicates that all the respondents authorities have neglected their statutory duties and obligations for providing facilities of parking without any levy or collection of parking fee to the visitors in commercial complexes like Malls in the city of Surat, Gujarat and thereby the citizen are deprived of their fundamental rights to access the public space despite they all are the tax payers of the state and great hardship and difficulties are being faced by the people of Surat due illegal, unjust and arbitrary collection of parking fee/charges from the visitors in the commercial establishments such as Malls.

- (b) That for general public as well as visitors to various commercial complexes, collection of parking fee by the owners of commercial complexes like the Respondent No.3 and 4 is illegal and contrary to the building plan sanctioned by the Respondent No.2 authority, that due to collection of parking fee by the owners of the complexes, all the visitors are parking their vehicles on the outside road margin resulting in traffic problems and that the Respondent No.2 has to take appropriate action against the Respondent No.3 and 4 for collecting parking fee illegally.
- (c) It is also submitted that, the place earmarked for parking in multi-storeyed commercial/office complexes and malls is place meant for parking by public without any fee. Further, as per sanctioned plan of Respondent No.2, the area reserved for parking does not include F.S.I. The collection of such fee amounts to business/commercial activities and against the sanction of Respondent No.2 authority for parking. It is the duty of owner of every complex to provide free parking to the people who visit such complex for shopping. If fee is collected the earmarking of parking place in commercial/ office and malls complexes will become futile. It is also submitted that, people are parking their vehicles in the road margin as complex owners are collecting fee and resulting in traffic problems and accidents. Hence, the parking fee should not be collected in parking areas in commercial/office complexes and malls. Collection of such fee amounts to violation of sanctioned plan and it should be treated seriously and the Respondent No.2 authority should take appropriate action against those persons. However, in the present case despite the



representation of the Petitioner, the respondent authorities did not took any action against the wrong doers.

- (d) It is further stated that as per the provisions of the Comprehensive General Development Control Regulations, 2017 (CGDCR), it is compulsory for the owners of the commercial/shopping complex and malls to provide regular parking facility for the owners as well as visitors to the complex. The area earmarked for parking is counted for the purpose of floor area ratio while sanctioning the building permit. The owners/builders availed the benefit of extra FAR by including the area meant for parking and, therefore, it is not open to them to utilise the said parking area as commercial venture and collect fee from the visitors. If the owners/ their licensees are permitted to collect parking fee, the same frustrates the purpose for which parking area is provided. Respondent No.2 authority can enforce the law by compelling the owners to stick to the building plan and utilise the areas for the purpose for which they are earmarked. It is further stated that the Petitioner and general public have made several complaints to the Respondent No.2 authorities that parking fee is being collected by commercial complexes and malls at exorbitant rates even though the area itself is earmarked for parking. Such area is earmarked and specified keeping in view the parking requirements of the owners and also the visitors to the complex. Commercial complexes are required to provide large parking area than residential complexes. The parking area in a commercial complex is a public parking place meant for the purpose of the general public and, therefore, it is the duty of the owners to provide free parking to the people who visit the complex. Parking area in commercial complex is

also meant for the general public who visit the complex and, therefore, the statute does not confer any right on the Respondent No.3 and 4 to collect parking fee is without authority of law and is illegal.

- (e) Hence, in view of the settled principles of law, the parking space is a public space and thereby the Respondent No.3 and 4 has no right to collect or levy any kind of parking charge of the vehicles from the visitors to the commercial establishments such as Malls etc. It is also submitted that, there is no specific policy of the State or the authority to regulate the issue of levy and collection of parking fee. It is pertinent to mention that, the Government of Telangana has issued Government Orders dated 20.03.18 whereby Policy of Parking for the city of Hyderabad and other urban areas of Telangana to regulate the parking charges as the huge parking fee is being collected in the commercial establishments such as malls and multiplexes etc. to avoid misuse of parking. Copy of the G.O.Ms. No.63 dated 20.03.18 by the Government of Telangana is annexed hereto and marked as **Annexure-F**.

- (f) It is submitted that, complexes such as malls, theatres or shopping complexes have no right to lease, or rent out parking areas for commercial purposes which actually come under the common utility areas. Hence, the commercial complexes are public spaces which operate by flow of public, so the public spaces must be free of cost.

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

**GROUND FOR INTERIM RELIEF**

- (a) The grounds for interim relief have been narrated in the present petition showing the required urgency.
  - (b) Petitioner has a prima facie case. Balance of Convenience is in favour of the Petitioner. No irritable damage will cause to the respondent and also it is in the interest of the respondents also if interim relief prayed for is granted.
  - (c) That the Respondent No.3 and 4 are collecting illegal parking fee from the visitors and the authorities are not taking any action which is totally arbitrary, unjust and illegal.
10. The Petitioner submits that, no other application or petition is filed or pending before any other Tribunal, Court, Authority or Hon'ble High Court or Hon'ble Supreme Court of India in respect to the subject matter of this Petition except this petition before this Hon'ble Court.
11. The Petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this Petition.
12. That the Petitioner prays that this Hon'ble Court may be pleased to:-
- (a) Your Lordships may be pleased to issue a Writ of Mandamus and/or any other appropriate Writ, order or direction in

the nature of mandamus directing the Respondent No.1, 2 and 5 to take appropriate action against the Respondent No.3 and 4 for collection and levy of parking fee from the visitors in commercial complexes like Malls in the city of Surat, Gujarat which is illegal, arbitrary and unjust and further be pleased to direct the Respondent No.3 and 4 not to collect or levy any kind of parking fee permanently from the visitors in commercial complexes like Malls in the city of Surat;

(b) Your Lordships may be pleased to issue a Writ of Mandamus and/or any other appropriate Writ, order or direction in the nature of mandamus directing the Respondent No.1, 2 and 5 to frame uniform parking policy with regard to rationalize and regulate the parking fee being collected in the commercial establishments/malls/multiplexes and to prevent misuse of parking by the outsiders in the public interest;

(c) Pending admission, hearing and/or final disposal of this Petition, Your Lordships may be pleased to constitute a Committee comprising of each member from the Respondent No.1, 2 and 5 authorities including the present Petitioner and also if any experts on the subject as deem fit by this Hon'ble Court to suggest/discuss and to take all steps to frame uniform parking policy with regard to rationalize and regulate the parking fee being collected in the commercial establishments/malls/multiplexes and to prevent misuse of

parking by the outsiders in the public interest expeditiously and Your Lordships may be pleased to further direct the said Committee after conducting meeting and inspection to submit the status /compliance report for kind perusal of this Hon'ble Court;

(d) Pending admission, hearing and/or final disposal of this Petition, Your Lordships may be pleased to restrain the Respondent No.3 and 4 from collecting or levying any kind of parking fees for the vehicle parked in the shopping mall from their visitors and further be pleased to direct the Respondent No.3 and 4 to deposit entire amount collected illegally from the date of its inception to the government treasurer as the case may be in the interest of justice;

(e) Your Lordships may be pleased to grant any other relief or reliefs' as this Hon'ble Court may deem just, fit and expedient be granted in favour of the Petitioner;

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

Place:

Date:

[VISHAL J. DAVE/NIPUN SINGHVI]  
ADVOCATE FOR THE PETITIONER

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

DISTRICT: SURAT

WRIT PETITION NO. \_\_\_\_\_ OF 2018 (PIL)

(EXTRA ORDINARY JURISDICTION)

Sajeev Bhargav Ezhava

...Petitioner

Versus

The State of Gujarat & Ors.

...Respondents

**AFFIDAVIT**

I, Sajeev Bhargav Ezhava, being the Founder and President of Surat Airport Action Committee; Aged: 41 years Adult; Male; Occupation: Business ; residing at: B-403, Saneswar Complex, Mahadev Faliya, Opp: Katargam lake garden, Katargam, Surat-395004 do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner in the present application and thereby I am very well conversant with the facts of the present case and thereby competent to swear this affidavit.
2. That I am fully competent and conversant with the facts of the case. I state that what is stated herein above in para 1 to \_\_\_ are true to the best of my personal knowledge and what is stated in the rest of the paragraphs are true to the best of my knowledge,

information and belief. I believe the same to be the true and correct. Para – \_\_\_ is the prayer clause.

Solemnly affirmed at Ahmedabad on this 07<sup>th</sup> day of May, 2018.

Explained and interpreted in Gujarati to the deponent by me.

DEPONENT

Advocate.