THE HIGH COURT OF ORISSA, CUTTACK

No.XI-16/2024/.18243.(30)/ Dated..25.11.2024

From;

Asanta Kumar Das,
Registrar General

To,

The District & Sessions Judge,..... (All)

Sub: **Judgment dtd. 13th November, 2024 passed in W.P.(C) No. 295 of 2022 (In Re: Directions in the matter of demolition of structures) by Hon'ble the Supreme Court of India**

Sir/Madam,

With reference to the subject cited above, I am directed to forward herewith a copy of the Judgment dtd. 13th November, 2024 passed in W.P.(C) No. 295 of 2022 (In Re: Directions in the matter of demolition of structures) by Hon'ble the Supreme Court of India for favour of your information.

Further, you are requested to circulate the same amongst all the Judicial Officers working in your judgeship for their information and guidance.

Yours faithfully,

ASANTA KUMAR DAS
Digitally signed by ASANTA KUMAR DAS
Date: 2024.11.22 17:06:12 +05'30'

REGISTRAR GENERAL

Encl.: As above.

2024 INSC 866

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.295 OF 2022

In Re: Directions in the matter of demolition of structures

WITH

WRIT PETITION (CRIMINAL) NO. 162 OF 2022

WRIT PETITION (CIVIL) NO. 328 OF 2022

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Signature Not Verified
Digitally signed by NARENDRA PRASAD
Date: 2024.11.13 11:27:11 IST
Reason:

J U D G M E N T

B.R. GAVAI, J.

"अपना घर हो, अपना आंगन हो,

इस ख्वाब में हर कोई जीता है।

इंसान के दिल की ये चाहत है,

कि एक घर का सपना कभी न छूटे।"

(To have one's own home, one's own courtyard – this dream lives in every heart. It's a longing that never fades, to never lose the dream of a home.)

This is how the importance of shelter has been described by a famous Hindi poet 'Pradeep'.

It is a dream of every person, every family to have a shelter above their heads. A house is an embodiment of the collective hopes of a family or individuals' stability and security.

An important question as to whether the executive should be permitted to take away the shelter of a family or families as a

measure for infliction of penalty on a person who is accused in a crime under our constitutional scheme or not arises for consideration.

Before we proceed with our judgment, we may gainfully refer to the following observation of Lord Denning in the case of ***Southam v. Smout***[1]:

> "'The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail – its roof may shake – the wind may blow through it – the storm may enter – the rain may enter – but the King of England cannot enter – all his force dares not cross the threshold of the ruined tenement.' So be it – unless he has justification by law."

I. BACKGROUND

1. This batch of Writ Petitions filed under Article 32 of the Constitution of India seeks to raise the grievance on behalf of various citizens whose residential and commercial properties have been demolished by the state machinery, without following

[1] (1964) 1 QB 308 at 320

the due process of law, on the ground of them being involved as an accused in criminal offences.

2. The petitions *inter alia* seek a direction to the Union of India and the concerned States directing them that no precipitative action be taken in respect of residential or commercial properties of any accused in any criminal proceedings.

3. It has also been prayed that a direction be issued for strict action to be taken against the officials of the state machinery who have participated or participate in future in such an illegal exercise of demolition.

4. We have heard the matter from time to time.

5. When the matter was listed on 2nd September 2024, this Court passed the following order:

"UPON hearing the counsel the Court
made the following
O R D E R
1. IA. Nos.194520, 195057, 194619,
188144 and 186082 of 2024 are allowed.

2. The present batch of petitions raise a grievance that the properties of persons who are accused of some crime are being demolished.

3. The position is disputed by the State of Uttar Pradesh and an affidavit has been filed that the immovable properties can be demolished only in accordance with the procedure prescribed by law. An affidavit has also been filed on behalf of the State of Uttar Pradesh by Special Secretary, Home Department, Government of Uttar Pradesh.

4. We appreciate the stand taken by the State of Uttar Pradesh in the affidavit filed by it.

5. We propose to lay down certain guidelines on 'Pan-India Basis' so that the concerns with regard to the issues raised are taken care of.

6. We find that it will be appropriate that the learned counsel for the parties give their suggestions so that the Court can frame appropriate guidelines, which will be applicable on 'Pan-India Basis'.

7. We request all the parties to also supply a copy of their suggestions to Shri Nachiketa Joshi, learned Additional

Advocate General for the State of Madhya Pradesh, on his Email ID which is sr.adv.nachiketajoshi@gmail.com, who is requested to collate the same.

8. List on 17.09.2024."

6. Vide order dated 17th September 2024, we directed that, *"there shall be no demolition anywhere across the country without seeking leave of this Court"*. However, we clarified that, *"our order would not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law"*.

7. Thereafter, we heard the matter at length on 1st October 2024.

8. We have heard Shri Abhishek Manu Singhvi, Shri M.R. Shamshad, Shri Sanjay Hegde, learned Senior Counsel appearing for the petitioners, Shri Tushar Mehta, learned Solicitor General of India ("SG" for short), appearing for the Union

of India as well as for some of the States, Shri Nachiketa Joshi, learned Senior Counsel and Shri C.U. Singh, Smt. Nitya Ramakrishnan, learned Senior Counsel and Shri Mohd. Nizammudin Pasha, Smt. Fauzia Shakil and Smt. Rashmi Singh, learned counsel appearing for their respective applicant(s) seeking intervention/impleadment.

9. In pursuance to our order dated 2nd September 2024, various learned counsel had given their suggestions.

10. Shri Nachiketa Joshi, learned Senior Counsel has made a compilation of the suggestions given by different learned counsel on different points. The same are reproduced herein below:

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
1.	SHOW CAUSE NOTICE	Mr. C.U. Singh, Sr. Adv.	**RELEVANT DETAILS IN SHOW CAUSE NOTICE:** a) Specific grounds on the basis of which the violation is alleged and the demolition is proposed; b) Description of building/structure proposed to be demolished and the extent of unauthorized construction, if any; c) Details of relevant applicable provisions and laws alleged to have been breached (municipal laws, forest laws etc.);

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
	SHOW CAUSE NOTICE		d) If the alleged violation can be compounded or regularized on payment of a fee/penalty; e) Time period within which the owner has to reply; and f) Documents that the owner has to furnish. **SERVICE OF SHOW CAUSE NOTICE:** 1. **Delivery Method:** Serve the Show Cause Notice by hand to the owner of the dwelling/commercial establishment slated for demolition. 2. **Witness Requirement:** A neighbour of the owner must be present as a witness during the notice service and sign the notice. 3. **Report of Service:** The officer serving the notice must prepare a report detailing the service. 4. **Alternate Delivery:** If the owner is not residing in the district, the notice can be sent via Registered Post/Speed Post AD. **SERVICE OF NOTICE TO OCCUPIER:** 1. **Occupier Notification**: If the property is occupied by someone other than the owner, serve the notice to the occupier in the same manner. 2. **Direction to Occupier**: The notice must include a directive for the occupier to inform the owner about the notice. 3. **Affixing Notice**: The notice should be affixed to the gate/door or another conspicuous part of the property proposed for demolition. **UPLOADING NOTICE ON THE WEBSITE:** Copy of notice and service report should also be uploaded on the website of the municipal corporation or concerned authority.

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			TIME TO FILE REPLY: Minimum 2 months-time **REPLY TO SHOW CAUSE NOTICE:** The owner shall file its reply to the show cause notice within the time prescribed, along with relevant supporting material. A receiving or acknowledgment of the reply should be provided to the owner.
		Ms. Nitya Ramakrishnan, Sr. Adv.	**Issuance of Show Cause Notice**: • If the authority believes an unauthorized building/development exists, a show cause notice must be served to both the owner and occupier before any action is taken. • The notice must also be pasted on the property and published in three newspapers with over one lakh circulation—one each in Hindi, English, and a third language designated by the state. • The newspaper notice only needs to include the owner's and occupier's names, property address, and a link to a website with the full notice and timestamp. **Content of the Notice**: The notice must specify the legal provisions under which it is issued, the violations identified, and the specific portion and extent of the building/structure that is deemed illegal. **Time for Response**: The notice must provide a response period of no less than 45 days and no more than 60 days for the owner/occupier to justify why the structure should not be demolished. **Notice to Family Members**: If the owner or occupier cannot be found, the notice may be

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			served to a member of their immediate family, with additional time for response granted in such cases
		Mr. Mohd. Nizammudin Pasha & Ms. Rashmi Singh, Advs.	A. Publication of notice of demolition in at least 10 days in advance in local newspapers in addition to personal service of notice on the owner of the property sought to be demolished; B. Personal hearing of owner of property;
		Mr. M.R. Shamshad, Sr. Adv.	**Service of Notice**: Once the list is prepared, the officer must serve written notice at least 60 days before the proposed demolition. The notice must contain: **a. Reason for Proposed Demolition**: A brief explanation of why the demolition is proposed. **b. Personal Service of Notice (Dasti)**: The notice must be served in-person with two neighborhood witnesses, as well as by registered post (acknowledgment due), in line with procedures laid down by High Courts and the Supreme Court for service of notices or summons. **c. Online Upload**: The notice must be uploaded on the Municipal authority's website. **d. Vernacular Language**: The notice must be provided in the vernacular language(s) prevalent in the area where the property is located. **e. Affidavit of Compliance**: The officer must swear an affidavit 10 days before the demolition, confirming compliance with all notice-serving procedures, and submit it to the Divisional Commissioner or equivalent officer. **f. Notice to Owner in Custody**: If the owner is in custody, the notice must be served via the

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			concerned Judicial Magistrate at least 60 days before the proposed demolition. **Explanation**: The 60-day period begins from the date of delivery of the notice to the affected persons.
2.	CONSIDERATION OF THE REPLY TO SHOW CAUSE	Mr. C.U. Singh, Sr. Adv.	1. **Review of Owner's Reply**: Authorities shall consider the reply and supporting material provided by the owner. 2. **Request for Additional Information**: If additional explanations/material are needed, the authority will inform the owner in writing. The owner will have 4 weeks to furnish the requested information. 3. **Personal Hearing**: The authority will issue an intimation to the owner specifying the date and time for a personal hearing. The personal hearing for the occupier will not replace the need for a hearing with the owner or authorized representative.
		Ms. Nitya Ramakrishnan, Sr. Adv.	The person(s) in response to the notice shall have the following rights: 1. The concerned person in receipt of the above-mentioned Notice shall have the right to engage an Advocate/Counsel and may also be allowed to appear in- person. 2. To present evidence that the construction is legal. 3. The opportunity to compound the offence, that is, to make modifications to comply with the regulations.
3.	PROPOSED ACTION SHOULD BE PROPORTIONAL TO THE	Mr. C.U. Singh, Sr. Adv.	The authority shall in the meanwhile also consider the nature and extent of unauthorized construction, if the unauthorized construction can be regularized or compounded on payment of fee/penalty under applicable law. If yes, then the owner shall be intimated of such avenue and provided some reasonable time, not being less than 4 weeks, to avail the option. In case the breaches are technical and inconsequential in

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
	VIOLATION		character, and the house/commercial establishment can be saved by removing the offending part, the owner may be permitted to remove the encroachment and save the building. The administrative action should be proportional to the alleged breach and demolition should be the last option.
4.	ORDER/ NOTICE OF DEMOLITION	Mr. C.U. Singh, Sr. Adv.	**Authority's Satisfaction and Demolition Order**: After considering the owner's reply, written explanation, and physical hearing, if the authority is satisfied that there are violations beyond condonable limits or cannot be regularized, an order for demolition may be made. **Relevant Details in the Demolition Order**: • The demolition order must state reasons for the proposed action and mention the proposed demolition date. A minimum of 8 weeks must be given from the service of the order, allowing the owner time to approach the courts, remove belongings, and arrange alternate accommodation. • The head of the authority's department must record satisfaction, certify compliance with guidelines, and ensure the action is taken in good faith. **Service of Demolition Order**: The service of the demolition order should follow the same procedure as the show cause notice.
	ORDER/ NOTICE OF DEMOLITION	Ms. Nitya Ramakrishnan, Sr. Adv.	If, after the abovementioned inquiry, the appropriate authority decides that the demolition of the offending part or the whole of the building/ development/ structure it will issue an order affording the owner/occupier to demolish the offending portions within 30 (thirty) days failing which it will issue a notice of demolition in the manner explained hereunder.

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			Personal Service of Demolition Notice: The demolition notice must be served personally on the owner/occupier by a Nodal officer, appointed in each state for serving and implementing such orders, ensuring adherence to timelines. **Period for Appeal and Legal Recourse**: The notice must state a period for appeal and legal recourse, which shall not be less than 60 days. **Additional Publication Requirements**: The demolition notice must also be pasted on the property and published in three newspapers (Hindi, English, and a third language). The newspaper notice needs to include only the owner's/occupier's name, property address, and a link to a website where the full notice with a timestamp is uploaded. **Scope of Demolition**: No demolition shall extend beyond the portion deemed illegal. Any excess demolition will require compensation as per Part C of these guidelines. **Special Permission for Demolition**: If the owner or occupier is not found, special permission from the Nodal officer is required before proceeding with the demolition.
		Mr. M.R. Shamshad, Sr. Adv.	**Survey of the Neighborhood**: If an officer believes a dwelling unit, house, or shop is subject to demolition, they must first conduct a neighborhood survey to determine how many properties in the area are also liable for demolition based on municipal law. **Preparation of Demolition List**: After completing the neighborhood survey, the officer shall prepare a list of all houses or units deemed fully or partially liable for demolition.
		Mr. Mohd. Nizammudin Pasha & Ms.	Order of demolition must record reasons therefor inter alia including the following: I. Documents relied upon by owner to prove ownership/validity of property;

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
		Rashmi Singh, Advs.	II. Relevant provisions under which property is illegal/encroachment; III. Alternative rehabilitation or compensation provided to owner; IV. Time given to owner to move belongings etc. from property sought to be demolished; No order of demolition ought to be passed till sufficient time has been granted to the owner of property to take recourse to effective legal remedies including appeal/challenge against the order of demolition. In any proceedings where demolition is challenged on the ground of the same being punitive, the fact that the aggrieved person has been singled out for action and no action has been taken against similarly situated persons in the vicinity must be a valid consideration for grant of relief;
5.	CHALLENGE TO THE ORDER OF DEMOLITION	Mr. C.U. Singh, Sr. Adv.	**Judicial Examination of Demolition Orders**: Courts must assess whether the proposed demolition is motivated by malice or bad faith. **Presumption of Malice in Law**: **(a)** If the demolition is triggered by the owner's or a family member's involvement in a criminal case, it will be presumed punitive and illegal, making the action malicious. **(b)** If the authority acts with undue haste after the owner or family member becomes involved in a criminal case, malafide intent will be presumed. **(c)** If the authority selectively targets a property while ignoring neighbouring properties with similar violations, this "pick and choose" action will also be presumed malicious.
		Mr. M.R. Shamshad, Sr. Adv.	4. After service of notice as per the procedure set out above, the aggrieved person shall take appropriate remedy within fifteen days and the appropriate authority, after giving opportunity

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			of personal hearing shall decide the same within fifteen days thereafter and the order of disposal shall be communicated to the aggrieved person on WhatsApp, email etc. as provided on the application challenging the notice. Further, the order disposing the appeal shall also be uploaded on the respective Municipal Corporation Website. 5. In case the Appellate remedy is provided and appeal is filed, the demolition shall not be carried out till disposal of the said appeal. In case of dismissal of appeal, the Appellate Authority shall give at least ten days to the residents, occupants to vacate the premises. The order of disposal shall be served on the appellant through electronic modes and immediately uploaded on the website.
6.	ACT OF DEMOLITION	Mr. C.U. Singh, Sr. Adv.	No demolitions should be carried out in the early morning and late night. Video recording of the same shall be carried out under the orders of the said authority. No persons or their movable property, shall be subject to any direct or indirect harm.
7.	MALFEASANCE OF ERRING OFFICERS AND ACCOUNTABILITY	Mr. C.U. Singh, Sr. Adv.	I. If the proposed action of demolition was in bad faith and actuated by malice, disciplinary proceeding may be initiated against the erring officers under their applicable service rules. II. In case any demolition is carried out in violation of the guidelines, the erring officers and the head of the department that has carried out the demolition shall be personally liable. In addition, proceedings for contempt against the erring officers may be initiated. The compensation to be paid to the owner shall also be recoverable from the salary of the erring officers including the head of the department.

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			III. The erring officers shall also be liable for prosecution u/s 198,324,326(f), 326(g),56,59 BNS
	MALFEASANCE OF ERRING OFFICERS AND ACCOUNTABILITY	Ms. Nitya Ramakrishnan, Sr. Adv.	Government officers, Ministers, Member of Legislative assembly, Member of Parliament of the Union or the State government shall not make any statement endorsing illegal and unconstitutional penal measures and that if the such statements are made the same shall be a cause for criminal prosecution as well as tortious liability on part of the persons or class of persons who have suffered from such unconstitutional penal measures.
		Mr. Mohd. Nizammudin Pasha & Ms. Rashmi Singh, Advs.	**Strict Action Against Officials Involved in Demolitions**: • **Ministers**: Ministers who publicly justify or support demolitions immediately following accusations against the victim, whether before or after the demolition, must face strict action. • **Municipal Officers**: Municipal officers responsible for carrying out such demolitions should be held accountable. • **Police Officers**: Police officers who order, aid, or assist in the execution of illegal demolitions, especially when linked to accusations of an offence, must also face consequences. **Court-Monitored Inquiry**: The Court should order a monitored inquiry into demolitions linked to accusations of offences, as highlighted in the Applicant's IA No.19164/2024, Paragraph 5. **Immediate Suspension and Departmental Action**: Immediate suspension and departmental action should be taken against all officers involved in executing extrajudicial demolition orders. **Criminal Proceedings Under IPC**:

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			• Criminal proceedings under Section 326(g) of the Indian Penal Code (2023) should be initiated against officers involved in extrajudicial demolitions. • This action should not be considered as performed in an official capacity, and the officers should be tried as private individuals for causing the destruction of human dwellings or unlawful arrest of the aggrieved persons.
		Mr. M.R. Shamshad, Sr. Adv.	• While undertaking the process of demolition, the authorities or nominated officers shall not consider demolition of unauthorized/illegal houses by targeting one house or few houses in a particular neighborhood or the town. • In case the Appropriate authority is of the opinion that a house or a set of particular houses are liable to be demolished, to ensure fairness and non-discriminatory act of appropriate authorities, the Municipal authority or Appropriate authority shall undertake the overall exercise of identifying illegal constructions and fix the timeline for removal of the encroachment/demolition. • Under no circumstances, one or two houses shall be demolished in a particular neighborhood until the authority is of the opinion that no other house has illegal construction/encroachment etc. • Violation of this guideline shall attract penal consequences against the erring Officers and the aggrieved person shall be adequately compensated for consequential effect of the violation. In addition to this the violation of this guideline shall also amount to contempt of this Court on the lines of violation of the guidelines in terms of the judgment of this

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			Hon'ble Court in **D.K. Basu v. State of W.B., (1997) 1 SCC 416**
8.	COMPENSATORY DAMAGES TO OWNER NI CASE OF MALICIOUS OR ILLEGAL DEMOLITION COMPENSATORY DAMAGES TO OWNER NI CASE OF MALICIOUS OR ILLEGAL DEMOLITION	Mr. C.U. Singh, Sr. Adv.	**Damages for Set-Aside Demolition**: If the proposed demolition is set aside, the owner is entitled to damages for mental agony, harassment, and litigation costs. **Compensatory Damages for Illegal Demolition**: • If the demolition is carried out in violation of guidelines or declared illegal by the court, the owner is entitled to compensatory damages, which include: o Cost of reconstruction of the demolished structure o Loss of belongings o Loss of reputation o Rent paid for alternate accommodation • The court may also direct the authorities to rebuild the structure and award punitive damages.
		Ms. Nitya Ramakrishnan, Sr. Adv.	**Appointment of Claim Commissioner**: • Any judicial officer may be appointed as a Claim Commissioner, empowered to grant compensation or restitution to persons whose buildings or structures have been demolished illegally or arbitrarily by the authority. • Orders for compensation by the Claim Commissioner shall be treated as decrees of a Civil Court and executed accordingly. **Personal Liability of Officers**: • If an officer willfully or negligently fails to comply with Supreme Court guidelines, causing damage or loss, they will be personally liable for recovery of damages. • Recovery may occur through salary deductions, forfeiture of entitlements, or other lawful means, subject to a proper

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			inquiry where the officer will be given an opportunity to be heard by the Claim Commissioner. **State Compensation Scheme for Illegal Demolition**: • The State must establish a scheme to provide relief, restitution, and compensation to persons whose property has been illegally demolished. • The scheme will cover financial assistance, rehabilitation support, and restoration of property rights for the aggrieved persons and their family members. **Documentation Requirements**: All actions, steps, and procedures taken by the authority or Claim Commissioner must be fully and accurately documented, including: o Issuance of orders, notices, and details of responsible officers. o Records of inquiry processes, including complaints, responses, findings, and recommendations. o Recovery steps from erring officers, including calculations and methods. o Copies of communications with concerned persons, including notices, final determinations, and acknowledgments of receipt. **Online Portal for Documentation**: An online portal shall be established for preserving and documenting all actions and communications related to demolition and recovery. This portal will be available for audit, review, or inspection by authorized authorities and will house all records including notices, orders, and communications, ensuring transparency and accessibility.
		Mr. Mohd. Nizammudin	• Provision must be made for immediate interim rehabilitation and/or compensation

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
		Pasha & Ms. Rashmi Singh, Advs.	to persons who are found *prima facie* to have been victims of punitive extra-judicial demolitions; • Payment of compensation for loss of movable/immovable property damaged or destroyed and restoration of the underlying land to persons found upon final adjudication to have been victims of punitive extra-judicial demolitions.
9.	DISSEMINATION & COMPLIANCES OF THE GUIDELINES	Mr. C.U. Singh, Sr. Adv.	The guidelines should be translated in local language and widely disseminated including publication in local newspapers and should also be uploaded on the official website of the municipal authorities.
		Mr. Mohd. Nizammudin Pasha & Ms. Rashmi Singh, Advs.	Nodal officers must be appointed by the State Governments to perform the following functions: i) to ensure strict compliance of guidelines issued by this Hon'ble Court; ii) to provide information to owners as to legal provisions under which their dwellings etc are illegal, legal remedies available etc.; The Nodal Officers so appointed shall be made personally liable in case of violation or non-compliance of guidelines issued by this Hon'ble Court.
		Mr. M.R. Shamshad, Sr. Adv.	Appropriate authorities/Municipal authorities shall nominate group of officers who shall be answerable to courts/administration as and when the issue relating to demolition of houses, structure, shops etc. are questioned in courts of law or any other forum. The said Nominated Officer shall report to the Divisional Commissioner / equivalent officer thereto.

11. Shri Tushar Mehta, learned SG, has also given his suggestions. The same are reproduced herein below:

"In view of the legal position exposited above, the following suggestions are put forth by the Ld. Solicitor General on behalf of the Respondents:

1. **The specific requirements of notice as provided in the relevant municipal law must be strictly followed.** Further, the notice must clearly state the alleged violation for which demolition action is proposed. Where such notice period is not specifically provided, and the case does not fall within the exception noted in paras 2 and 3 below, a reasonable notice period of one week to 10 days may be read into the relevant statute.

2. **Exception: It is also pertinent to note that this Hon'ble Court has itself, in Order dt. 17.09.2024, carved an exception in case of "unauthorised structure[s] in any public place such as a road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order of demolition made by a Court of law."** Therefore, it is submitted that any guidelines/SoP framed by this Hon'ble Court may not provide for notice in such cases, in case the relevant municipal law does not specifically provide for the same. Every municipal law also provides for situations where demolitions may be carried out without notice. For instance, Section 26C of the

Uttar Pradesh Urban Planning and Development Act, 1973 states:

> ***"Section 26-C. Authority may without notice remove anything erected or deposited in contraventions of Act.***-
>
> *The Authority or an officer authorised by it in this behalf may, without notice, cause to be removed-*
>
> *(a) Any wall, fence, rail, post. Step, booth or other structure whether fixed or movable and whether of a permanent or temporary nature or any fixture which shall be erected, or set in or upon or over any street or upon or over any open channel, drain. well or tank contrary to the provisions of this Act.*
>
> *(b) Any stall, chair, bench, box, ladder, bale, board or shelf of any other thing whatever placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of this Act***."**

3. It is submitted that a perusal of the Chart of demolitions submitted by the Petitioners (at pp. 28 – 32 of the Compilation of Suggestions submitted by the Ld. Nodal Senior Counsel), itself

notes that the demolitions at S. nos. 3, 4, 5, 6, 7, 10, 16, 22) were all of structures that amounted to illegal encroachment in public places, which itself has been carved out of this Hon'ble Court's Order dt. 17.09.2024. **Therefore, it is submitted that the SoP framed by this Hon'ble Court may not allow for notice in case of encroachment on public land, if the relevant municipal law allows for such demolition without notice. At best, the illegal encroachers on the said public land/public place, may be granted 48 hours to vacate such encroachment. This Hon'ble Court in the Delhi Ceiling cases (MC Mehta v. Union of India), has also endorsed a 48 hour notice period in certain cases.**

4. **Manner of Service of Notice:** It is submitted that most municipal laws provide for the manner of service of notice. For instance, Section 43 of the Uttar Pradesh Urban Planning and Development Act, 1973 provides for the service of notice, either to be handed over in person, or if such person cannot be found, then by affixation on some conspicuous part of his last known place of residence or business or on some conspicuous part of land or building to which it relates, or by registered post. **It is therefore submitted that (i) the manner of service specified in the**

relevant municipal law must be strictly followed; (ii) if the relevant statute is silent on the issue of service of notice, then it must be sent through registered post, and if such post is returned unserved/refused, then it must be affixed on some conspicuous part of the building/ property against which the action is proposed; and (iii) in all cases, where practicable, the relevant municipal authority must also upload such proposed action on its portal.

5. **Procedure to be followed after service of notice:** It is submitted that most municipal laws have a specific procedure to be followed after service of notice – such as an opportunity for hearing, before a final demolition order is passed. Further, the affected party in most cases also has a right to appeal to the Appellant Authority designated by the statute. **It is submitted that the procedure for hearing and appeal as provided in the relevant statute must be strictly adhered to. Where there is no such procedure prescribed (and the case does not fall within the exceptions outlined in paras 2 and 3 above where demolition without notice is authorised), natural justice requirements of a hearing must be read into the statute – with the notice fixing a reasonable time of a week to**

appear before the concerned authority for the personal hearing.

6. **Final order of demolition: The final order of demolition should be passed after hearing the noticee (unless the case falls within the exception outlined in paras 2 – 3 above) and must specify clearly the violations on account of which it is being passed.** In most municipal laws, the statute itself provides the noticee himself the opportunity to undertake the demolition/rectify the violations prior to demolition being undertaken by the authority. Where the law does not provide such opportunity, reasonable period of 48 hours – 72 hours may be read into the statute to allow the noticee to either rectify/demolish or vacate the property before the Authority undertakes demolition. **However, it is submitted that any further period to challenge such action may not be read into the statute if such period is not provided.** This is because any writ challenges to demolition action are in any event treated as urgent by the Constitutional Courts, and 72 hours is sufficient time for the aggrieved persons to approach the courts.

7. **It is again reiterated that at the first instance, the municipal laws must be strictly followed qua the requirements**

> **of notice, service of notice, procedure of hearing, and final order of demolition.** The suggestions above are merely meant to supplement the municipal law *where the same is warranted on account of lacunae in the said laws.* **Furthermore, it is submitted that such guidelines should not allow for illegal encroachments on public places, waterways etc to continue with impunity when the relevant statute itself does not provide for notice in such cases."**

12. The scope of the present petitions is limited. The question that will have to be considered is, as to whether the properties of the persons, who are accused of committing certain crimes or for that matter even convicted for commission of criminal offences, can be demolished without following the due process of law or not?

13. For considering the said question, we will be required to consider the principle of the rule of law, which is the very foundation of democratic governance. We will also have to consider the rights guaranteed under the Constitution that

provide protection to individuals from arbitrary state action. We will also have to consider in this case the issue with regard to fairness in the criminal justice system, which mandates that the legal process should not prejudge the guilt of the accused. We will also have to touch upon the concept of separation of powers and the doctrine of public trust in respect of government officials holding their offices.

II. RULE OF LAW

14. The rule of law has been succinctly conceptualized by AV Dicey[2], which can be summarized into three postulates:

> (1) "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land", as contrasted to the "the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint";
>
> (2) "no man is above the law", and that "every man, whatever be his rank or condition, is

[2] AV Dicey, *Introduction to the Study of the Law of the Constitution,* Macmilan and Co. Ltd. (1952), pp. 183-205.

subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals"; and

(3) "the predominance of the legal spirit" or that "the general principles of the constitution... are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the courts".

15. There can be no doubt with the principle that, no one is above the law of the land; that everybody is equal before the law.

16. There can also be no doubt with the principle that, under the constitutional framework there is no scope for arbitrariness by officials, and that no one can be punished or made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It is only the courts which are independent adjudicators of the rights of the parties and under the constitutional framework it is only they which can impose punishment.

17. Though the basic principle, as conceptualized by Dicey, largely remains the same, the concept of 'rule of law' has been discussed subsequently by various scholars. It has been described to mean that "government officials and citizens are bound by and have to abide by the law" and that there "must be mechanisms or institutions that enforce the legal rules if they are breached"[3]. It ensures that "courts should be available to enforce the law and should employ fair procedures"[4]. The law must be just and fair, and "protect the human rights and dignity of all members of society"[5]. Above all, "the essential purpose of the rule of law is to prevent the abuse of power"[6]. Lord Bingham sets out as one of the facets of the rule of the law, the following[7]:

> "(4) Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the

[3] Tamanaha, Brian Z. "The history and elements of the rule of law." *Singapore Journal of Legal Studies* (2012): 232-247.
[4] Fallon Jr, Richard H. "The rule of law as a concept in constitutional discourse." *Colum. L. Rev.* 97 (1997): 1.
[5] Stein, Robert. "Rule of law: what does it mean." *Minn. J. Int'l L.* 18 (2009): 293.
[6] Raitio, Juha. "The Concept of the Rule of Law - Just a Political Ideal, or a Binding Principle?." Giornale di Storia Costituzionale, 45, 2023, pp. 37-46. HeinOnline.
[7] Bingham, Tom. The Rule of Law, p.60.

> purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably."

18. The rule of law has also been described as "an umbrella concept for a number of legal and institutional instruments to protect citizens against the power of the state"[8]. Moreover, "Rule of law is integral to and necessary for democracy and good governance", because "attempts to democratize without a functional legal system in place have resulted in social disorder"[9].

19. It can thus be seen that the law must be just and fair, and also protect the human rights and dignity of all members of society. At the same time, the essential purpose of the rule of law is to prevent the abuse of power. The rule of law is an umbrella concept to protect citizens against the power of the State. It is integral to and necessary for democracy and good governance.

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[8] Bedner, Adriaan. "An elementary approach to the rule of law." *Hague Journal on the rule of law* 2.1 (2010): 48-74.

[9] Peerenboom, Randall. "Human rights and rule of law: What's the relationship." *Geo. J. Int'l L.* 36 (2004): 809.

20. While we consider this aspect, we are of the view that the concept of rule of law needs to be considered broadly. The legal sanctity of practices in the past such as slavery in the United States, apartheid in South Africa, or untouchability in India would have to be considered as antitheses to the rule of law apart from being a serious affront to human dignity.

21. In this respect, we may refer to the work of various scholars in the field. Thus, "for the rule of law to measure up to the requirements of a legitimate constitutional democracy, it must be more than the rule of law in the narrow sense"[10]. In the modern constitutional framework, "the rule of law would seem to need democratic accountability, procedural fairness, and even perhaps substantive grounding"[11], such as in the provisions of the Constitution. In other words, "the rule of law means the

[10] Rosenfeld, Michel. "The rule of law and the legitimacy of constitutional democracy." *S. Cal. L. Rev.* 74 (2000): 1307.
[11] Ibid

regulative role of certain institutions and their associated legal and judicial practices"[12]. It has been beautifully observed:

> "That is the law. And no Spartan, subject or citizen, man or woman, slave or king, is above the law. Where-ever law ends, tyranny begins"[13].

22. This Court in the case of ***Smt. Indira Nehru Gandhi v. Shri Raj Narain[14]***, has held the rule of law to be part of the basic structure of the Constitution. It will be apt to refer to the following observations of Justice Mathew:

> "341…I cannot conceive of rule of law as a twinkling star up above the Constitution. To be a basic structure, it must be a terrestrial concept having its habitat within the four corners of the Constitution. The provisions of the Constitution were enacted with a view to ensure the rule of law…"

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[12] John Rawls, Samuel Freeman (ed.), *Collected Papers* (Harvard University Press, 2021).
[13] *Id.* at 306.
[14] (1976) 2 SCR 347

23. The relevance of the rule of law in our constitutional system has been considered by this Court in various judgments. In the case of ***National Human Rights Commission v. State of Arunachal Pradesh and another***[15], this Court was considering the plight of Chakma community in the State of Arunachal Pradesh. This Court observed thus:

> "No State Government worth the name can tolerate such threats by one group of person to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics."

24. This Court in unequivocal terms held that no State Government worth the name can tolerate threats by one group of

[15] 1996 INSC 38=(1996) 1 SCC 742

person to another group of persons. It has been held that the State is duty bound to protect the group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations. It has been held that the State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics.

25. In ***Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.***[16], while dealing with the constitutionality of the Aadhaar Act, 2016, this Court held:

> "As the interpreter of the Constitution, it is the duty of this Court to be vigilant against State action that threatens to upset the fine balance between the power of the state and rights of citizens and to safeguard the liberties that inhere in our citizens."

[16] [2018] 8 S.C.R. 1

26. In his dissenting opinion, Dr. Justice D.Y. Chandrachud (as His Lordship then was) described the principle of the rule of law as under:

> "The rule of law is the cornerstone of modern democratic societies and protects the foundational values of a democracy. When the rule of law is interpreted as a principle of constitutionalism, it assumes a division of governmental powers or functions that inhibits the exercise of arbitrary State power. It also assumes the generality of law: the individual's protection from arbitrary power consists in the fact that her personal dealings with the State are regulated by general rules, binding on private citizens and public officials alike."

27. This sentiment was echoed in ***Rojer Mathew v. South Indian Bank Ltd. & Ors.***[17], where this Court held:

> "If Rule of law is absent, there is no accountability, there is abuse of power and corruption. When the Rule of law disappears, we are ruled not by laws but by the idiosyncrasies and whims of those in power."

[17] [2019] 16 S.C.R. 1

28. Again, earlier this year, in ***Bilkis Yakub Rasool v. Union of India & Others***[18], the concept of the rule of law was discussed in detail. It was held:

> "Rule of law means wherever and whenever the State fails to perform its duties, the Court would step in to ensure that the Rule of law prevails over the abuse of the process of law. Such abuse may result from, inter alia, inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or other obligations in consonance with the procedural and penal statutes. Breach of the Rule of law, amounts to negation of equality under Article 14 of the Constitution.
>
> The concept of Rule of law is closely intertwined with adjudication by courts of law and also with the consequences of decisions taken by courts. Therefore, the judiciary has to carry out its obligations effectively and true to the spirit with which it is sacredly entrusted the task and always in favour of Rule of law. There can be no Rule of law if there is no equality before the law; and Rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review and relief and all these features would lose their significance if the courts don't step in to

[18] [2024] 1 S.C.R. 743

> enforce the Rule of law. Thus, the judiciary is the guardian of the Rule of law and the central pillar of a democratic State. Therefore, the judiciary has to perform its duties and function effectively and remain true to the spirit with which they are sacredly entrusted to it.
>
> Further, in a democracy where Rule of law is its essence, it has to be preserved and enforced particularly by courts of law. Compassion and sympathy have no role to play where Rule of law is required to be enforced. If the Rule of law has to be preserved as the essence of democracy, it is the duty of the courts to enforce the same without fear or favour, affection or ill-will."

29. It is thus well settled that the rule of law has been described as a safeguard against the arbitrary use of the State power. It ensures that the actions of the Government and its authorities are governed by established legal principles, rather than arbitrary discretion. Whenever the citizens in the form of mobs have broken the law to vandalize or to declare threats, the Court has cast an obligation on the State to prevent such threats or assaults. This obligation underscores the State's responsibility to

maintain law and order and protect citizens from unlawful actions that undermine the rule of law itself.

30. It is not necessary to state that failure to uphold these obligations can erode public confidence in the justice system, leading to an environment where the rule of law is compromised by lawlessness. Ensuring the preservation of the principle of rule of law and the protection of the civil rights and liberties of citizens is essential for protecting the constitutional democracy.

31. The concept of the rule of law is not an abstract principle but is reflected in the substantive content of various legal domains. In this regard, it would be apt to refer to the following articulation of the rule of law:

> "The rule of law provides a framework and value system in which institutions, principles, and rules are implemented to 'reign (*sic*) in the arbitrary exercise of state power and to prevent the abuse of power, to ensure predictability and stability, to make sure that individuals know that their lives, their liberty, their property will not be taken away from them arbitrarily and abusively'. It

> is from this core of understanding that constitutional law, criminal law, criminal procedure, due process, equal protection, international law, the laws of war, and human rights law find their moral, ethical, philosophical, and political justification in controlling the actions of executive power"[19].
>
> (emphasis added)

32. It has been emphasized that the rule of law provides a framework and value system to 'rein in the arbitrary exercise of state power and to prevent the abuse of power, to ensure predictability and stability, to make sure that individuals know that their lives, their liberty, their property will not be taken away from them arbitrarily and abusively'.

33. It can thus be said that the processes enshrined in constitutional law, criminal law and procedure are facets of the rule of law and thus serve to regulate the exercise of executive power.

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[19] Arthur H. Garrison, "The Rule of Law and the Rise of Control of Executive Power", 18(2) *Texas Review of Law & Politics* 303-355 (2014).

III. SEPARATION OF POWERS

34. Another important aspect that needs to be addressed in the present matter is with regard to the doctrine of separation of powers, as envisaged in our Constitution. Our Constitution has earmarked separate areas for exercise of powers and for discharge of duties to the three organs of the democracy, viz., the Executive, the Legislature, and the Judiciary. The Legislature is empowered to enact the laws within the framework of the Constitution; the Executive is entrusted with the powers and is expected to discharge its duties in accordance with the provisions of the Constitution and the laws as enacted by the competent Legislature. The adjudicatory function is entrusted to the Judiciary. In several judgments, this Court has reiterated the principle governing the separation of powers.

35. In the case of In ***Rai Sahib Ram Jawaya Kapur and others v. State of Punjab***,[20] a Constitution Bench of this Court observed thus:

> "It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."

36. It could thus be seen that the Constitution Bench of this Court has held that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.

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[20] AIR 1955 SC 549

37. In the case of ***Indira Nehru Gandhi v. Raj Narain and another*** (supra) reiterating the position that the principle of separation of power is a part of the basic structure, a Constitution Bench of this Court held thus:

> "The political usefulness of the doctrine of separation of powers is now widely recognized though a satisfactory definition of the three functions is difficult to evolve. But the function of the Parliament is to make laws, not to decide cases. The British Parliament in its unquestioned supremacy could enact a legislation for the settlement of a dispute or it could, with impunity, legislate for the boiling of the Bishop of Rochester's cook. The Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed…
>
> The reason of this restraint is not that the Indian Constitution recognizes any rigid separation of powers. Plainly, it does not. The reason is that the concentration of powers in any one organ may, by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic government to which we are pledged."

38. The Constitution Bench of this Court though admits that the Indian Constitution does not recognize any rigid separation

of powers, yet holds that, by upsetting the fine balance between the three organs, the fundamental premises of a democratic government to which we have pledged, will be destroyed. The Court observed that the Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed.

39. A Nine-Judge Bench of this Court in the case of ***I.R. Coelho (Dead) by LRs. v. State of T.N.***[21] recognized the doctrine of the separation of powers as a system of "check and balance". The Court observed that the separation of powers leads to "prevention of tyranny". The Court while emphasizing on the interconnectedness between judicial review, rule of law, and the separation of power observed thus:

> "Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the

[21] (2007) 2 SCC 1

> violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.
>
> Judicial review is justified by combination of "the principle of separation of powers, rule of law, *the principle of constitutionality* and the reach of judicial review" (*Democracy Through Law* by Lord Styen, p. 131)."

40. This Court reiterated that equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. It has been held that there can be no rule of law if there is no equality before the law. It observed that rights would be meaningless if the violation was not subject to the judicial review. The Court records the danger of legislative, executive and judicial powers being vested in one organ and, therefore, held that the duty to decide whether the limits have been transgressed has been placed on the judiciary.

41. While considering the importance of the doctrine of separation of powers in today's world of positive rights and justifiable social and economic entitlements, this Court in the case of ***State of U.P. and others v. Jeet S. Bisht and another***[22] observed thus:

> "If we notice the evolution of separation of powers doctrine, traditionally the checks and balances dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable social and economic entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of checks and balances to include governmental inaction. Otherwise we envisage the country getting transformed into a state of repose. Social engineering as well as institutional engineering therefore forms part of this obligation."
>
> (emphasis added)

[22] (2007) 6 SCC 586

42. While expanding the contours of the doctrine of separation of powers, the Constitution Bench of this Court in the case of ***Kalpana Mehta and others v. Union of India and others***,[23] observed thus:

> "… the concept of constitutional limitation is a facet of the doctrine of separation of powers. At this stage, we may clearly state that there can really be no straitjacket approach in the sphere of separation of powers when issues involve democracy, the essential morality that flows from the Constitution, interest of the citizens in certain spheres like environment, sustenance of social interest, etc. and empowering the populace with the right to information or right to know in matters relating to candidates contesting election. There can be many an example where this Court has issued directions to the executive and also formulated guidelines for facilitation and in furtherance of fundamental rights and sometimes for the actualisation and fructification of statutory rights."

43. This Court, therefore, observed that this Court can issue a direction to the executive and also formulate guidelines for

[23] (2018) 7 SCC 1

facilitation and in furtherance of fundamental rights and sometimes for the actualization and fructification of statutory rights.

44. The aforesaid decision would lead to a question, as to whether when the adjudicatory functions are entrusted to the judiciary, can the officers of the State Government take upon themselves the adjudicatory function and without a person undergoing a trial be inflicted with a punishment of demolition of his properties. In our view, such a situation would be wholly impermissible in our constitutional set up. The executive cannot replace the judiciary in performing its core functions.

IV. DOCTRINE OF PUBLIC TRUST AND PUBLIC ACCOUNTABILITY

45. When we are considering the issue with regard to 'Rule of Law' and 'Separation of Powers', we will also have to take into effect the matters where the executive transgresses its power and acts as a Judge and demolishes the structures of the persons

without following the procedure prescribed by law. Though the doctrine of public trust has been largely applied by this Court in environmental matters, it cannot be disputed that the executive exercises its powers as a 'trustee' of the citizens. Therefore, the executive actions must be consistent with maintaining public trust.

46. Conversely, when the executive acts in breach of the principles of 'rule of law' and 'separation of powers', the doctrine of public trust and accountability would come into play. This Court in the case of ***Delhi Airtech Services Private Limited and another v. State of Uttar Pradesh and another***[24] observed thus:

> "**213.** These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just

[24] (2011) 9 SCC 354

performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the government department, if not with a greater rigour. The well-established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In *State of Bihar* v. *Subhash Singh* [(1997) 4 SCC 430] , this Court, in exercise of the powers of judicial review, stated that the doctrine of "full faith and credit" applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In *Centre for Public Interest Litigation* v. *Union of India* [(2005) 8 SCC 202 : (2006) 1 SCC (Cri) 23] , this Court declared the dictum that State actions causing loss are

actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of "full faith and credit" applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision-making process in government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties

besides there being violation of the statutory rule.

217. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In *State of A.P.* v. *Food Corporation of India* [(2004) 13 SCC 53 : 2006 SCC (L&S) 873] , this Court observed that it is a known fact that in transactions of government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision-making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant", is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance."

47. This Court held that the well-established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office. It has been held that the doctrine of "full faith and credit" applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

48. This Court referring to its earlier decision in the case of ***Centre for Public Interest Litigation and another v. Union of India and another***[25] held that the State actions causing loss are actionable under public law. The courts, which are the protectors of civil liberties of the citizens, would ensure protection against devastating results of State action. The principles of public accountability and transparency in State actions are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also do not lack *bona fides*. The Court

[25] (2005) 8 SCC 202

held that the public officers are answerable for both their inaction and irresponsible actions. For such actions or inactions, responsibility should be fixed on the erring officers so as to ensure the real public purpose of an answerable administration.

49. The Court held that the principles of public accountability are applicable to the government officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. It has been held that every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant", is accountable for his decisions to the public as well as to the State. It has been held that the concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.

50. This Court in the case of ***Express Newspapers Pvt. Ltd. and others v. Union of India and others***[26] had an occasion to consider the distinction between exercise of power in good faith

[26] (1986) 1 SCC 133

and misuse in bad faith. While elaborating the principle of fraud on power, this Court observed thus:

> **"119.** Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers….."

51. In the case of ***Nilabati Behera v. State of Orissa and others***[27], this Court while considering as to whether the courts exercising writ jurisdiction could grant relief under the public law to a citizen complaining of infringement of the indefeasible right guaranteed under the Constitution, observed thus:

> "**32.** Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights

[27] (1993) 2 SCC 746

guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "*Freedom under the Law*" Lord Denning in his own style warned:

"**No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do : and will not do things that they ought to do**. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for

preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country.""

[emphasis added]

52. In the case of ***Common Cause, a registered society v. Union of India and others***[28], this Court observed thus:

"**90.***Halsbury's Laws of England*, Vol. I(I) 4th Edn. (Reissue), (para 203) provides as under:

"*Deliberate abuse of public office or authority*.—Bad faith on the part of a public officer or authority will result in civil liability where the act would constitute a tort but for the presence of

[28] (1999) 6 SCC 667

statutory authorisation, as Parliament intends statutory powers to be exercised in good faith and for the purpose for which they were conferred. Proof of improper motive is necessary in respect of certain torts and may negative a defence of qualified privilege in respect of defamation, but this is not peculiar to public authorities. There exists an independent tort of misfeasance by a public officer or authority which consists in the infliction of loss by the deliberate abuse of a statutory power, or by the usurpation of a power which the officer or authority knows he does not possess, for example by procuring the making of a compulsory purchase order, or by refusing, or cancelling or procuring the cancellation of a licence, from improper motives. However, where there has been no misfeasance, the fact that a public officer or authority makes an ultra vires order or invalidly exercises statutory powers will not of itself found an action for damages."

91. De Smith in *Judicial Review of Administrative Action*, while speaking of tort of misfeasance in public office, says as under:

"A public authority or person holding a public office may be liable for the tort of misfeasance in public office where:

(*1*) there is an exercise or non-exercise of public power, whether common law, statutory or from some other source;

(*2*) which is either (*a*) affected by malice towards the plaintiff or (*b*) the decision maker knows is unlawful; and

(3) the plaintiff is in consequence deprived of a benefit or suffers other loss."

92. De Smith further says as under:

"A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Where misfeasance is alleged against a decision-making body, it is sufficient to show that a majority of its members present had made the decision with the object of damaging the plaintiff. Often there may be no direct evidence of the existence of malice, and in these circumstances the court may make adverse inferences, e.g. from the fact that a decision was unreasonable, that it could only be explained by the presence of such a motive. A court will not entertain allegation of bad faith or malice made against the repository of a power unless it has been expressly pleaded and properly particularised."

53. If the executive in an arbitrary manner demolishes the houses of citizens only on the ground that they are accused of a crime, then it acts contrary to the principles of 'rule of law'. If the executive acts as a judge and inflicts penalty of demolition on a citizen on the ground that he is an accused, it violates the principle of 'separation of powers'. We are of the view that in such matters the public officials, who take the law in their hands, should be made accountable for such high-handed actions.

54. For the executive to act in a transparent manner so as to avoid the vice of arbitrariness, we are of the view that certain binding directives need to be formulated. This will ensure that public officials do not act in a high-handed, arbitrary, and discriminatory manner. Further, if they indulge in such acts, accountability must be fastened upon them.

V. RIGHTS OF THE ACCUSED UNDER THE CONSTITUTION

55. While we consider the issue in this case, we will have to reiterate that even the incarcerated individuals, whether accused, undertrial, or convicts, have certain rights, as any other citizen. They have a right to dignity and cannot be subjected to any cruel or inhuman treatment. The punishment awarded to such persons has to be in accordance with law. Such punishment cannot be inhuman or cruel.

56. This Court has protected the prisoners from excesses and arbitrariness of the State and its officials. In the case of ***Sunil Batra (I) v. Delhi Administration and others***[29], the Court declared that the use of iron fetters, or the practice of solitary confinement and cellular segregation is inhuman. Speaking for the Court, Justice Krishna Iyer, in his inimitable style, states that:

[29] (1978) 4 SCC 494

> "I hold that bar fetters are a barbarity generally and, like whipping, must vanish. Civilised consciousness is hostile to torture within the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational… The law is not abracadabra but at once pragmatic and astute and does not surrender its power before scary exaggerations of security by prison bosses... Social justice cannot sleep if the Constitution hangs limp where its consumers most need its humanism."

57. Again in the case of ***Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi***[30], while observing that the rights enjoyed by prisoners are not static and will rise to human heights when challenging situations arise, this Court observed thus:

> "**12.** … prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Moreover, the rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise."

[30] (1978) 4 SCC 104

58. In ***Sunil Batra (II) v. Delhi Administration***[31], the Court highlighted Article 21 protects the prisoners against several inflictions. It was held:

> "Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied."

59. This Court recently in the case of ***Sukanya Shantha v. Union of India & Ors.***[32], reiterated the constitutional rights of the accused in the following words:

> "The right to live with dignity extends even to the incarcerated. Not providing dignity to prisoners is a relic of the colonizers and pre-colonial

[31] (1980) 3 SCC 488
[32] 2024 INSC 753

> mechanisms, where oppressive systems were designed to dehumanize and degrade those under the control of the State. Authoritarian regimes of the pre-constitutional era saw prisons not only as places of confinement but as tools of domination. This Court, focusing on the changed legal framework brought out by the Constitution, has recognized that even prisoners are entitled to the right to dignity…
>
> Thus, the jurisprudence which emerges on the rights of prisoners under Article 21 is that even the incarcerated have inherent dignity. They are to be treated in a humanely and without cruelty. Police officers and prison officials cannot take any disproportionate measures against prisoners. The prison system must be considerate of the physical and mental health of prisoners. For instance, if a prisoner suffers from a disability, adequate steps have to be taken to ensure their dignity and to offer support."

60. It is thus clear that no one can take away the fundamental rights of prisoners or the accused. Incidentally, this Court in the case of ***Rudul Sah v. State of Bihar and another***[33], had an occasion to consider the question as to what happens when the rights of the accused or the prisoners are violated, and he

[33] 1983 INSC 85

becomes a victim of lawlessness on the part of the State Government which keeps him in illegal detention for over 14 years after his acquittal. While granting monetary compensation to the victim in the said case, this Court observed thus:

> "One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The ·right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

61. Again in the case of ***Ankush Maruti Shinde and others v. State of Maharashtra***[34], this Court has granted compensation to the accused, who spent 16 years in jail on false implication by the authorities.

62. From the above discussion, the position that would emerge is that, firstly, even the accused or the convicts have certain rights and safeguards in the form of constitutional provisions and criminal law. Secondly, the State and its officials cannot take arbitrary and excessive measures against the accused or for that matter even against the convicts without following the due process as sanctioned by law. The third principle that would emerge is that when the right of an accused or a convict is violated on account of illegal or arbitrary exercise of power by the State or its officials or on account of their negligence, inaction, or arbitrary action, there has to be an institutional accountability. One of the measures for redressing the grievance for violation of

[34] 2019 INSC 305

a right would be to grant compensation. At the same time, if any of the officers of the State has abused his powers or acted in a totally arbitrary or mala fide manner, he cannot be spared for such an illegal, arbitrary, mala fide exercise of power.

VI. PRINCIPLES OF CRIMINAL LAW: PRESUMPTION OF INNOCENCE AND NATURAL JUSTICE.

63. The principle, that the criminal justice process is also to be in accordance with the principle of the rule of law, is also very well enshrined in the Constitution. The principle, that "an accused is not guilty unless proven so in a court of law" is foundational to any legal system. It reflects the presumption of innocence, which means that every person accused of a crime is considered innocent until proven guilty beyond a reasonable doubt by a court of law. This principle ensures that individuals are not unfairly punished or stigmatized based solely on accusations or suspicions.

64. The right to a fair trial is essential in upholding the rule of law and protecting individual liberties. It ensures that the principles of natural justice and fair process are being strictly followed. H.L.A. Hart summarized the principle of natural justice as follows:

> "It may be said that the distinction between a good legal system which conforms at certain points to morality and justice, and a legal system which does not, is a fallacious one, because a minimum of justice is necessarily realized whenever human behaviour is controlled by general rules publicly announced and judicially applied. Indeed we have already pointed out,' in analysing the idea of justice, that its simplest form (justice in the application of the law) consists in no more than taking seriously the notion that what is to be applied to a multiplicity of different persons is the same general rule, undeflected by prejudice, interest, or caprice. This impartiality is what the procedural standards known to English and American lawyers as principles of 'Natural Justice' are designed to secure. Hence, though the most odious laws may be justly applied, we have, in the bare notion of applying a general rule of law, the germ at least of justice."[35]

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[35] H.L.A. Hart, *The Concept of Law* (Oxford University Press, New York, 2nd Edn., 1994), p. 206

65. John Rawls defined the principle of natural justice in the following words[36]:

> "Finally, there are those precepts defining the notion of natural justice. These are guidelines intended to preserve the integrity of the judicial process. If laws are directives addressed to rational persons for their guidance, courts must be concerned to apply and to enforce these rules in an appropriate way. A conscientious effort must be made to determine whether an infraction has taken place and to impose the correct penalty. Thus, a legal system must make provisions for conducting orderly trials and hearings; it must contain rules of evidence that guarantee rational procedures of inquiry. While there are variations in these procedures, the rule of law requires some form of due process: that is, a process reasonably designed to ascertain the truth, in ways consistent with the other ends of the legal system, as to whether a violation has taken place and under what circumstances. For example, judges must be independent and impartial, and no man may judge his own case. Trials must be fair and open, but not prejudiced by public clamor. The precepts of natural justice are to insure that the

[36] John Rawls, *A Theory of Justice (Revised Edition)* (The Belknap Press of Harvard University Press, Cambridge, 1999).

> legal order will be impartially and regularly maintained."[37]

66. It is thus required that the trial must be fair and open, but not prejudiced by public clamor. The precepts of natural justice are to ensure that the legal order will be impartially and regularly maintained. An accused cannot be declared guilty, unless proven so beyond reasonable doubt before a court of law. They cannot be declared guilty, unless there is a fair trial.

67. In this regard, it will be apposite to refer to the decision of this Court in the case of ***Himanshu Singh Sabharwal v. State of Madhya Pradesh and others***[38], where it was held:

> "Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the

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[37] *Id.* at 209-210.

[38] AIR 2008 SC 1943

> process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial…
>
> The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

68. It has been held by this Court in the case of ***State of Maharashtra v. Champalal Punjaji Shah***[39], that the right to a fair and speedy trial is enshrined under the right to life guaranteed under the Constitution.

69. The importance and purpose of the principles of natural justice have been succinctly summed up by Lord Megarry in the case of ***John v Rees***[40] as under:

> "It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious,' they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges

[39] (1982) 1 SCR 299
[40] (1970) Ch 345 at p. 402

> and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

70. In the light of the aforesaid, we will have to consider the grievance as sought to be espoused in the present Writ Petitions.

71. As discussed hereinabove, the rule of law, the rights of the citizens guaranteed under the Constitution, and the principles of natural justice would be essential requirements. If a citizen's house is demolished merely because he is an accused or even for

that matter a convict, that too without following the due process as prescribed by law, in our considered view, it will be totally unconstitutional for more than one reason. Firstly, the executive cannot declare a person guilty, as this process is the fundamental aspect of the judicial review. Only on the basis of the accusations, if the executive demolishes the property/properties of such an accused person without following the due process of law, it would strike at the basic principle of rule of law and is not permissible. The executive cannot become a judge and decide that a person accused is guilty and, therefore, punish him by demolishing his residential/commercial property/properties. Such an act of the executive would be transgressing its limits.

72. The chilling sight of a bulldozer demolishing a building, when authorities have failed to follow the basic principles of natural justice and have acted without adhering to the principle of due process, reminds one of a lawless state of affairs, where "might was right". In our constitution, which rests on the

foundation of 'the rule of law', such high-handed and arbitrary actions have no place. Such excesses at the hands of the executive will have to be dealt with the heavy hand of the law. Our constitutional ethos and values would not permit any such abuse of power and such misadventures cannot be tolerated by the court of law.

73. As we have already said, such an action also cannot be done in respect of a person who is convicted of an offence. Even in the case of such a person the property/properties cannot be demolished without following the due process as prescribed by law.

74. Such an action by the executive would be wholly arbitrary and would amount to an abuse of process of law. The executive in such a case would be guilty of taking the law in his hand and giving a go-bye to the principle of the rule of law.

75. It is to be noted that even in the cases consisting of imposition of a death sentence, it is always a discretion available

to the courts as to whether to award such an extreme punishment or not. There is even an institutional safeguard in the cases of such punishment to the effect that the decision of the trial court inflicting death penalty cannot be executed unless it is confirmed by the High Court. Even in the cases of convicts for the commission of most extreme and heinous offences, the punishment cannot be imposed without following the mandatory requirements under the statute. In that light, can it be said that a person who is only accused of committing some crime or even convicted can be inflicted the punishment of demolition of his property/properties? The answer is an emphatic 'No'.

VII. RIGHT TO SHELTER

76. There is another angle to this problem. It is not only the accused who lives in such property or owns such property. If his spouse, children, parents live in the same house or co-own the same property, can they be penalized by demolishing the property without them even being involved in any crime only on

the basis of them being related to an alleged accused person? What is their mistake if their relative is arrayed as an accused in some complaint or F.I.R.? As is well known, a pious father may have a recalcitrant son and vice versa. Punishing such persons who have no connection with the crime by demolishing the house where they live in or properties owned by them is nothing but an anarchy and would amount to a violation of the right to life guaranteed under the Constitution.

77. This Court in the case of ***Chameli Singh and others v. State of U.P. and another***[41] though was considering an issue in the context of land acquisition, it had elaborately discussed on the right to shelter. It will be apt to refer to the following observations of this Court:

> "**7.** In *State of Karnataka* v. *Narasimhamurthy* [(1995) 5 SCC 524 : JT (1995) 6 SC 375] (SCC p. 526, para 7 : JT at p. 378, para 7), this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution. To

[41] (1996) 2 SCC 549

make the right meaningful to the poor, the State has to provide facilities and opportunity to build houses. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is the constitutional duty of the State to provide house sites to the poor.

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water,

electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life,

> providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights."

78. The right to shelter is one of the facets of Article 21. Depriving such innocent people of their right to life by removing shelter from their heads, in our considered view, would be wholly unconstitutional.

79. It was sought to be urged by the learned SG that most of the houses which were demolished were demolished since the constructions were found to be in breach of the local municipal laws. It was submitted that the houses were demolished since they are found to be in violation of either the provisions of municipal law governing them or the Panchayat laws governing such construction.

80. The learned SG submitted that in some cases it may be by sheer coincidence that the properties which were in breach of local municipal laws governing them also happen to belong to accused persons. He, however, reiterated that it was the stand of

various States that such properties can be demolished only in accordance with the procedure prescribed by law.

81. The position is disputed by the learned counsels appearing on behalf of the petitioners/applicants. It is stated that the chain of events clearly depicts that the demolition of the houses was an immediate reflection of the persons being implicated in crimes. It was submitted that the time gap between the person being named as an accused and demolition of his property/properties made it apparent that the punishment of demolition was inflicted by the executive on such person being arrayed as an accused. It was also submitted that in case of demolition of the property of an alleged accused, it is difficult to believe that only a single construction belonging to an accused is unauthorized construction, whereas all other structures in the vicinity are legal and authorized as per local laws.

82. Though the learned SG may be right in submitting that in some cases it may be by sheer coincidence that the properties

which were in breach of local municipal laws governing them also happen to belong to the accused persons, however, when a particular structure is chosen all of a sudden for demolition and the rest of the similarly situated structures in the same vicinity are not even being touched, *mala fide* may loom large. In such cases, where the authorities indulge into arbitrary pick and choose of the structures and it is established that soon before initiation of such an action an occupant of the structure was found to be involved in a criminal case, a presumption could be drawn that the real motive for such demolition proceedings was not the illegal structure but an action of penalizing the accused without even trying him before the court of law. No doubt, such a presumption could be rebuttable. The authorities will have to satisfy the court that it did not intend to penalize a person accused by demolishing the structure.

83. While considering the issue with regard to the demolition of the houses which are required to be demolished for breach of the

local laws, we find that the principle of the rule of law needs to be considered even in the municipal laws. There may be certain unauthorized constructions which could be compoundable. There may be certain constructions wherein only part of the construction is required to be removed. In such cases, the extreme step of demolition of the property/house property would, in our view, be disproportionate.

84. As already discussed herein above, the right to shelter is one of the facets of Article 21 of the Constitution. If the persons are to be dishoused, then for taking such steps the concerned authorities must satisfy themselves that such an extreme step of demolition is only available and other options including compounding and demolition of only part of the house property are not available. This Court in catena of cases including the Constitution Bench cases of ***Modern Dental College and Research Centre and others v. State of Madhya Pradesh and***

others[42]***, K.S. Puttaswamy and another v. Union of India and others***[43] ***(Privacy 9-J)*** and ***Vivek Narayan Sharma and others v. Union of India and others***[44] ***(Demonetization Case-5J)*** has laid emphasis on the four-pronged test of proportionality.

85. In the case of ***Modern Dental College and Research Centre and others*** (supra), this Court observed thus:

> "**60.** .....Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "*doctrine of proportionality*". Jurisprudentially, "*proportionality*" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four

[42] (2016) 7 SCC 353
[43] (2017) 10 SCC 1
[44] (2023) 3 SCC 1

> sub-components of proportionality which need to be satisfied [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).] , a limitation of a constitutional right will be constitutionally permissible if:
>
> (*i*) it is designated for a proper purpose;
>
> (*ii*) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;
>
> (*iii*) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally
>
> (*iv*) there needs to be a proper relation ("*proportionality stricto sensu*" or "*balancing*") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

86. It is also to be noted that the construction of a house has an aspect of socio-economic rights. For an average citizen, the construction of a house is often the culmination of years of hard work, dreams, and aspirations. A house is not just a property but

embodies the collective hopes of a family or individuals for stability, security, and a future. Having a house or a roof over one's head gives satisfaction to any person. It gives a sense of dignity and a sense of belonging. If this is to be taken away, then the authority must be satisfied that this is the only option available.

VIII. PERMISSIBILITY OF THE COLLECTIVE PUNISHMENT

87. Right to life is a fundamental right. As already discussed herein above, with the expanded scope of law, the right to shelter has also been considered as one of the facets of Article 21 of the Constitution. In one structure, various people or maybe even a few families could reside. The question that is required to be considered is, as to whether if only one of the residents of such a structure is an accused or convicted in a crime, could the authorities be permitted to demolish the entire structure thereby removing the shelter from the heads of the persons who are not directly or indirectly related with the commission of crime.

88. It is a settled principle of criminal jurisprudence as recognized in our country that a person is presumed to be innocent till he is held guilty. In our view, if demolition of a house is permitted wherein number of persons of a family or a few families reside only on the ground that one person residing in such a house is either an accused or convicted in the crime, it will amount to inflicting a collective punishment on the entire family or the families residing in such structure. In our considered view, our constitutional scheme and the criminal jurisprudence would never permit the same.

89. In this respect, it will be apposite to refer to the following observations of Justice Krishna Iyer in the case of ***Gujarat Steel Tubes Ltd. and others v. Gujarat Steel Tubes Mazdoor Sabha and others***[45]:

> "**111.** The cardinal distinction in our punitive jurisprudence between a commission of enquiry and a court of adjudication, between the cumulative

[45] (1980) 2 SCC 593

> causes of a calamity and the specific guilt of a particular person, is that speaking generally, we have rejected, as a nation, the theory of community guilt and collective punishment and instead that no man shall be punished except for his own guilt. Its reflection in the disciplinary jurisdiction is that no worker shall be dismissed save on proof of his individual delinquency. Blanket attainder of a bulk of citizens on any vicarious theory for the gross sins of some only, is easy to apply but obnoxious in principle."

IX. DIRECTIONS

90. In order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. We are also of the view that even after orders of demolition are passed, the affected party needs to be given some time so as to challenge the order of demolition before an appropriate forum. We are further of the view that even in cases of persons who do not wish to contest the demolition order, sufficient time needs to

be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children and aged persons dragged to the streets overnight. Heavens would not fall on the authorities if they hold their hands for some period.

91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall

also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the noticee is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

B. PERSONAL HEARING

i. The designated authority shall give an opportunity of personal hearing to the person concerned.

ii. The minutes of such a hearing shall also be recorded.

C. FINAL ORDER

i. Upon hearing, the designated authority shall pass a final order.

ii. The final order shall contain:

a. the contentions of the noticee, and if the designated authority disagrees with the same, the reasons thereof;

b. as to whether the unauthorized construction is compoundable, if it is not so, the reasons therefor;

c. if the designated authority finds that only part of the construction is unauthorized/non-compoundable, then the details thereof.

d. as to why the extreme step of demolition is the only option available and other options like compounding and demolishing only part of the property are not available.

D. AN OPPORTUNITY OF APPELLATE AND JUDICIAL SCRUTINY OF THE FINAL ORDER.

i. We further direct that if the statute provides for an appellate opportunity and time for filing the same, or even if it does not so, the order will not be implemented for a period of 15 days from the date of receipt thereof. The order shall also be displayed on the digital portal as stated above.

ii. An opportunity should be given to the owner/occupier to remove the unauthorized construction or demolish

the same within a period of 15 days. Only after the period of 15 days from the date of receipt of the notice has expired and the owner/occupier has not removed/demolished the unauthorized construction, and if the same is not stayed by any appellate authority or a court, the concerned authority shall take steps to demolish the same. It is only such construction which is found to be unauthorized and not compoundable shall be demolished.

iii. Before demolition, a detailed inspection report shall be prepared by the concerned authority signed by two Panchas.

E. PROCEEDINGS OF DEMOLITION

i. The proceedings of demolition shall be video-graphed, and the concerned authority shall prepare a demolition report giving the list of police officials and

civil personnel that participated in the demolition process. Video recording to be duly preserved.

ii. The said demolition report should be forwarded to the Municipal Commissioner by email and shall also be displayed on the digital portal.

92. Needless to state that the authorities hereinafter shall strictly comply with the aforesaid directions issued by us.

93. It will also be informed that violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution.

94. The officials should also be informed that if the demolition is found to be in violation of the orders of this Court, the officer/officers concerned will be held responsible for restitution of the demolished property at his/their personal cost in addition to payment of damages.

95. The Registrar (Judicial) is directed to circulate a copy of this judgment to the Chief Secretaries of all the States/Union Territories and the Registrar Generals of all the High Courts. All State Governments shall issue circulars to all the District Magistrates and local authorities intimating them about the directions issued by this Court.

96. Before we part with the judgment, we must place on record our appreciation for the valuable assistance and suggestions given by Shri Abhishek Manu Singhvi, Shri M.R. Shamshad, Shri Sanjay Hegde, Shri C.U. Singh, Smt. Nitya Ramakrishnan, learned Senior Counsel, and Shri Prashant Bhushan, Shri Mohd. Nizammudin Pasha, Smt. Fauzia Shakil and Smt. Rashmi Singh, learned counsel appearing for the petitioners/applicants.

97. We also make a special mention of the pain-staking efforts made by Shri Nachiketa Joshi, learned Senior Counsel in collating the suggestions given by all the different counsel.

98. We must place on record our appreciation for Shri Tushar Mehta, learned Solicitor General of India, who has presented the case in an objective and dispassionate manner in keeping with the traditions of his high office.

99. Post the writ petitions for further orders after four weeks.

.....J.
[B.R. GAVAI]

.....J.
[K.V. VISWANATHAN]

NEW DELHI;
NOVEMBER 13, 2024