



2024 INSC 990

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14604 OF 2024
(Arising out of SLP (C) No.36440 of 2014)

RAJENDRA KUMAR BARJATYA AND ANOTHER ... APPELLANT(S)

VERSUS

U.P. AVAS EVAM VIKAS PARISHAD & ORS. ... RESPONDENT(S)

CIVIL APPEAL NO. 14605 OF 2024
(Arising out of SLP (C) No.1184 of 2015)

RAJEEV GUPTA AND OTHERS ... APPELLANT(S)

VERSUS

U.P. AVAS EVAM VIKAS PARISHAD & ORS. ... RESPONDENT(S)

J U D G M E N T

R.MAHADEVAN, J.

1. Leave granted.
2. Challenging the final judgment and order dated 05.12.2014 passed by the High Court of Judicature at Allahabad¹ in Writ-C.No.46342 of 2013, the appellants herein, who are third parties to the proceedings, have preferred the

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¹ Hereinafter shortly referred to as "the High Court"

present appeals.

3. The aforesaid writ petition was filed by the Respondent No.1 seeking for issuance of a Writ of Mandamus to direct the Respondent Nos.2 to 4 to stop the illegal / unauthorized commercial construction on residential plot no.661/6, Shastri Nagar Yojna No.7, Meerut, and to provide police force to execute the order of demolition dated 31.05.2011 passed by the competent authority viz., Executive Engineer, Construction Division-8, U.P. Avas Evam Vikas Parishad, Sector 9, Shastri Nagar, Meerut.

4. By the judgment and order impugned herein, the High Court allowed the above writ petition with the following directions and observations:

(a) The District Magistrate, Meerut and the Senior Superintendent of Police Meerut shall remain present on the date and time to be notified by the petitioner-Avas Evam Vikas Parishad for the purposes of demolition of unauthorized constructions. Such demolitions must be effected on or before 31st December, 2014.

(b) Criminal proceedings should be launched against respondent nos.4 and 5 as well as against the officers, who were In-charge of the office of Avas Vikas Parishad at the relevant time including the Chief Engineer and the Executive Engineer when these constructions had come up.

(c) The Chief Secretary, U.P. Lucknow shall ensure that the departmental proceedings are also initiated against the officers of Avas Evam Vikas Parishad responsible for the situation, which has been created. The Housing Commissioner shall also ensure that all like nature of unauthorized constructions are similarly dealt with without any discrimination and without any favouritism. For the purpose, he shall ensure that the highest officer posted in the office of Avas Evam Vikas Parishad at Meerut is made personally responsible for giving notice to the owner/persons in possession of the unauthorized occupations. The proceedings must be decided and appropriate action be taken within two months from the date of receipt of a certified copy of this order. There should be no complaint to this Court that any person has been treated favourably in the matter of demolition of the unauthorized

constructions.

(d) We also direct the Chief Secretary, U.P. Lucknow to ensure that the district authorities at Meerut are responded to the request of Awas Evam Vikas Parishad in the matter of demolition with all promptness and with full force.

(e) We make it clear that all unauthorized constructions have to be dealt with in same manner."

5. At the outset, it is imperative to note the relevant background facts leading to the present litigation. The Respondent No.5 by name, Veer Singh was originally allotted a plot bearing No.661/6, situated in Bhoomi Vikas, Grisathan Yojna No.7, Sector No.6, Phase-1, Shastri Nagar, Meerut, U.P.² by the Respondent No.1 on 30.08.1986. Possession was also handed over to him on 15.06.1989. In respect of the subject property, the Respondent No.1 executed a freehold deed dated 06.10.2004 in favour of the Respondent No.5 with specific condition that the property shall be used only for residential purposes. Contrary to the same, the Respondent No.5 with the assistance of his power of attorney agent by name, Vinod Arora i.e., Respondent No.6, started raising illegal commercial construction on the subject property without obtaining any sanction / approval from the Respondent No.1. Though show cause notices were issued to him, he neither responded to the same nor took any steps against the illegal construction, which compelled the competent authority to pass the order of demolition of the illegal / unauthorized construction on the subject property on 31.05.2011. However, the Respondent No.1 was unable to execute the said

² Hereinafter shortly referred to as the "subject property"

order, due to lack of co-operation from the local as well as police authorities. Therefore, they preferred the Writ Petition bearing No.46342 of 2013, which was allowed by the High Court, by order dated 05.12.2014, which is assailed in these appeals by the appellants herein, who are the owners of the commercial shops, which are stated to have been illegally / unauthorizedly constructed on the subject property by the Respondent Nos.5 and 6.

6. The common submissions made by the learned counsel appearing for the appellants in these appeals are that admittedly, shops in the subject property have been in existence for the past 24 years; and the Respondent No.1 had converted the subject property from leasehold to freehold by the registered document dated 06.10.2004 on "As is where is basis" and as per clause 6(a) of the said deed, the Respondent No.1 had accepted the construction made on the subject property and they were fully aware of the same from its inception. That apart, through registered sale deeds, all the appellants herein had purchased the shops constructed on the subject property for valuable consideration and have been occupying the premises since then and earning their livelihood. However, the Respondent No.1 without issuing notice under section 82 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965³ to the appellants, erroneously took steps to demolish the entire construction in the subject property by treating the same as illegal and unauthorized one and also obtained the demolition order

³ For short, "the Act"

from the High Court, which is arbitrary, illegal and in violation of the principles of natural justice. In support of the same, the learned counsel placed reliance on the decision of this Court in *Municipal Corporation, Ludhiana v. Inderjeet Singh*⁴, wherein, demolition of commercial property was carried out by Municipal Corporation, without serving proper notice on the respondent i.e., notice was served on a dead person and in such circumstances, it was observed by this Court that '*had a proper show cause notice been served upon the first respondent, he could have shown that the alleged violation of the provisions of the Act is of negligible character, which did not warrant an order of demolition.*'

6.1. Elaborating further, the learned counsel for the appellants submitted that without issuing notice to the appellants and occupants of the shops, the High Court has ordered demolition of the entire construction in the subject property. According to the learned counsel, the High Court, before ordering demolition, should have directed the authorities to explore the possibility of regularizing the alleged illegal construction in the subject property. It is also submitted by the learned counsel that there were initially about 15 to 20 shops and now, there are more than 600 commercial establishments run in the area earmarked as 'Central Market', but the Respondent No.1 failed in its statutory duty to keep pace with the booming development and therefore, this situation has arisen. It is further

⁴ (2008) 13 SCC 506

alleged that the Respondent No.1 adopted a pick and choose policy, whereby the construction made on the subject property was cherry picked for demolition, whereas in the entire vicinity of the Central market, buildings like this have blossomed and mushroomed. The learned counsel ultimately, submitted that the right of the Respondent No.1 to seek demolition is barred by delay and laches and they were negligent and acted hand in glove with the people responsible for such sorry state of affairs and that, in terms of Sections 92 to 94 r/w Sections 3, 7 and 8 of the Act, the State Government has full rights and control over the Respondent No.1, but they failed to exercise the same in proper perspective. Resultantly, due to no fault on the part of the appellants, their valuable rights are jeopardized and prejudiced at the hands of the Respondent No.1, who are acting in collusion and connivance with dishonest builders and land grabbers. Stating so, the learned counsel prayed to set aside the impugned order passed by the High court and allow these appeals.

7. On the other hand, the learned counsel appearing for the Respondent No.1 made detailed submissions reiterating the averments stated in the counter affidavit. According to him, U.P. Avas Evam Vikas Parishad viz., Respondent No.1 is the Housing Board of the State of Uttar Pradesh, an autonomous body created under the statute and governed by the U.P. Avas Evam Vikas Parishad

Adhiniyam, 1965⁵. With a view to eliminate housing problem and have a planned development in the District of Meerut, they floated a scheme called "Shastri Nagar Yojna No.7". In the said scheme, plots were carved out and categorized as residential and commercial as per usage. The residential plots could be used only for constructing the residential house and no commercial activity was permitted on the said plots. However, the Respondent No.5 started raising illegal commercial construction on the plot allotted to him, without obtaining any sanction from the competent authority. Though the Respondent No.1 sent show cause notices / communication to the Respondent No.5 to stop the illegal construction and get the same regularized, the Respondent No.5 did not respond to the same and he continued to construct the shops for commercial purposes. Therefore, the competent authority rightly passed the order of demolition of the unauthorized construction. But the said order was not enforced by the Respondent No.1, due to non-co-operation of the local as well as police authorities. Finally, the Respondent No.1 approached the High Court by filing the writ petition stating that the subject property was patently in violation of the statutory provisions applicable and it has to be demolished. The High Court after taking note of the facts and circumstances of the case, rightly passed the impugned order, which need not be interfered with by this Court.

7.1. In reply to the contentions raised on the side of the appellants, the learned counsel for the Respondent No.1 made the following submissions:

⁵ For short, "the Act"

(i) The Respondent No.5 got the property converted from leasehold to freehold on the basis of the fabricated construction completion certificate.

(ii) Unauthorized construction was made only by the original allottee i.e., Respondent No.5 and not the appellants. Further, the Respondent No.1 did not know about the change of interest *qua* the subject property as it was never intimated to them. Moreover, the appellants were aware of the unauthorized construction and notices issued to stop the same, at the time of purchasing the shops itself. In such circumstances, there was no need for the appellants to be arrayed as parties before the High Court in adherence to the principles of natural justice.

(iii) The Respondent No.1 from the year 1990 onwards had served several notices on the Respondent No.5, directing him to stop the unauthorized construction, but he never paid heed to any of the notices and continued to raise the unauthorized construction. Therefore, it is incorrect to state that the Respondent No.1 lost its right to demolish the said unauthorized construction on the ground of delay and laches.

(iv) The appellants' right over the shops was created in pursuance of the change in usage of plot and unauthorized construction raised by the original allottee, which was never approved by the Respondent No.1 and therefore, in no way, their rights are being infringed by the Respondent No.1. Further, it cannot be said that the action of the Respondent No.1 is barred by the principles of acquiescence and estoppel.

(v) The violations made by Respondent No.5 are deliberate, designed and motivated and it is not a case where the violations are marginal or insignificant or that it had crept in accidentally. It is only after complying with all the requirements of law that a violation would qualify for regularization. Therefore, there is no illegality or infirmity in the order of the High Court directing demolition of the unauthorized construction.

(vi) Nevertheless, the appellants always have a remedy to sue the Respondent No.5 for return of money and/or damages.

(vii) After carrying out all kinds of development activities in different sectors of the Scheme, the Respondent No.1 allotted commercial properties, wherever required, by way of auction sale and commercial activities are taking place on such properties and therefore, it is wrong to state that the Respondent No.1 failed in its duty to provide planned development in the area.

(viii) An illegal act, more so, when it was done deliberately, does not become legal only because certain length of time has passed.

Thus, it is submitted by the learned counsel that the appeals filed by the appellants may be dismissed by this Court.

8. The learned counsel for the Respondent Nos.2 to 4 made his submissions supporting the case of the Respondent No.1 in entirety. Placing reliance on the counter affidavit filed by the respondent authorities, it is submitted by the learned counsel that they are ready to provide all the protection and facilities to the Respondent No.1 to demolish the unauthorized construction as ordered by

the High Court. Therefore, the learned counsel prayed for appropriate orders in these appeals.

9. During the pendency of these appeals, the Respondent No.5 died, his legal heirs were brought on record as Respondent Nos.5.1 to 5.6, and the cause title was accordingly amended. Despite the service of notice, none appeared on behalf of the legal heirs of the deceased Respondent No.5. *Qua* the Respondent No.6, who also died during the pendency of these appeals, it was recorded by this Court on 24.03.2022⁶ in SLP(C)No.36440 of 2014 that considering the status of the parties and the subject matter in issue, there was no requirement to substitute the legal representatives of the deceased Respondent No.6. In such circumstances, we have to examine the stand of the Respondent No.5 as was placed before the High Court. It was stated by the Respondent No.5 therein that after allotment, the Respondent No.5 executed a power of attorney in respect of the subject property in favour of the Respondent No.6, who raised the illegal / unauthorized commercial construction on the same. He categorically admitted that the construction was made without any sanctioned map / plan by the Respondent No.6. However, he has no objection, if the construction is demolished and he shall not claim any compensation from the Respondent

⁶ It has been pointed out that respondent No. 6 in these petitions, Shri Vinod Arora S/o Late K.L. Arora, has expired. It has also been pointed out that he has been a party in these matters in his capacity as power of attorney holder of the other private i.e., respondent No. 5.

Looking at the status of the parties and the subject matter of these petitions, as at present, we see no reason to require substitution of legal representatives of the deceased respondent.

Learned counsel for the parties may file short notes on their submissions while also clarifying the position at site, as existing today.

List these matters for final hearing at the admission stage on 27.04.2022.

No.1. Thus, according to the Respondent No.5, the Respondent No.6 was the original owner of the shops which were constructed on the subject property on the strength of the power of attorney executed by the Respondent No.5. Whereas, it was stated by the Respondent No.6 before the High Court that it was the Respondent No.5, who had raised construction of the shops and had sold the same to the different persons.

10. Heard the learned counsel appearing for the appellants as well as the Respondent No.1 and the Respondent Nos.2 to 4 and also perused the materials available on record carefully and meticulously.

11. This Court on 17.12.2014⁷ in SLP(CC) No.21102 of 2014⁸, granted an order of *status quo* in respect of the shop nos.6 and 10 situated in the subject property on condition that the appellants deposit a sum of Rs.10,00,000/- on or before 23.12.2014. The said order was duly complied with by the appellants. Thereafter, as per the order dated 22.01.2015 passed by this Court, the deposited amount was kept in interest bearing account. It is revealed from the latest office report dated 18.11.2024 that amount of Rs.10,00,000/- deposited by the

⁷ The notice shall be issued, subject to the petitioner depositing a sum of Rs.10,00,000/- before this Court by 23rd December, 2014.

Status quo, existing as on today, qua the Shop Nos.10 and 6, Ground Floor, Plot No.661/ 6, Bhoomi Vikas, Grisathan Yojna No. 7, Sector No.6, Phase-I, Shastri Nagar, Meerut, U.P., of the petitioner Nos.1 and 2 respectively, shall be maintained till the next date of hearing.

⁸ Arising out of which is SLP(C) No.36440 of 2014

appellants in SLP(C)No.36440 of 2014, was kept in an interest-bearing Fixed Deposit with UCO Bank, Supreme Court Compound, which is being renewed from time to time and is now bearing the next date of maturity on 10.05.2025.

12. This Court also granted an order of *status quo* on 05.01.2015⁹ in SLP(CC) No.21820 of 2014¹⁰. Subsequently, at the instance of the appellants, on 30.11.2018¹¹, the said order was clarified by this Court to the effect that it confined to the shops of the seven appellants in the subject property.

13. Concededly, the appellants are third parties to the writ proceedings. They have come up with these appeals stating that they are the most affected persons by the order passed by the High Court and will be deprived of their livelihood if the same is implemented. It is the principal contention of the learned counsel appearing for the appellants that the shops have been in existence for the past 24 years and the appellants are the owners of the same by virtue of the registered

⁹ Permission to file special leave petition is granted.
Issue notice, returnable within eight weeks.
Status quo, existing as on today, shall be maintained until further orders.

¹⁰ Arising out of which is SLP (C) No.1184 of 2015

¹¹ I.A. No. 98823/2017 is for seeking a clarification of the order of this Court dated 5.1.2015 so that the status quo as directed should be maintained in respect of the shops of the seven petitioners in the special leave petition.

Our attention has been drawn to the fact that an order was passed by this Court on 17.12.2014 in another special leave petition bearing SLP(C) No. 36440/2014 to that effect.

Hence, we direct that the order of status quo dated 5.1.2015 shall stand confined to the shops of the seven petitioners in plot No. 661/6 in Bhumi Vikas, Grihsthan, Yojana No.7, Sector-6, Phase-I, Shastri Nagar, Meerut, U.P.

The I.A. is, accordingly, disposed of.

List the matter in the second week of January, 2019 along with SLP(C) No. 36440/2014.

sale deed and the Respondent No.1 was fully aware of the construction made on the subject property from its inception. However, without issuing any notice to the appellants and occupants of the shops, the order of demolition came to be passed and hence, it is arbitrary, illegal and in violation of the principles of natural justice.

14. The facts remain undisputed are that the Respondent No.5 was allotted the subject property on 30.08.1986 and possession was handed over to him on 15.06.1989. The Respondent No.1 had executed a sale deed cum free hold deed in favour of the Respondent No.5 in respect of the subject property, on 06.10.2004. It is alleged by the Respondent No.1 that the said deed was executed by the Respondent No.1 based on the fabricated construction completion certificate produced by the Respondent No.5 and he with the assistance of the Respondent No.6, after possession, started to construct commercial shops, without obtaining sanctioned map / plan / approval from the competent authority. Clause 6-B of the said deed dated 06.10.2004 specifically stated that the property shall be used only for the residential purposes. It was also clearly mentioned in Clause 8 that the said property shall not be used for any purposes other than residential purposes and the Registered intending buyer shall always follow the rules and bylaws of the Council in respect of the property sold. However, there was no material available to prove that the Respondent No.5 was in possession of the sanctioned plan in respect of the construction made on the subject property or that he submitted any application

before the authority concerned seeking sanction / approval for such construction and the same was pending. It is also pertinent to mention at this juncture that the Respondent Nos.5 and 6 before the High Court categorically admitted that the construction of the commercial shops was made without there being any sanctioned plan from the competent authority. The survey report produced by the Respondent No.1 relating to Scheme No.7, Shastri Nagar, Meerut, would further disclose that there are 6379 sanctioned residential properties, in which 860 plots have been used for commercial purpose. Therefore, it is crystal clear that the Respondent Nos.5 and 6 without obtaining sanctioned plan / approval from the competent authority, illegally / unauthorisedly constructed the shops on the subject property, for commercial purposes and sold to the appellants and others for valuable consideration.

15. Undoubtedly, the competent authority under section 83 of the Act, is empowered to remove the unauthorised construction. As stated earlier, in this case, the plot allotted to the Respondent No.5 was residential in nature and the same was illegally used for commercial purpose and therefore, the construction raised on the subject property was liable to be removed by the competent authority. However it is the specific case of the appellants that the Respondent No.5 started to construct the commercial shops in the year 1990 itself, i.e., immediately after taking possession of the subject property and the Respondent No.1 was fully aware of such construction made by the Respondent No.5, from

its inception, but they did not take immediate steps against the same. It can be reasonably inferred that the Respondent No.1 was aware of the construction made on the subject property at the beginning itself, which prompted them to issue show cause notice dated 19.09.1990 to the Respondent No.5 to stop the illegal construction and take appropriate steps. Without giving reply to the same, the Respondent No.5 continued to raise illegal commercial construction on the plot allotted to him. Thereafter, *vide* letter dated 27.09.2002, the Respondent No.1 instructed the Respondent No.5 to get the illegal construction regularized. But the Respondent No.5 did not respond to the same and he continued the illegal construction of some more shops on the subject property. Therefore, the Respondent No.1 sent a notice dated 09.02.2004 to the Respondent No.5 stating that the plot allotted to him was being illegally used for commercial purpose and hence, the construction raised on the subject property was liable to be removed under section 83 of the Act. Even thereafter, the Respondent No.5 failed to reply to the said notice, which compelled the competent authority to pass an order of demolition dated 23.03.2005 for removal of unauthorized construction. However, the said order could not be executed by the Respondent No.1. In the meanwhile, the shops constructed on the subject property were purchased by the appellants herein and others, which was not intimated to the Respondent No.1 by the Respondent No.5. It is also evident from the records that in the year 2011, the Respondent No.5 again started to raise the illegal construction on the subject property, which was

objected to by the Respondent No.1 by issuing notice dated 20.04.2011 and directing him to immediately stop the unauthorized construction and show cause as to why the same should not be demolished. However, there was no reply on the side of the Respondent No.5. Finding no other alternative, the competent authority by exercising powers under section 83 of the Act, passed the order dated 31.05.2011 to demolish the said illegal construction raised on the subject property. Thus, from 1990 onwards, though the Respondent No.1 had periodically issued notices for removal of unauthorized constructions, it did not lead to actual removal/ demolition. Despite sufficient opportunities being granted to Respondent Nos.5 and 6 they did not utilize the same and continued the illegality. Such parties cannot plead estoppel. Even otherwise, we are of the view that there cannot be any estoppel against law. The lapses on the part of the authorities will not vest any person with a right to put up construction without planning approval and in violation of the conditions regarding usage. However, the fact that the notices issued by the authorities between 1990 to 2013 did not culminate into demolition, would speak volumes about the lackadaisical attitude of the authorities and that also smacks of collusion with the violators. Therefore, the fact that the building has stood over 24 years will not clothe the appellants with any right in law and hence we do not find any force in the contentions of the counsel for the appellants alleging delay and laches.

16. As regards the allegation raised by the appellants that without issuing any notice, the order of demolition came to be passed against them, the records

reveal that before passing the order of demolition dated 30.05.2011 by the competent authority, the Respondent No.1 sent show cause notice dated 20.04.2011 to the Respondent No.5 pointing out the raising of commercial construction illegally on the plot allotted for residential use, that too, without sanctioned map / plan and permission accorded. Subsequently, the copy of the notice served on the Respondent No.5 was pasted on the notice board. But the Respondent No.5 failed to appear before the authority concerned to put forth his stand. Therefore, the Respondent No.1 passed the order dated 31.05.2011 for demolishing the unauthorized construction, but the same did not take place.

16.1. Even thereafter, the Respondent No. 5 continued to raise illegal commercial construction, which led the Respondent No.1 to lodge a First Information Report on 29.07.2013 and also sought for assistance from Respondent No. 4 for demolition. However, on account of the fact that there was no assistance from the police, the demolition could not be proceeded with. It is thereafter that the Respondent No.1 approached the High Court by filing the writ petition. It is clear from the above narration of facts that there has been no violation of the principles of natural justice and the Respondent No.1 after sending notices to the original allottee i.e., Respondent No.5 took steps to remove the unauthorized construction made on the subject property. Therefore, the action impugned now is not *de novo* action, but only continuation of the earlier line of events as stated above.

16.2 As regards the rights of the appellants, independent from that of Respondent No.5, are concerned, we are unable to believe that the appellants did not even verify the original allotment order before purchase of the property to know the permissible use of the property and the factum of existence or otherwise of any approval in respect of the commercial building purchased by them. In this regard, the doctrine of Caveat Emptor would require the buyer to perform all acts within his capacity to ascertain the title of the seller and the defects in the property. Further, Sub-section (1) (a) of Section 55 of the Transfer of Property Act makes it clear when the buyer with ordinary care is not able to ascertain the material defect in the property or in the seller's title, it becomes the duty of the seller to disclose the same though it is the primary responsibility is on the buyer to ascertain the defects in the property and the title. In the present case, it appears that neither the appellants as buyers nor the Respondent No. 5 as seller have performed their obligations under the law. Having said this, it is pertinent to mention here that some notices have also been issued after the appellants have come into occupation of the premises. Thus, the contention of the appellants that they were not put on notice and that the orders are in violation of the principles of natural justice, is a fig leaf of a defence that can hardly have any basis in law.

17. The deed dated 06.10.2004 said to have been executed by the

Respondent No.1 granting freehold right to the Respondent No.5 while simultaneously issuing notices against unauthorized constructions, does not inspire the confidence of this court. In any event the said grant is also subject to a condition that it shall be used for residential purpose and hence it cannot be treated as a licence to construct the shops without any sanction/approval. That apart, the registration of the property would not in any way amount to regularizing the unauthorized construction. The power to take action against an unauthorized construction is independent and not in anyway connected to the Registration Act. Seen from any angle the appellants cannot claim that the construction of shops was in accordance with law.

18. Notably, the High Court, in the order impugned herein, clearly observed that the officials who are responsible for ensuring planned land development and for ensuring that no unauthorized/illegal constructions take place, themselves start colluding with the land mafias. A situation has been created, where the authority itself is forced to approach the High Court for a writ of mandamus to the district police to provide help in the matter of demolition of the unauthorized constructions, which have been raised within the jurisdictional territory of the authority concerned. Having held thus, and also considering the stand of the Respondent Nos.5 and 6 that they have no objection for demolition of the unauthorized construction, the High Court passed the order of demolition with direction to the authorities. We find no reason much less valid reason to

interfere with the well-reasoned order passed by the High Court.

19. In a catena of decisions, this Court has categorically held that illegally or unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction. The following decisions are of relevance and hence cited herein below to drive home the point that unauthorized constructions must be dealt with, with an iron hand and not kid gloves.

(i) In *K. Ramadas Shenoy v. Chief Officers, Town Municipal Council*¹², after having found that the impugned resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme and hence, it has no legal foundation, this Court held that the High Court was wrong in not quashing the resolution on the surmise that money might have been spent.

The relevant passage reads as follows:

"29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the

¹² (1974) 2 SCC 506

performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction.

30. The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent No.3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in Maddison v. Alderson [1883] 8 App. Cases 467 said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable.

31. For the foregoing reasons, the appeal is accepted. The order of the High Court leaving resolution dated 19 June, 1970 being Annexure 'D' to the petition undisturbed is set aside. The resolution dated 19 June, 1970 being Annexure 'D' to the petition before the High Court is quashed. The parties will pay and bear their own costs."

(ii) *Dr.G.N. Khajuria and others v. Delhi Development Authority and others*¹³, in which, the Authority concerned misused the power and allotted the plot earmarked for park for a nursery school. This Court vehemently condemned the same and ordered for cancellation of the said allotment, besides recommending penal action against the authority concerned. The relevant paragraphs are extracted below:

"8. We, therefore, hold that the land which was allotted to Respondent 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of Respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of Respondent 2 should be cancelled and we order accordingly. The fact that Respondent 2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation

¹³ (1995) 5 SCC 762

from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the Court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by Respondent 2 or by any other body.

9. The appeal is, therefore, allowed by ordering the cancellation of allotment made in favour of Respondent 2. It would be open to this respondent to continue to run the school at this site for a period of six months to enable it to make such alternative arrangements as it thinks fit to shift the school, so that the children are not put to any disadvantageous position suddenly.

10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happen for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

(iii) In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*¹⁴, this court in clear terms, held that there is no alternative to the construction which is unauthorised and illegal to be dismantled. The relevant paragraphs read thus:

"13. There is no alternative to the construction which is unauthorised and illegal to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in *Seth Badri Prasad and others vs. Seth Nagarmal and*

¹⁴ (1999) 6 SCC 464

others (1959 (1) Supp. SCR 769 at 774) was referred to, to contend that the court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made construction on the basis of the interim order of this Court and at its own risk."

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand, we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

"81. A number of cases come to this Court pointing to unauthorised constructions taking place at many places in the country by builders in connivance with the corporation/municipal officials. In a series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, the court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, we would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed."

(iv) In *Esha Ekta Apartments Coop Housing Society Limited v. Municipal Corporation of Mumbai*¹⁵, it was observed by this Court that the courts are expected to refrain from exercising equitable jurisdiction for regularisation of

¹⁵ (2013) 5 Supreme Court Cases : (2013) 3 Supreme Court Cases (Civil) 89

illegal and unauthorised constructions and the relevant passage of the said decision is extracted below:

"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal construction by way of compounding and otherwise."

"8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their own hands and get away with it."

"56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

(v) The aforesaid view was reiterated in *Supertech Limited v. Emerald Court Owner Resident Welfare Association and others*¹⁶ by holding that illegal constructions have to be dealt with strictly to ensure compliance with rule of law. The relevant paragraphs read as under:

"159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities."

¹⁶ (2021) 10 SCC 1

160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from the different departments (fire, garden, sewage etc.) and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations - the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach of the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns."

(vi) In *Kerala State Coastal Zone Management Authority vs. Maradu Municipality*¹⁷, it was once again reiterated that illegal and unauthorised constructions put up with brazen immunity, cannot be permitted to remain. The relevant passage of the said decision is quoted below:

"107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will

¹⁷ (2021) 16 SCC 822

promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations is not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument. We find that the view taken by the Kerala High Court in aforesaid decision is appropriate. Permission granted by the Panchayat was illegal and void. No such development activity could have taken place. In view of the findings of the Enquiry, Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court."

(vii) In *State of Haryana v. Satpal*¹⁸, it was held that the High Court committed a very serious error in directing to legalise the unauthorized occupation and possession made by the original writ petitioners on payment of market price and hence, it deserved to be quashed. The operative portion of the judgment is reproduced below:

"19. Under the circumstances, the High Court has committed a very serious error in directing to legalise the unauthorised occupation and possession made by the original writ petitioners on payment of market price. Even the other directions issued by the High Court are not capable of being implemented, namely, to segregate the vacant land from the residential house and which can be separated and utilised for earmarked purpose i.e. school premises. The unauthorised construction is in such a manner and even some areas are not used for residential purpose and some of the area is covered by vegetation and therefore, it is not possible to segregate and separate the same, which can be used for school premises. There is no other panchayati land and/or other land, which is available, which can be used as school premises/playground. The adjacent land belongs to some private persons and they are not ready to part with their land to be used as school premises/playground.

¹⁸ (2023) 6 SCC 643

20. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court and the directions issued (reproduced hereinabove) directing to legalise the unauthorised occupation and possession made by the original writ petitioners on the land, which is earmarked for school premises/playground is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. However, the original writ petitioners are granted 12 months' time to vacate the land, which is occupied by them unauthorisedly and if within one year from today, they do not vacate the lands in question, the appropriate authority is directed to remove their unauthorised and illegal occupation and possession."

(viii) Finally, in a recent decision in *Re: Directions in the matter of demolition of structures*¹⁹, while determining a question 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, this Court has extensively analysed all the aspects and issued certain directions to the authorities. The penultimate paragraphs read as under:

"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 unauthorised structure in any public place such as road, street, footpath,

¹⁹ 2024 SCC OnLine SC 3291

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/noncompoundable, 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."

20. In the ultimate analysis, we are of the opinion that construction(s) put up in violation of or deviation from the building plan approved by the local

authority and the constructions which are audaciously put up without any building planning approval, cannot be encouraged. Each and every construction must be made scrupulously following and strictly adhering to the Rules. In the event of any violation being brought to the notice of the Courts, it has to be curtailed with iron hands and any lenience afforded to them would amount to showing misplaced sympathy. Delay in directing rectification of illegalities, administrative failure, regulatory inefficiency, cost of construction and investment, negligence and laxity on the part of the authorities concerned in performing their obligation(s) under the Act, cannot be used as a shield to defend action taken against the illegal/unauthorized constructions. That apart, the State Governments often seek to enrich themselves through the process of regularisation by condoning/ratifying the violations and illegalities. The State is unmindful that this gain is insignificant compared to the long-term damage it causes to the orderly urban development and irreversible adverse impact on the environment. Hence, regularization schemes must be brought out only in exceptional circumstances and as a onetime measure for residential houses after a detailed survey and considering the nature of land, fertility, usage, impact on the environment, availability and distribution of resources, proximity to water bodies/rivers and larger public interest. Unauthorised constructions, apart from posing a threat to the life of the occupants and the citizens living nearby, also have an effect on resources like electricity, ground water and access to roads, which are primarily designed to be made available in orderly development and

authorized activities. Master plan or the zonal development cannot be just individual centric but also must be devised keeping in mind the larger interest of the public and the environment. Unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson's eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc.

21. Therefore, in the larger public interest, we are inclined to issue the following directions, in addition to the directives issued by this Court in *Re: Directions in the matter of demolition of structures* (supra):

(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the

authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, *etc.*, shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible

for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for

regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.

22. As far as the present case is concerned, we pass the following orders:

(i) The order of the High Court shall stand confirmed.

(ii)The appellants are directed to vacate and handover the vacant premises to the respondent authorities within a period of three months from the date of receipt of a copy of this judgment.

(iii)On such surrender, the respondent authorities shall take steps to demolish the unauthorised construction made on the subject property, within a period of two weeks therefrom.

(iv)All the authorities shall provide necessary assistance to the Respondent No.1 to execute the order of the High Court in its letter and spirit.

(v)Appropriate criminal as well as departmental action shall be taken against the erring officials / persons concerned in line with the order of the High Court and a report shall be filed before this Court.

(vi)The amount deposited by the appellants in SLP (C)No. 36440 of 2014 be refunded to them, along with accrued interest.

23. With the aforesaid observations and directions, these appeals stand dismissed. There is no order as to costs. Pending application(s), if any, shall stand disposed of.

.....J.
[J.B. Pardiwala]

.....J.
[R. Mahadevan]

NEW DELHI
DECEMBER 17, 2024.

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NOTE:

1) The Registrar (Judicial) is directed to circulate a copy of this Judgment to the Registrar General of all the High Courts, so as to enable the High Courts to refer it, while considering the disputes relating to unauthorised construction, deviation / violation of building permission, plan, *etc.*

2) The Registrar (Judicial) is also directed to circulate a copy of this Judgment to the Chief Secretaries of all the States / Union Territories. All the State / UT Governments shall issue circulars to all the local authorities / Corporations, intimating them about the directions issued by this Court and for strict compliance.

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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 valid

Digitally signed by
NARENDRA K. JOSHI
Date: 2024.01.13
11:27:10
Reason:

J U D G M E N T

B.R. GAVAL, 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.	<p>RELEVANT DETAILS IN SHOW CAUSE NOTICE:</p> <p>a) Specific grounds on the basis of which the violation is alleged and the demolition is proposed;</p> <p>b) Description of building/structure proposed to be demolished and the extent of unauthorized construction, if any;</p> <p>c) Details of relevant applicable provisions and laws alleged to have been breached (municipal laws, forest laws etc.);</p>

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

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			<p>TIME TO FILE REPLY: Minimum 2 months-time</p> <p>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.</p>
		<p>Ms. Nitya Ramakrishnan, Sr. Adv.</p>	<p>Issuance of Show Cause Notice:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p> <p>Notice to Family Members: If the owner or occupier cannot be found, the notice may be</p>

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, Adv.	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.	<p>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:</p> <ul style="list-style-type: none"> 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
			<p>concerned Judicial Magistrate at least 60 days before the proposed demolition.</p> <p>Explanation: The 60-day period begins from the date of delivery of the notice to the affected persons.</p>
2.	CONSIDERATION OF THE REPLY TO SHOW CAUSE	Mr. C.U. Singh, Sr. Adv.	<ol style="list-style-type: none"> 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.	<p>The person(s) in response to the notice shall have the following rights:</p> <ol style="list-style-type: none"> 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.	<p>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</p>

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.	<p>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.</p> <p>Relevant Details in the Demolition Order:</p> <ul style="list-style-type: none"> 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. <p>Service of Demolition Order: The service of the demolition order should follow the same procedure as the show cause notice.</p>
	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
			<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
		Mr. M.R. Shamshad, Sr. Adv.	<p>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.</p> <p>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.</p>
		Mr. Mohd. Nizammudin Pasha & Ms.	<p>Order of demolition must record reasons therefor inter alia including the following:</p> <ol style="list-style-type: none"> 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, Adv.	<p>II. Relevant provisions under which property is illegal/encroachment;</p> <p>III. Alternative rehabilitation or compensation provided to owner;</p> <p>IV. Time given to owner to move belongings etc. from property sought to be demolished;</p> <p>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;</p>
5.	CHALLENGE TO THE ORDER OF DEMOLITION	Mr. C.U. Singh, Sr. Adv.	<p>Judicial Examination of Demolition Orders: Courts must assess whether the proposed demolition is motivated by malice or bad faith.</p> <p>Presumption of Malice in Law:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
		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
			<p>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.</p> <p>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.</p>
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.	<p>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.</p> <p>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.</p>

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
	MALFEASANCE OF ERRING OFFICERS AND ACCOUNTABILITY		III. The erring officers shall also be liable for prosecution u/s 198,324,326(f), 326(g),56,59 BNS
		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, Adv.	<p>Strict Action Against Officials Involved in Demolitions:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>Immediate Suspension and Departmental Action: Immediate suspension and departmental action should be taken against all officers involved in executing extrajudicial demolition orders.</p> <p>Criminal Proceedings Under IPC:</p>

S.No.	TOPIC/ ISSUE	COUNSEL'S/ PARTY NAME	SUMMARY OF SUGGESTIONS
			<ul style="list-style-type: none"> • 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.	<ul style="list-style-type: none"> • 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 IN CASE OF MALICIOUS OR ILLEGAL DEMOLITION	Mr. C.U. Singh, Sr. Adv.	<p>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.</p> <p>Compensatory Damages for Illegal Demolition:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ Cost of reconstruction of the demolished structure ○ Loss of belongings ○ Loss of reputation ○ Rent paid for alternate accommodation • The court may also direct the authorities to rebuild the structure and award punitive damages.
	COMPENSATORY DAMAGES TO OWNER IN CASE OF MALICIOUS OR ILLEGAL DEMOLITION	Ms. Nitya Ramakrishnan, Sr. Adv.	<p>Appointment of Claim Commissioner:</p> <ul style="list-style-type: none"> • 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. <p>Personal Liability of Officers:</p> <ul style="list-style-type: none"> • 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
			<p>inquiry where the officer will be given an opportunity to be heard by the Claim Commissioner.</p> <p>State Compensation Scheme for Illegal Demolition:</p> <ul style="list-style-type: none"> • 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. <p>Documentation Requirements: All actions, steps, and procedures taken by the authority or Claim Commissioner must be fully and accurately documented, including:</p> <ul style="list-style-type: none"> 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. <p>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.</p>
		Mr. Mohd. Nizammudin	<ul style="list-style-type: none"> • 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, Adv.	to persons who are found <i>prima facie</i> to have been victims of punitive extra-judicial demolitions; <ul style="list-style-type: none"> • 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.	DISSEMI NATION & COMPLI ANCES OF THE GUIDELI NES	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, Adv.	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 expounded 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 Dicey², 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 following⁷:

“(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.

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...”

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 power¹⁹.

(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.

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.

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

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 words³⁶:

“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

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.
—R. GAVAI]

.....J.
—V. VISWANATHAN]

**NEW DELHI;
NOVEMBER 13, 2024**

