

बिहार सरकार
नगर विकास एवं आवास विभाग

प्रेषक:-

राजीव कुमार श्रीवास्तव, भा०प्र०से०
अपर सचिव
नगर विकास एवं आवास विभाग,
बिहार, पटना।

सेवा में,

मुख्य कार्यपालक पदाधिकारी,
सभी आयोजना क्षेत्र प्राधिकार।
नगर आयुक्त,
सभी नगर निगम।
नगर कार्यपालक पदाधिकारी,
सभी नगर परिषद/सभी नगर पंचायत।

पटना, दिनांक-06/06/2025

विषय - माननीय सर्वोच्च न्यायालय द्वारा एस०एल०पी०(सी) संख्या-36440/2014 से उत्पन्न सिविल अपील संख्या-14604/2024 में दिनांक-17.12.2024 को पारित निर्देशों के अनुपालन करने के सम्बन्ध में।

महाशय,

निदेशानुसार उपर्युक्त विषयक के संदर्भ में माननीय सर्वोच्च न्यायालय, नई दिल्ली के कार्यालय द्वारा जारी पत्र संख्या-41119/2014/एस०ई०सी०-III-ए, दिनांक-16 जनवरी, 2025 तथा एस०एल०पी०(सी) संख्या-36440/2014 से उत्पन्न सिविल अपील संख्या-14604/2024 की ओर से दिनांक-17 दिसम्बर, 2024 को माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय की छायाप्रति संलग्न करते हुए कहना है कि पारित निर्णय की कंडिका-21 के तहत निम्नलिखित निर्गत निर्देशों का अनुपालन किया जाना है :-

(i) भवन निर्माण की अनुज्ञा जारी करते समय, जैसा भी मामला हो, बिल्डर/आवेदक से इस आशय का वचन लिया जाएगा कि भवन का स्वामित्व, संबंधित प्राधिकारियों से पूर्णता प्रमाण-पत्र/अधिभोग प्रमाण-पत्र प्राप्त करने के बाद ही मालिकों/लाभार्थियों को सौंपा जाएगा।

(ii) बिल्डर/डेवलपर/स्वामी को निर्माण स्थल पर निर्माण की पूरी अवधि के दौरान अनुमोदित योजना की एक प्रति प्रदर्शित करानी होगी तथा संबंधित प्राधिकारियों द्वारा समय-समय पर परिसर का निरीक्षण किया जाएगा तथा अपने आधिकारिक अभिलेखों में ऐसे निरीक्षण का रिकार्ड रखेंगे।

(iii) संबंधित प्राधिकार द्वारा आवासीय/व्यावसायिक भवन के संबंध में पूर्णता प्रमाण-पत्र/अधिभोग प्रमाण-पत्र व्यक्तिगत निरीक्षण करने और इस बात से संतुष्ट होने पर कि भवन का निर्माण, भवन-निर्माण की अनुज्ञा के अनुसार किया गया है और निर्माण में अनुज्ञा से किसी भी तरह का विचलन नहीं है, तदोपरान्त संबंधित प्राधिकार संबंधित पक्षों को बिना किसी अनावश्यक देरी के पूर्णता प्रमाण-पत्र जारी करने की प्रक्रिया को स्थगित कर दिया जाना चाहिए, जब तक कि बताए गए विचलन को पूरी तरह से ठीक नहीं कर लिया जाता है।

(iv) सभी आवश्यक सेवा कनेक्शन, जैसे-बिजली, पानी की आपूर्ति, सीवरेज कनेक्शन आदि, सेवा प्रदाता/बोर्ड द्वारा भवनों को पूर्णता प्रमाण-पत्र/अधिभोग प्रमाण-पत्र, प्रस्तुत करने के बाद ही दिए जाएंगे।

(v) पूर्णता प्रमाण-पत्र जारी होने के बाद भी, यदि भवन-निर्माण की अनुज्ञा के विपरीत कोई विचलन/उल्लंघन प्राधिकार के ध्यान में लाया जाता है, तो संबंधित प्राधिकार द्वारा बिल्डर/मालिक/कब्जा धारक के विरुद्ध तत्काल विधिवत कार्रवाई की जाएगी तथा गलत पूर्णता

प्रमाण-पत्र/अधिभोग प्रमाण-पत्र जारी करने के लिए जिम्मेदार अधिकारी के विरुद्ध विभागीय कार्रवाई की जाएगी।

(vi) किसी भी अनाधिकृत भवन में, चाहे वह आवासीय हो या व्यावसायिक, किसी भी राज्य/संघ शासित प्रदेश के किसी भी प्राधिकार व स्थानीय निकायों द्वारा कोई व्यवसाय/व्यापार करने की अनुमति लाइसेंस नहीं दिया जाना चाहिए।

(vii) भवन निर्माण संबंधित विकास क्षेत्र के जोनल प्लान और भू-उपयोग के अनुरूप होना चाहिए। ऐसी जोनल प्लान और भू-उपयोग में कोई भी संशोधन, लागू नियमों का सख्ती से पालन करते हुए और व्यापक जनहित तथा पर्यावरण पर पड़ने वाले प्रभाव को ध्यान में रखते हुए किया जाना चाहिए।

(viii) जब भी प्लानिंग विभाग/स्थानीय निकाय के अंतर्गत संबंधित प्राधिकार द्वारा किसी अनाधिकृत निर्माण के विरुद्ध कार्रवाई करने के लिए किसी अन्य विभाग से सहयोग के लिए अनुरोध किया जाता है, तो संबंधित विभाग द्वारा प्राधिकार को तत्काल सहायता और सहयोग प्रदान किया जाएगा तथा किसी भी प्रकार की देरी या लापरवाही को गंभीरता से लिया जाएगा। देरी या लापरवाही के प्रकरण में संज्ञान में आने पर राज्य/संघ-राज्य क्षेत्र सरकार द्वारा संबंधित अधिकारियों के विरुद्ध अनुशासनात्मक कार्रवाई किया जाएगा।

(ix) मालिक या बिल्डर द्वारा पूर्णता प्रमाण-पत्र निर्गत नहीं किए जाने के प्रकरण में या अनाधिकृत निर्माण के नियमितीकरण या विचलन में सुधार आदि के लिए कोई आवेदन/अपील/संशोधन दायर किया जाता है, तो संबंधित प्राधिकार द्वारा लंबित अपीलों/संशोधनों सहित उसका यथा संभव शीघ्रता से, किसी भी स्थिति में वैधानिक रूप से निर्धारित 90 दिनों से अधिक समय के भीतर निपटारा किया जाएगा।

(x) यदि अधिकारी इस न्यायालय द्वारा जारी किए गए पहले के निर्देशों और आज पारित किए जा रहे निर्देशों का सख्ती से पालन करते हैं, तो उनका निवारक प्रभाव होगा और न्यायाधिकारण/न्यायालयों के समक्ष मकान/भवन निर्माण से संबंधित मुकदमों की मात्रा में भारी कमी आएगी। इसलिए सभी राज्य/संघ राज्य क्षेत्र सरकारों द्वारा सभी संबंधितों को परिपत्र के रूप में आवश्यक निर्देश जारी किए जाने चाहिए, जिसमें चेतावनी दी गई हो कि सभी निर्देशों का कर्तव्यनिष्ठता से पालन हो और अनुपालन में लापरवाही को गंभीरता से लिया जाए, तथा कानून के अनुसार दोषी अधिकारियों के खिलाफ विभागीय कार्रवाई शुरू की जाएगी।

(xi) बैंक/वित्तीय संस्थान किसी भी भवन को संबंधित पक्ष की संपत्ति मान कर सुरक्षा के रूप में ऋण तभी मंजूर करेंगे, जब संबंधित पक्षों द्वारा भवन को जारी किए गए पूर्णता प्रमाण-पत्र/अधिभोग प्रमाण-पत्र को प्रस्तुत करने के बाद ही उसका सत्यापन किया जाएगा।

(xii) माननीय सर्वोच्च न्यायालय के निर्गत किसी भी निर्देश का उल्लंघन करने पर संबंधित कानूनों के तहत अभियोजन के अलावा अवमानना कार्यवाही भी शुरू की जाएगी।

उक्त निर्देशों का अनुपालन हेतु अपने नगरपालिका के अंतर्गत संबंधित पदाधिकारी, बिल्डर समूह, वास्तुविद् समूह, अभियंता समूह, रियल ईस्टेट डेवलपर समूह, बैंक संगठन आदि संबंधित समूह/संगठन को माननीय सर्वोच्च न्यायालय के आदेश से अवगत कराते हुए अनुपालन सुनिश्चित कराएँ।

अतएव इसे सर्वोच्च प्राथमिकता दी जाय।

अनु०-यथोक्त।

विश्वासभाजन
20/6/2024
अपर सचिव
नगर विकास एवं आवास विभाग,
बिहार, पटना।

43

ज्ञापांक-09/न०वि०न्या०-17/2024 6387

न०वि० एवं आ०वि० पटना, दिनांक- 06/06/25

प्रतिलिपि-सचिव, भू-सम्पदा विनियामक प्राधिकरण (रेरा), 6वीं मंजिल, बिहार राज्य भवन निर्माण निगम परिसर, अस्पताल रोड, 800012/सचिव, सार्वजनिक स्वास्थ्य अभियांत्रिकी विभाग, पी०एच०ई०डी० भवन, बेली रोड, पटना-800015/महानिदेशक-सह-कमांडेंट, राज्य अग्निशमन कार्यालय, बिहार अग्निशमन सेवा, बुद्ध मार्ग, लोदीपुर, पटना, बिहार, 800001/प्रबंध निदेशक, बिहार राज्य आवास बोर्ड, आर-ब्लॉक, 6, सरदार पटेल मार्ग, वीरचंद पटेल रोड एरिया, पटना, बिहार, 800015/प्रबंध निदेशक, बिहार शहरी आधारभूत संरचना विकास निगम लिमिटेड पटना, खाद्य भवन, द्वितीय तल दरोगा राय आर ब्लॉक रोड नंबर-02 पटना-1/ अध्यक्ष, कन्फेडरेशन ऑफ रियल एस्टेट डेवेलपर्स एसोसिएशन ऑफ इंडिया (CREDAI), दूसरी मंजिल, एन०पी० सेंटर, 201, न्यू डाक बंगला रोड, पटना, बिहार/ अध्यक्ष, बिल्डर एसोसिएशन ऑफ इंडिया (बिहार), 45/97, आशियाना गैलेक्सी प्रदर्शनी रोड, पटना, 800001/ अध्यक्ष, इंडियन इंस्टिट्यूट ऑफ इंजीनियर (बिहार राज्य केंद्र), सरदार पटेल मार्ग, इलाहाबाद बैंक के पास, परिवहन भवन, वीरचंद पटेल रोड एरिया, पटना, बिहार, 800001/ प्रबंध निदेशक, नार्थ बिहार पावर डिस्ट्रीब्यूशन कंपनी लिमिटेड, विद्युत भवन, जवाहरलाल नेहरू मार्ग, पटना/ प्रबंध निदेशक, साउथ बिहार पावर डिस्ट्रीब्यूशन कंपनी लिमिटेड, दूसरी मंजिल, विद्युत भवन, बेली रोड, पटना, बिहार, 800001 को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

2/6/2025
अपर सचिव

ज्ञापांक-09/न०वि०न्या०-17/2024 6387

न०वि० एवं आ०वि० पटना, दिनांक- 06/06/25

प्रतिलिपि-सचिव के आप्त सचिव, नगर विकास एवं आवास विभाग को सूचनार्थ प्रेषित।

2/6/2025
अपर सचिव

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पत्र संख्या:-ई०/कोर्ट केस-04/2025-1483../

अत्यावश्यक
कोर्ट केस

बिहार सरकार

गृह विभाग

(विशेष शाखा)

प्रेषक,

के० सुहिता अनुपम,
सरकार के विशेष सचिव।

सेवा में,

सचिव,
नगर विकास एवं आवास विभाग।
बिहार, पटना।

पटना, दिनांक-07/02/2025

सहायक निबंधक, उच्चतम न्यायालय, नई दिल्ली से प्राप्त पत्र
दिनांक-16.01.2025 पर आवश्यक कार्रवाई करने के संबंध में।

विषय:-

महाशय,

निदेशानुसार उपर्युक्त विषयक सहायक निबंधक, उच्चतम न्यायालय, नई
दिल्ली से प्राप्त पत्रांक-41119/2014/SEC-III-A, दिनांक-16.01.2025 की छायाप्रति
संलग्न करते हुए कहना है कि विषयांकित वाद में अग्रेतर कार्रवाई भवन निर्माण विभाग,
बिहार, पटना एवं नगर विकास एवं आवास विभाग, बिहार, पटना के स्तर से अपेक्षित
है।अतः उक्त पत्र की छायाप्रति संलग्न करते हुए अनुरोध है कि
विषयांकित वाद में अग्रेतर कार्रवाई करने की कृपा की जाय।

अनु०:-यथोक्त।

विश्वासभाजन,

K/6/2/25

(के० सुहिता अनुपम)
सरकार के विशेष सचिव।

निदेशानुसार कृपा

सचिव के विशेष कार्य पर्याधिकारी
नगर विकास एवं आवास विभाग
बिहार, पटना।श्री सुज
५२
२१/०२/२५
५.५०
३०३
२१/०२/२५१३६३
११/०२/२५



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(40/88)

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NEW DELHI
16th JANUARY, 2025

From:

The Assistant Registrar,
Supreme Court of India,
New Delhi.

Ass- Home
मुख्य सचिव कोषाग, बिहार
22 JAN 2025
Chief Secretary, Bihar

बिहार सरकार
मुख्य सचिव का कोषाग
दिनांक 28/1/25
फाइल नं. 290

To,

1. STATE OF ANDHRA PRADESH,
THROUGH ITS CHIEF SECRETARY,
1ST BLOCK, 1ST FLOOR, A.P. SECRETARIAT OFFICE,
VELAGAPUDI - 522023

I/c Legal cell

मुख्य सचिव कोषाग
28 JAN 2025
मुख्य सचिव का कोषाग

2. STATE OF ARUNACHAL PRADESH
THROUGH ITS CHIEF SECRETARY,
CIVIL SECRETARIAT, ITANAGAR - 791111

मुख्य सचिव का कोषाग
बिहार सं. 27-1-2025

3. STATE OF ASSAM
THROUGH ITS CHIEF SECRETARY,
BLOCK - C, 3RD FLOOR,
ASSAM SACHIVALAYA,
DISPUR, GUWAHATI - 781006

4. STATE OF BIHAR
THROUGH ITS CHIEF SECRETARY,
MAIN SECRETARIAT,
PATNA- 800015

अवर सचिव / E
29/1/25

इस मामले को गवर्न निर्माण/नगर विकास
विभाग, ग्रामिका के प्रसि के साथ
आवश्यक कारवाई हेतु प्रेषित
की जा सकती है।

114
04/02/25

5. STATE OF CHHATTISGARH,
THROUGH ITS CHIEF SECRETARY,
MAHANADI BHAWAN, MANTRALAYA,
NAYA RAIPUR - 492002

6. STATE OF GOA
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT, PORVROIM,
BARDEZ - 403521

29-1-25

395/55/15
31/1/25

पत्र प्राप्त शाखा
मुख्य विभाग विशेष शाखा
सं. 3630545
दिनांक 28/1/25

मुख्य सचिव कोषाग
29/1/25

मुख्य सचिव कोषाग
4.2.25

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7. STATE OF GUJARAT,
THROUGH ITS CHIEF SECRETARY,
1ST BLOCK, 5TH FLOOR, SACHIVALAYA
GANDHINAGAR – 382010

8. STATE OF HARYANA
THROUGH ITS CHIEF SECRETARY,
4TH FLOOR, HARYANA CIVIL SECRETARIAT
SECTOR – 1, CHANDIGARH – 160019

9. STATE OF HIMACHAL PRADESH,
THROUGH ITS CHIEF SECRETARY,
H.P. SECRETARIAT, SHIMLA – 171002

10. STATE OF JHARKHAND,
THROUGH ITS CHIEF SECRETARY,
1ST FLOOR, PROJECT BUILDING, DHURWA,
RANCHI – 834004

11. STATE OF KARNATAKA
THROUGH ITS CHIEF SECRETARY,
ROOM NO. 320, 3RD FLOOR, VIDHANA SOUDHA,
BENGALURU – 560001

12. STATE OF KERALA
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT,
THIRUVANANTHAPURAM – 695001

13. STATE OF MADHYA PRADESH
THROUGH ITS CHIEF SECRETARY,
MP MANTRALAYA, VALLABH BHAVAN,
BHOPAL – 462004

14. STATE OF MAHARASHTRA
THROUGH ITS CHIEF SECRETARY,
CS OFFICE MAIN BUILDING, MANTRALAYA
6TH FLOOR, MADAME CAMA ROAD,
MUMBAI – 400032

15. STATE OF MANIPUR
THROUGH ITS CHIEF SECRETARY,
SOUTH BLOCK, OLD SECRETARIAT,
IMPHAL – 795001

(39) (38) (78)
16 STATE OF MEGHALAYA
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT BUILDING, RILANG BUILDING,
ROOM NO. 321, MEGHALAYA SECRETARIAT,
SHILLONG - 793001

17. STATE OF MIZORAM
THROUGH ITS CHIEF SECRETARY,
NEW SECRETARIAT COMPLEX,
AIZWAL - 796001

18. STATE OF NAGALAND
THROUGH ITS CHIEF SECRETARY,
CIVIL SECRETARIAT,
KOHIMA - 797004

19. STATE OF ORISSA
THROUGH ITS CHIEF SECRETARY,
GENERAL ADMINISTRATION DEPARTMENT,
ODISHA SECRETARIAT,
BHUBANESWAR - 751001

20. STATE OF PUNJAB
THROUGH ITS CHIEF SECRETARY,
CHANDIGARH - 160001

21 STATE OF RAJASTHAN
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT
JAIPUR - 302005

22. STATE OF SIKKIM
THROUGH ITS CHIEF SECRETARY,
NEW SECRETARIAT
GANGTOK- 737101

23. STATE OF TAMIL NADU
THROUGH ITS CHIEF SECRETARY,
SECRETARIAT,
CHENNAI - 600009

24. STATE OF TELANGANA
THROUGH ITS CHIEF SECRETARY,
BLOCK - C, 3RD FLOOR, TELANGANA SECRETARIAT
KHAIRATABAD, HYDERABAD

37
38
25.STATE OF TRIPURA
THROUGH ITS CHIEF SECRETARY,
NEW SECRETARIAT COMPLEX
PO: SECRETARIAT, AGARTALA- 799010

26.STATE OF UTTARAKHAND,
THROUGH ITS CHIEF SECRETARY,
4, SUBHASH ROAD, UTTARAKHAND SECRETARIAT
DEHRADUN – 248001

27. STATE OF UTTAR PRADESH
THROUGH ITS CHIEF SECRETARY,
1ST FLOOR, ROOM NO. 110,
LALBHADUR SASTRI BHAWAN,
UTTAR PRADESH SECRETARIAT
LUCKNOW – 226001

28. STATE OF WEST BENGAL
THROUGH ITS CHIEF SECRETARY,
NABANNA, 13TH FLOOR, 325,
SARAT CHATTERJEE ROAD,
MANDIRTALE, SHIBPUR,
HOWRAH – 711102

29. UNION TERRITORY OF ANDAMAN &
NICOBAR ISLANDS,
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
ANDAMAN AND NICOBAR ADMINISTRATION
SECRETARIAT,
PORT BLAIR – 744101

30. UNION TERRITORY OF CHANDIGARH,
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
UT SECRETARIAT, SECTOR – 9
CHANDIGARH

31. UNION TERRITORY OF DADAR & NAGAR HAVELI,
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
FORT AREA, MOTI DAMAN,
DAMAN, DADRA AND NAGAR HAVELI – 396220

32. UNION TERRITORY OF DAMAN & DIU
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
FORT AREA, MOTI DAMAN,
DAMAN, DADRA AND NAGAR HAVELI – 396220

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33. UNION TERRITORY OF JAMMU & KASHMIR,
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
ROOM NO. 2/7, 2ND, FLOOR MAIN BUILDING,
CIVIL SECRETARIAT,
JAMMU – 180001

34. UNION TERRITORY OF NCT OF DELHI
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
DELHI SECRETARIAT , IP ESTATE,
NEW DELHI- 110002

35. UNION TERRITORY OF LAKSHADWEEP
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
OFFICE OF THE HON'BLE ADMINISTRATOR
SECRETARIAT BUILDING,
KAVARATTI ISLAND – 682555

36. UNION OF TERRITORY OF PUDUCHERRY
THROUGH ITS CHIEF SECRETARY/ ADMINISTRATOR,
CHIEF SECRETARIAT, GOUBERT AVENUE – 605001,

37. UNION TERRITORY OF LADAKH,
THROUGH ITS CHIEF SECRETARY/ADMINISTRATOR,
UT SECRETARIAT, DISTRICT-LEH (LADAKH)-194101

CIVIL APPEAL No. 14604 OF 2024

IN

WC No.46342 OF 2013

RAJENDRA KUMAR BARJATAYA AND ANOTHER

...Appellant(s)

VERSUS

U.P. AVAS EVAM VIKAS PARISHAD & ORS.

...Respondent(s)

AND

CIVIL APPEAL No. 14605 OF 2024

IN

WC No.46342 OF 2013

RAJEEV GUPTA AND OTHERS

...Appellant(s)

VERSUS


U.P. AVAS EVAM VIKAS PARISHAD & ORS.

...Respondent(s)

Sir,

I am directed to transmit herewith certified copy of Signed Reportable Judgment dated **17th December, 2024** passed in the Civil Appeals above mentioned, for your information and strict compliance.

Yours faithfully,


ASSISTANT REGISTRAR

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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)

Certified to be true copy
Assistant Registrar (Judl)
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Supreme Court of India
Anny
18/1/24

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

VERSUS

25007796

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)

JUDGMENT

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

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 / unauthorizedly 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 unauthorized 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

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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 of 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.

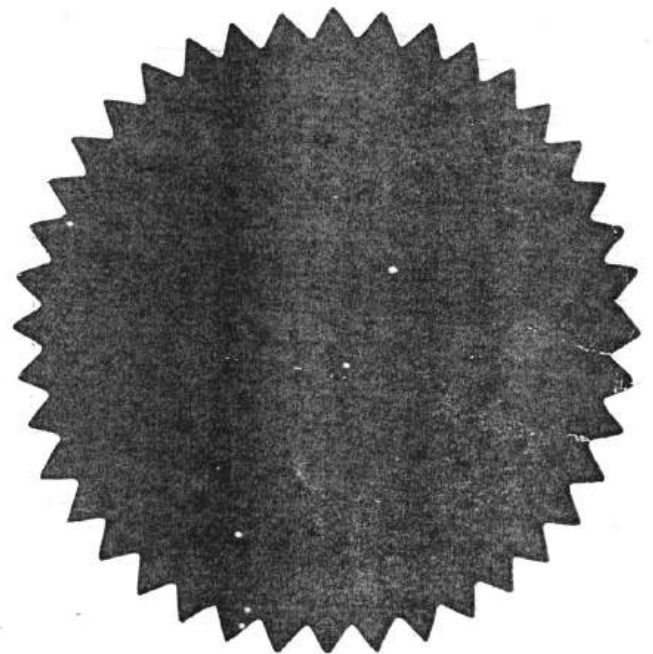
23. With the aforesaid observations and directions, these appeals stand dismissed. There is no order as to costs. Pending application(s), if any, shall stand disposed of.

..... Sd - J.
[J.B. Pardiwala]

..... Sd - J.
[R. Mahadevan]

NEW DELHI
DECEMBER 17, 2024.

(14)
मजाले शिक्षा
विभाग





SEALED IN MY PRESENCE

See