

BEFORE THE NATIONAL GREEN TRIBUNAL

PUNE

MEMORANDUM OF APPLICATION

**Under Section 18(1) read with Sections 14, 15 of National
Green Tribunal Act 2010**

Application No. 43 of 2023

Sagar Kantilal Devre

... Applicant

VERSUS

State Of Maharashtra Through Principal Secretary

And 9 Others.

... Respondents

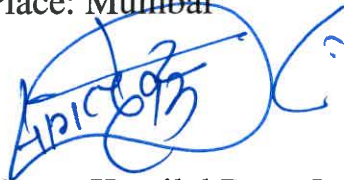
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Date: 21.01.2025

Place: Mumbai


[Sagar Kantilal Devre]

Applicant

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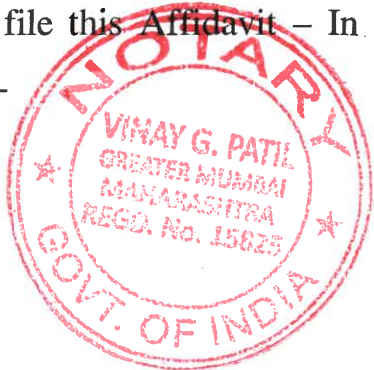
VERSUS

State Of Maharashtra Through Principal Secretary
And 9 Others. ... Respondents

**“AFFIDAVIT – IN – REJOINDER OF THE APPLICANT TO
AFFIDAVIT IN REPLY FILED BY THE RESPONDENT NO
2(MCGM) PURSUANT TO ORDER DATED 20.09.2024:”**

I, Sagar Kantilal Devre, Age: 38 years, Occ:- Advocate, Applicant
in above Original Application, do hereby state on solemn
affirmation as under:-

I say that I am the Applicant abovenamed as such well
conversant with the facts of this case. Respondent No. 2 has
filed the Reply-in-Affidavit on 10.12.2024. I have gone
through the contents of the Affidavit-in-reply. I file this
Affidavit – In – reply in order to point out the correct facts on
record of this Hon'ble Tribunal, because the present reply is
filed mischievously, malafidely and Respondent Corporation
has suppressed the vital facts, for which, there is a need
necessitated to file this Affidavit – In – reply. I state the
following facts:-



2. That, by Notification dated 7.10.2017, (vide no. TPS-1814/CR- 82/14/Rules/UD-13) the Urban Development Department has amended MR&TP Act, reads,

"Regularization on Govt. land can be done except playground, garden, and open spaces."

AND

"unauthorized developments on lands reserved for public purpose except playground, garden an open space in any plan, if the said reservation is shifted or deleted after following due process of law, subject to the condition that the cost of shifting or deletion is born by the owner and/or occupier."

(Annexed **EXHIBIT – A** is the copy of notification dated 07.10.2017.)

3. Therefore, the MCGM, MHADA or Collector have no jurisdiction to regularize any unauthorized construction in the plot of land designated and earmarked for Recreational Ground (R.G.) area in the final Development Plan.
4. That, the MHADA has requested MCGM for regularization of the unauthorized constructions. Though there are no approval is granted by MCGM for regularization, it is pertinent to note that, the proposal of regularization has to be made by the concerned Authority owning the land and or the Authority having Development Rights over the property. In instance case the land belongs to the Government and the collector MSD is the custodian of the land. Hence the application ought to be made by him and not by MHADA.



5. That, the Hon'ble Bombay High Court in the case of "**APMC V/s The Hon'ble Minister and ors**" [W.P. No 7741 of 2020] has clearly stated that, "**No Construction on earmarked as Open space can be regularized in any case**".

A true and correct copy of the judgment of the Hon'ble Bombay High Court in the case of "**APMC V/s The Hon'ble Minister and ors**" [W.P. No 7741 of 2020] dtd.02.05.2023 is annexed as **EXHIBIT - B.**

6. The Hon'ble Supreme Court of India in the case of "**RAJENDRA KUMAR BARJATYA AND ANOTHER VERSUS U.P. AVAS EVAM VIKAS PARISHAD & ORS.**" observed that illegal structures, irrespective of their investment or age, cannot be regularized. The Hon'ble court has stated,

"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."

The Hon'ble Court has further held that,

"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.”

[EMPHASIS SUPPLIED]



A true and correct copy of the judgement of the Hon'ble Supreme Court of India in the case of **“RAJENDRA KUMAR BARJATYA AND ANOTHER VERSUS U.P. AVAS EVAM VIKAS PARISHAD & ORS.”** dtd 17.12.2024 is annexed as **EXHIBIT - C.**

7. Present Affidavit – In – reply filed by the Corporation is a glaring example of open favour given by the Corporation to the wrong- doors and encroachers, the land mafia politicians who are constructing the unauthorized structures without having any fear of law. These politicians do not care about the environment.
8. That, the Corporation Officers knows it very well pursuant to 74th Amendment in the Constitution as per Item No.12 of the 12th Schedule to provide R.G. area, to maintain including removal of unauthorized constructions encroachments are all the duties of the Corporation. However, in present Affidavit, the MCOM has attempted to shrug these constitutional responsibility duties, powers, functions by giving lame excuses. This is highly unfortunate and not permissible in law.
9. That, under the Constitution, this responsibility has been entrusted upon the Corporation and these powers, duties, functions have been endowed upon the Corporation by the

State Legislature as per Article 243-W of the Constitution, then, filing of such an Affidavit by the Corporation is not tenable and only shows the malafide intention of MCGM Officers to run away from their constitutional as well statutory duties.



10. This Affidavit of the MCGM sheds light on the mischievous conduct of the Corporation encouraging wrong-doers, encroachers, influential politicians doing unauthorized construction work on the Government property that too, by misusing the funds of the government. Therefore, it is necessary and in the interest of justice that the cost expenditure by the government construction of these unauthorized constructions be recovered from those politicians who are using, possessing and occupying them, besides demolishing the same without any further delay This Hon'ble Tribunal be pleased to direct the Corporation to demolish all the unauthorized structures without any delay exercise of powers u/s. 314 of the MMC Act for which neither any notice nor any hearing is required to the encroachers.

I say that the facts stated above are true to my knowledge and no material is concealed therefrom.

Solemnly Affirmed,

Mumbai

Date: 21.01.2025

BEFORE ME
[Signature]

[Signature]

[Sagar Kantilal Devre]

DEPONENT

BEFORE ME,



VINAY G. PATIL
Advocate & Notary
R.No.3, Shree Ganesh Niwas, Shripad Chavan
Opp. Mulund Court, J.S.D. Road,
Mulund (West), Mumbai - 400 030.

NOTED & REGISTERED
Sr. No. 293 Page No. 38
Date 21 JAN 2025



महाराष्ट्र प्रादेशिक नियोजन व नगर रचना अधिनियम, १९६६ मधील कलम ५.२ क नुसार अनधिकृत बांधकामे प्रशमन आकार लावून "प्रशमित संरचना" म्हणून घोषित करण्यासाठी अधिनियमाचे कलम १५८(१) अन्वये केलेले नियम प्रसिध्द करणेबाबत ...


महाराष्ट्र शासन
नगर विकास विभाग,
मंत्रालय, मुंबई-३२

शासन निर्णय क्रमांक: टिपीएस-१८१४/प्र.क्र.८२/१४/नियम/नवि-१३

दिनांक : ०७/१०/२०१७

शासन निर्णय :- सोबतची शासकीय अधिसूचना महाराष्ट्र शासनाच्या असाधारण राजपत्रामध्ये प्रसिध्द करावी.

महाराष्ट्राचे राज्यपाल यांचे आदेशानुसार व.नांवाने,


(संजय सावजी)

उप सचिव, महाराष्ट्र शासन

प्रत :-

- १) मा.मुख्यमंत्री महोदय यांचे सचिव.
- २) मा. राज्यमंत्री, नगर विकास यांचे खाजगी सचिव.
- ३) प्रधान सचिव (नवि-१), नगर विकास विभाग, मंत्रालय, मुंबई.
- ४) प्रधान सचिव (महसूल), महसूल व वन विभाग, मंत्रालय, मुंबई.
- ५) प्रधान सचिव, ग्राम विकास विभाग, मंत्रालय, मुंबई.

प्रति :-

- १) संचालक, नगर रचना, महाराष्ट्र राज्य, पुणे.
- २) व्यवस्थापक, शासकीय मध्यवर्ती मुद्रणालय, चर्नी रोड, मुंबई.
त्यांना विनंती करण्यांत येते की, सोबतची शासकीय अधिसूचना महाराष्ट्र शासनाच्या असाधारण राजपत्रामध्ये प्रसिध्द करून त्याच्या प्रत्येकी १०० प्रती या विभागास पाठवाव्यात.
- ३) महानगरपालिका आयुक्त / मुख्याधिकारी, नगरपरषिदा / नगरपंचायती (सर्व).
- ४) मुख्य कार्यकारी अधिकारी, एमआयडीसी.
- ५) व्यवस्थापकीय संचालक, सिडको.
- ६) कक्ष अधिकारी (नवि-२१) नगर विकास विभाग, मंत्रालय, मुंबई.
त्यांना विनंती की सदरची सूचना या विभागाच्या वेबसाईटवर प्रसिध्द करणेत यावी.



NOTIFICATION
Urban Development Department
Mantralaya, Mumbai - 400 032.
Dated 7th October, 2017.

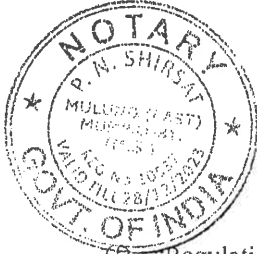
Maharashtra Regional and Town Planning Act, 1966

No.TPS-1814/CR-82/14/Rules/UD-13:-In exercise of the powers conferred by sub section (1) of Section 52A and clause (xxxviii) of sub section (2) of Section 158 of the Maharashtra Regional and Town Planning Act, 1966 (Mah.XXXVII of 1966), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby make the following rules, the same having been previously published as required by sub-section (1) of the said section 158, as follows:-

- 1) These rules may be called the Maharashtra Town Planning (Compounded Structures) Rules, 2017.
- 2) These rules shall apply to the unauthorised developments carried out on or before 31/12/2015 within the jurisdiction of Local Authority/ Planning Authority & New Town Development Authority constituted under section-113 of the MR&TP Act, 1966.
- 3) These rules shall come into force at once.
- 4) In these rules, unless the context requires otherwise,-
 - (a) "Act" means the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966);
 - (b) "Buffer zone" means an area to be left free from development as per the concerned regulations;
 - (c) "Compounded structure" means a structure defined as compounded structure under clause (5A) of section 2 of the Act;
 - (d) "Compounding charges", "infrastructure charges" and "premium" means compounding charges, infrastructure charges and premium as specified by the Government under these rules;
 - (e) "Prohibited areas" means the areas where development is prohibited on account of safety and legal or natural impediments or constraints;



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(f) "Regulations" means Development Control and Promotion Regulations made under the Act;

(g) "Structurally unsafe buildings" means the building which is declared as dangerous structure under the relevant provisions of the concerned Municipal laws time being in force;

(h) "Unauthorised development" means an unauthorised development as envisaged in subsection (1) of Section 52 of the Act;

The words and expression used in these Rules but not defined hereinabove shall have the same meaning as respectively assigned to them under the Act, rules or regulations made thereunder.

5) The following types of unauthorised developments shall not be considered for declaration as compounded structure under section 52 A of the Act, namely:-

(a) Unauthorised developments in the areas where development is prohibited by or under any law, or development prohibited areas such as rivers, canals, tanks, blue flood line, defence zone, quarry, heritage buildings, dumping grounds, ecologically sensitive areas like hill slope having slope greater than 1:5, CRZ-I areas, mangroves, forest etc.;

(b) Unauthorised development in Buffer Zones;

(c) Structurally unsafe building;

(d) Unauthorised development on lands in zones other than the Residential Zone, Public-Semipublic Zone, Commercial Zone & Industrial Zone;

(e) Unauthorised development carried out by violating the land use permissible in zones of Development Plan except in the Residential Zone.

6) The following types of unauthorised developments may be considered for declaration as compounded structure subject to the fulfilment of conditions mentioned below and parameters specified in the table annexed to these rules.

14/3/17



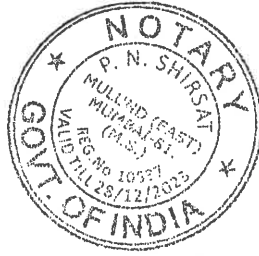


- (a) Unauthorised development on inam lands and class-II Occupant lands on production of clearance or No Objection Certificate from the competent authority;
- (b) Unauthorised developments on lands reserved for public purposes except playground, garden and open spaces in any plan, if the said reservation is shifted or deleted after following due process of law, subject to the condition that the cost of shifting or deletion is borne by the owner and / or occupier;
- (c) Unauthorised developments on lands reserved for linear reservations such as roads, railways, metros in any plan, if the said linear reservations are shifted after following due process of law;
- (d) Unauthorised developments on buildable reservations in any plan, if requirements of regulation for Accommodation Reservation are complied with;
- (e) Unauthorised developments violating the land use zone, if the land use zone is changed after following due process of law subject to the condition that the cost of zone change is borne by the owner and / or occupier;
- (f) Unauthorised developments on Government lands or lands owned by other public authorities on production of,-
- (i) No objection certificate from the land owning authority authorised to do so under the law applicable thereto; and
 - (ii) After transfer or allotment or lease of such land to the concerned person by following due process of law under the law applicable thereto;
- (g) Unauthorised development on land earmarked for any special scheme for rehabilitation or resettlement of any Project Affected Person, at the discretion of the Planning Authority;
- (h) Unauthorised developments on unauthorised plots subject to conditions mentioned in entry 15 in the table annexed hereto;

7) Development which is permissible in Residential or Commercial or Public-semipublic or Industrial Zone as per prevailing development control Regulations but constructed without obtaining prior permissions of the authority shall be



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considered for declaration as compounded structure by charging compounding charges.

8) Unauthorised developments (**Residential or other use**) which is carried out in Residential or Commercial or Public-semipublic or Industrial Zone in violation of Regulations on the following grounds may be considered for declaration as compounded structure after taking into consideration the parameters specified in the table annexed to these rules,-

- (i) Floor Space Index (F.S.I.);
- (ii) Height of building;
- (iii) Marginal open spaces;
- (iv) Coverage;
- (v) Road width; or
- (vi) Other development control matters provided in the table annexed to these rules.

9) Every Planning Authority shall, within six months from the commencement of these rules, publish notice, in local newspapers widely circulated in its area, inviting applications, in the form provided by it in the public notice, from the owners or occupiers of unauthorised development, for consideration to declare such structure as compounded structure and stating therein the time and date on or before which the application must reach to it, and applications received thereafter shall not be considered.

10) Every Planning Authority shall consider the applications received by it after taking into consideration the parameters specified in these rules and in the table annexed to these rules;

11) And where the Planning Authority is satisfied in case or class of cases the unauthorised developments or use of such developments can be permitted for retention or continuation of use by charging and recovering premium, infrastructure charges and compounding charges, as specified in these rules and upon such payments, the Planning Authority may declare such unauthorised development as compounded structure.

12) Where the planning authority has declared any unauthorised development as compounded structure, no further development shall be permissible in such structure other than repairs and maintenance, and any redevelopment or



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reconstruction of such structure shall be permissible only as per the provisions of the prevailing Development Control and Promotion Regulations.

13) In respect of unauthorised development to be declared as compounded structure, in addition to the Development Charges,-

- (a) i) Infrastructure charges equal to the development charges shall be levied and recovered.
- ii) Compounding charges not less than double the development charges shall be levied and recovered.

(b) Premium shall be assessed, levied and recovered as applicable in the jurisdiction of planning authorities for the categories such as Additional Floor Space Index premium, Transferrable Development Rights (TDR) loading premium, infrastructure improvement charges, Deficiency premium etc. as the case may be.

14) All money received by the planning authority as premium, infrastructure charges and compounding charges under these rules shall be credited to a separate head of account and the same shall be utilized only for the purpose for providing public amenities, utilities and services in the respective areas.

By order and in the name of Governor of Maharashtra,

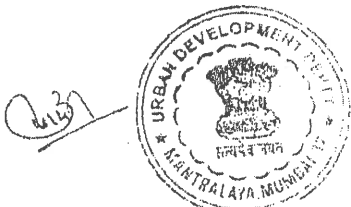


(Sanjay Saoji)
Deputy Secretary to Government



Parameters to be taken into consideration by the Planning Authority while declaring unauthorised developments as compounded structures,-

1	Permissible height of building with respect to Road Width.	Road width	Maximum permissible height
		6.00 mt.	Upto 15.00 mt.
		9.00 mt.	Upto 24.00 mt.
		12.00 mt.	Upto 36 mt.
		Note:- No building shall be declared as compounded structure having height more than 36 mt.	
2	Permissible building use.	<p>i) Mixed uses under R-1 and R-2 zones may be considered as permissible in Development Control Regulations without the limitations of the floors.</p> <p>ii) Uses in independent building may be considered as permissible in Development Control Regulations, provided the road width is minimum 9 mt.</p> <p>iii) Mixed use other than residential use may be considered by charging compounding charges as specified in these rules.</p>	
3	Permissible Floor Space Index (FSI)	<p>Floor Space Index (FSI) shall be permissible as per the prevailing Development Control Regulations of the respective Planning Authority;</p> <p>Provided that if some extra construction has been carried out beyond the then permissible Floor Space Index limit or areas free of Floor Space Index have been brought into habitable use, then such areas / construction can be considered for declaration as compounded structure by procuring premium Floor Space Index or Fungible Floor Space Index or Transferrable Development Right admissible as per the current norms in the prevailing</p>	





		<p>Development Control Regulation by paying additional compounding charges at the rate of 10% of land rate as mentioned in the Annual Statement Rates in addition to the premium for such additional Floor Space Index;</p> <p><u>Explanation:-</u></p> <p>For the purpose of this clause higher permissible Floor Space Index as applicable for Economically Weaker Section / Low Income Group housing and slum rehabilitation projects shall be taken into consideration subject to the restrictions of dwelling unit sizes mentioned in the respective Development Control Regulations.</p>												
4	Inadequate set backs	<p>Inadequate marginal distances with respect to Development Control Regulations may be considered as per the following table:-</p> <table border="1" data-bbox="662 1108 1085 1400"> <thead> <tr> <th>Sr. No</th> <th>Building height</th> <th>Minimum required setback</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Height up to 10 mtr.</td> <td>0.75 mtr.</td> </tr> <tr> <td>2</td> <td>10 to 24 mtr.</td> <td>50 % of required setback</td> </tr> <tr> <td>3</td> <td>Above 24 mtr.</td> <td>50 % of required setback or as decided by Chief Fire Officer.</td> </tr> </tbody> </table> <p>It can be considered for compounding subject to recovery of an amount equal to 50 % of the cost of the unauthorised development occupied by inadequate marginal distance calculated as per the construction rate mentioned in applicable Annual Statement of Rates, with additional compounding charges equal to 10 % of the land rate in current Annual Statement of Rates subject to No Objection Certificate of fire, wherever necessary.</p>	Sr. No	Building height	Minimum required setback	1	Height up to 10 mtr.	0.75 mtr.	2	10 to 24 mtr.	50 % of required setback	3	Above 24 mtr.	50 % of required setback or as decided by Chief Fire Officer.
Sr. No	Building height	Minimum required setback												
1	Height up to 10 mtr.	0.75 mtr.												
2	10 to 24 mtr.	50 % of required setback												
3	Above 24 mtr.	50 % of required setback or as decided by Chief Fire Officer.												

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		Provided that the unauthorised development carried out along the classified roads may be permitted within building / control line subject to no objection certificate from the concerned authority.
5	Width of approach road	<p>Width of approach road must be as per the approved Development Control Regulations of the concerned planning authority. If width of approach road is not as per the Development Control Regulations, the possibility of widening the same may be explored by adopting the process under prevailing Acts / Rules / Regulations. However, in any case, following minimum width of road should be observed.</p> <p>In Gaothan Area -</p> <p>i) For purely Residential use - at least 4.50 m.</p> <p>ii) For Mixed use - at least 6.00 m.</p> <p>In Outside Gaothan Area -</p> <p>i) For purely Residential use - at least 6.00 m.</p> <p>ii) For Mixed use - at least 9.00 m.</p> <p>However such uses may be considered by charging the additional compounding charges equal to 10 percent of the land rate in current Annual Statement of Rates.</p>
6	Plinth area (Ground Coverage)	Plinth area or Ground Coverage may be relaxed by the concerned planning authority or officer authorised by charging the additional compounding charges equal to 10% of the land rate in current Annual Statement Rates. These charges shall not be necessary in cases in which charges for inadequate setback are recovered.

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7	Parking area	If parking area is not possible to be provided for the individual building, possibility be explored to provide mechanical parking or a space for common parking adjoining such area. If not possible then for residential building only concession be given by charging additional premium equal to 20% of land rate in current Annual Statement of Rates. For other building concession may be given not exceeding 50% of required parking area by charging additional premium as mentioned above.
8	Inner chowk / duct sizes.	Relaxation may be granted upto 33% in the required sizes.
9	Stair case width / passage width / balcony / terrace / misuse of any free Floor Space Index component.	Relaxation may be granted up to 30 % of the base Floor Space Index as per the Development Control Regulations by recovering additional compounding charges equal to 10 % of the land rate in current Annual Statement of Rates.
10	No Objection Certificates of Drainage Department	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
11	No Objection Certificates of Water Supply Department	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
12	No Objection Certificates of Garden	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
13	No Objection Certificates of Fire department	Wherever required as per the Development Control Regulations, fire No Objection Certificate from authorised officer is necessary.
14	Structural stability of Unauthorized building	Wherever required as per the Development Control Regulations, Structural stability certificate / No Objection Certificate from authorised structural engineer is necessary.



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15	Unauthorised sub-division of layouts / plot in Residential Zone	Unauthorised layout / plot / subdivision in Residential zone - i) Unauthorised layouts which are as per the Development Control Regulations can be regularised by charging one time compounding charges as specified by the Government. But when such layouts are not as per the Development Control Regulations, then in such cases compounding charges plus land value of compulsory re-creational open space shall be recovered. ii) for unauthorised sub-division of plot, when such plot, owner comes for regularisation then such plot may be regularised by charging compounding and infrastructure charges. iii) In cases (i) and (ii) above where open spaces are not available in layouts, in such cases Floor Space Index shall be the 75 per cent of the basic Floor Space Index.
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By order and in the name of Governor of Maharashtra,



(Sanjay Saoji)

Deputy Secretary to Government



{1}

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7741 OF 2020

Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar
through it's Secretary.

.. Petitioner.

VERSUS

1. The Hon'ble Minister,
Urban Development Department,
Maharashtra State, Mantralaya,
Mumbai – 400 032.
2. The Ahmednagar Municipal Corporation,
Ahmednagar
through its Deputy Commissioner.

...Respondents.

Mr. Sanjeev Deshpande, Senior Counseli/b Mr. Pramod S. Gaikwad, for
petitioner
Mr. P.K. Lakhotiya AGP for respondent No.1
Mr. K.N. Lokhande advocate for respondent no.2.

with

WRIT PETITION NO. 9013 OF 2018

1. Abhay Rasiklal Luniya
Age : 37 yrs. Occu : Business,
R/o : Sainagar Burdgaon Road
Ahmednatgar, Dist. Ahmednagar.
2. Rahul Subhash Sonimandlecha
Age : 38 yrs, Occu : Business
R/o : Sarasnagar, Ahmednagar.



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3. Manisha Rahul Sonimandlecha
Age : 34 years, Occ : Business,
R/o: Sarasnagar, Ahmednagar.
4. Mrunalini Yashwant Darekar,
Age : 39 years, Occ: Business,
R/o : Sainagar, Nakshatra Lawn
Burudgaon Road
Ahmednagar.
5. Prasad Pramod Bora
Age : 25 years, Occ : Business,
R/o : Anuron Ground, Maniknagar
Ahmednagar.
6. Shobha Vijay Munot
Age : 42 years, Occ : Business,
R/o : Munot Estate
Station Road, Ahmednagar.
7. Vidya Rajendra Sobale
Age : 32 years, Occ : Business,
R/o : Satal Galli, Kedgaon,
Ahmednagar.
8. Ajit Nemichand Kasliwal
Age : 48 years, Occ : Business,
R/o : Sandipnagar, Sarasnagar,
Ahmednagar.
9. Mangal Mahavir Chajed
Age : 42 years, Occ : Business,
R/o : Anant park, Sarasnagar,
Ahmednagar.
10. Sunita Rajendra Kothari
Age : 46 years, Occ : Business,
R/o : Anant Park, Sarasnagar,
Ahmednagar.
11. Vijay Ambarchand Gandhi
Age : 53 years, Occ : Business,



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R/o : Pashwanath Colony,
Punammotinagar, Ahmednagar.

12. Vaibhav Vikram Dabhade
Age : 41 years, Occ : Business,
R/o : Minavikram Bungalow
Near Anant Rushi Hospital
Ahmednagar.

13. Vishal Vikram Dabhade
Age : 43 years, Occu : Business
R/o Minavikram Bunglow,
Near Anant Rushi Hospital
Ahmednagar.

..PETITIONERS**VERSUS**

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.

2. Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building Station Road,
Market Yard, Ahmednagar,
Through its Secretary.

..RESPONDENTS..

...
Mr. V.H. Dighe, Advocate h/f. Mr. Sanjay N. Gaikwad, Advocate for
petitioners.

Mr. K.N. Lokhande, AGP for respondent No.1.

Mr. Sanjeev Deshpande, Senior Counsel i/b . Mr. Pramod S. Gaikwad, for
respondent No.2.

..
with

WRIT PETITION NO. 9022 OF 2018

1. Kaushik Pravindchand Kothari
Age : 43 years, Occu : Business,
R/o : Kanchan Bungalow Punammoti nagar,
Tq. Ahmednagar, Dist. Ahmednagar.



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2. Dhanashri Dhananjay Joshi
Age : 38 years, Occ : Business,
R/o : Ausarkar mala, Burudgaon Road,
Ahmednagar Tq. Ahmednagar, Dist. Ahmednagar.
3. Nanasahab Eknath Deshmukh
Age : 40 years, Occ : Business,

R/o : Anand Park, Saarasnagar,
Ahmednagar. Tq. Ahmednagar
Dist. Ahmednagar.
4. Sangram Santosh Suryawanshi
Age : 23 years, Occ : Business,
R/o : Bhavani Nagar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.
5. Komal Sandesh Munot
Age : 36 years, Occ : Business,
R/o Munot Estate,
Station Road, Ahmednagar,
Tq. Ahmednagar, Dist. Ahmednagar.
6. Nitin Popatlal Shingavi
Age : 45 years, Occ : Business,
R/o : Saurabhnagar, Bhingar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.
7. Kiran Amarlal Darda
Age : 38 years, Occ: Business,
R/o : Marketyard, Ahmednagar,
Tq. Ahmednagar, Dist. Ahmednagar.
8. Bhaskar Wamanrao Pawar
Age : 43 years, Occ : Business,
R/o : Shiv Bungalow, Burundgaon Road,
Nakshatra Lawn,
Ahmednagar.
9. Saurabh Anil Bhalgat



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- Age : 27 years, Occ : Business,
R/o : Anant Park, Sarasnagar,
Ahmednagar, Tq. Ahmednagar,
Dist. Ahmednagar.
10. Dhanesh Ganeshmal Kothari
Age : 39 years, Occ : Business,
R/o : Chhaya Bungalow, Chhaya Nagar,
Kainatik Chowk, Ahmednagar.
11. Dipali Dhanesh Kothari
Age : 34 years, Occ : Business,
R/o : Chhaya Bungalow, Chhaya Nagar,
Kainatik Chowk, Ahmednagar.
12. Ritesh Ramesh Sonimandlecha
Age : 38 years, Occ : Business,
R/o . Pushkraj Bungalow,
Munot Estate, Ahmednagar.
Tq. Ahmednagar, Dist. Ahmednagar.
13. Rahul Sunil Auti
Age : 332 years, Occu : Business,
R/o. Shinde Galli, Maliwada,
Ahmednagar.
14. Avinash Bhanudas Pawar
Age : 36 years, Occu : Business,
R/o : Sakatkhard, Shiradgaon,
Tq. & Dist Ahmednagar.

. PETITIONERS.**VERSUS**

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.
2. Agricultural Produce Market Committee,
Ahmednagar,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar,
Through its Secretary.

..RESPONDENTS



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Mr. V.H. Dighe, Advocate h/f. Mr. Sanjay N. Gaikwad, Advocate for petitioners.

Mr. K.N. Lokhande, AGP for respondent No.1.

Mr. Sanjeev Deshpande, Senior Counsel h/f. Mr. Pramod S. Gaikwad, for respondent No.2.

WRIT PETITION NO.8894 OF 2012

1. Shivaji Paraji Chavan
age 43 years, Occ. Business,
R/o Gokulnagar, Bhistbag, Sawedi,
Ahmednagar.
2. Santosh Bhagwan Pawar,
age 37 years, Occ. Business,
R/o Sachin Nagar, Om Colony,
Kedgaon, Ahmednagar.
3. Ramchandra Aba Waghmare,
age 43 years, Occ. Business,
R/o Ruichatteshi, Tq. Nagar,
Dist. Ahmednagar. Petitioners.

versus

1. The Ahmednagar Municipal Corporation,
Through its Deputy Commissioner.
2. Agricultural Produce Market Committee,
Ahmednagar, Kisan Kranti Building,
Station Road, Market Yard,
Ahmednagar, Through its Secretary Respondents

...
WITH

WRIT PETITION NO.8946 OF 2012

1. Dattatraya Mahipatrao Ghorpade,
age 58 yrs, Occ. Business,



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- R/o Pimpalgaon Ujjani,
Tq. & Dist. Ahmednagar.
2. Popat Namdeo Thombare,
age 56 years, Occ. Business,
R/o Ghat Deolgaon, Tq. Ashti,
Dist. Beed.
 3. Uttam Bapurao Kale,
age 63 years, Occ. Business,
R/o Astagaon, Tq. Parner,
Dist. Ahmednagar.
 4. Anil Sahebrao Kardile,
age 36 yrs, Occ. Business,
R/o Burudgaon, Tq. & Dist.
Ahmednagar.
 5. Dilip Bhikan Bhavar,
age 54 yrs, Occ. Business,
R/o Ruichattishi,
Tq. & Dist. Ahmednagar.
 6. Bhaskar Shivaji Sonwane,
age major, Occ. Business,
R/o Hingangaon, Tq. &
Dist. Ahmednagar.
 7. Suresh Baburao Bhaganagare,
Age 33 years, Occ. Business,
R/o Maniknagar, Ahmednagar.
 8. Subhash Ramchandra Dhavan,
age 52 yrs, Occ. Business,
R/o Limpangaon, Tq. Shrigonda,
Dist. Ahmednagar.
- Petitioners.

Versus

1. The Ahmednagar Municipal Corporation,
Ahmednagar,
Through its Deputy Commissioner.



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2. Agricultural Produce Market Committee,
Ahmednagar, Kisan Kranti Building,
Station Road, Market Yard,
Ahmednagar, Through its Secretary Respondents

...

Mr. Z.H. Farooqui h/f Mr. N.V. Gaware advocate for petitioners.

Mr. K. N Lokhande Advocate for respondent no.1.

Mr. Sanjay Deshpande, Sr. Counsel i/b Mr. P.S. Gaikwad advocate for
respondent no.2.

(in WP No.8894 of 2012 & 8946 of 2012)

...

WITH

WRIT PETITION NO.11220 OF 2021

1. Ahmednagar Vegetables and Fruit
Commission Agent Association,
@ Addattabegu Association,
Vyapari Bhavan, Bhaji Pala Division,
Gate No.2, Market Yard, Ahmednagar
Through it's President,
Ashok Bapusaheb Late,
age 62 yrs, Occ. Trader,
R/o. Vyapari Bhavan, Bhaji Pala Division,
Gate No.2, Market Yard, Ahmednagar. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Government of Maharashtra,
Mantralaya, Mumbai 32.
2. The Divisional Commissioner,
Nashik Region, Nashik.
3. The Municipal Corporation,
Ahmednagar, Through it's
Commissioner, Municipal Corporation,



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Ahmednagar.

4. The Agricultural Produce Market Committee,
Ahmednagar.
5. The Collector,
Ahmednagar District, Ahmednagar.
6. Kishan R Ratnale,
age 48 yrs, the Administrator,
Agricultural Produce Market Committee,
Ahmednagar, r/o Main Office, Railway station,
Ahmednagar.
7. Yash Trading Company,
through its proprietor,
Abhay Nayansukh Lunkad,
age 54 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.12,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
8. Atul Bhausahab Karale,
age 42 yrs, occ. Business,
R/o Gala/shop no.13, Sale Hall no.4,
Market yard Ahmednagar,
Dist Ahmednagar.
9. M/s Hiralal Hasmatlal Bhandari,
through its authorized person,
namely Amit Satishlal Gandhi,
age 38 yrs, Occ. Business,
R/o Hall No.4, Gala No.11, Market Yard,
Ahmednagar, Tq. & Dist. Ahmednagar.
10. M/s Harshadkumar Kantilal & Company,
through its authorized person,
namely Deepak Kantilal Gugale,
age 39 yrs, Occ. Business,
R/o Hall No.4, Gala No.9, Market Yard,
Ahmednagar, Tq. & Dist. Ahmednagar.



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11. Kishor Mithulal Gugale,
age 48 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.1,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
12. R.K. Traders,
through its Authorized Person,
Hamid Babumiya Khan,
age 62 Yrs, Occ. Business,

R/o Sale Hall No.4, Gala No.1
Market Yard, Ahmednagar
Tq. & Dist. Ahmednagar.
13. Shriram Traders,
through its authorized person,
Prakash Mukundrao Mhaske,
age 55 yrs, Occ. Business,
R/o Sale Hall no.4, Gala No.2,
Market Yard, Ahmednagar.
14. M/s Sadashiv Shankar Babar,
through its Authorized person,
Namely Yuvraj Vishnu Babar,
age 42 yrs, occ. Business,
R/o Sale Hall no.4, Gala No.3,
Market Yard, Ahmednagar.
15. Mohit Traders,
Through its Authorized Person,
Ajit Shantilal Gandhi,
age 58 yrs, Occ. Business,
R/o Sale Hall no.4, Gala No.4,
Market Yard, Ahmednagar,
Tq. & Dist Ahmednagar.
16. Satish Sarjerao Gund,
age 52 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.5,
Market Yard, Ahmednagar.
17. Sham Baburao Nimse



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age 58 yrs, Occ. Business,
R/o Sale Hall no.4,
Gala No.6, Market Yard,
Ahmednagar, Tq. & Dist.
Ahmednagar.

18. Satish Mulchand Gugale,
age 60 yrs, Occ. Business,
R/o Sale Hall No.4, Gala No.7,
Market Yard, Ahmednagar,
Tq. & Dist. Ahmednagar.
19. Shri Jay Anand Trading Company,
Through its Authorized Person,
Subhashlal Punamchand Gugale,
age 72 years, Occ. Business,
R/o Sale Hall No.4,
Gala No.8, Market Yard,
Ahmednagar,
Tq. & Dist. Ahmednagar.

Respondents

...

Mr. G.K.Naik Thigle, Advocate for petitioners

Mr. P.K. Lakhotiya AGP for respondent nos.1,2, and 5 State.

Mr. K.N. Lokhande Advocate for respondent no.3

Mr. Sanjiv Deshpande, sr. counsel i/b Mr. P.S. Gaikwad Advocate for
respondent nos.4 and 6.

Mr. R.B. Narvade Patil Advocate for respondent nos.7 to 19.

...

**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 2nd MAY, 2023
PRONOUNCED ON : 30th JUNE, 2023.**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J).

1. This group of writ petitions, filed under Article 226 & 227 of Constitution of India arise out of common subject matter pertaining to the construction raised in the premises of Agricultural Produce Market



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Committee (APMC), Ahmednagar and orders of demolition / removal passed by the Commissioner, Municipal Corporation, Ahmednagar. By order dated 6.1.2023, the Honourable Senior-most Judge at this Bench directed clubbing of all these writ petitions for common hearing.

Hence, writ petitions in this group have been heard together.

2. Writ petition No. 11220 of 2021 has been filed by Ahmednagar Vegetable and Fruit Commission Agents Association, seeking directions against respondents to remove illegal constructions raised in the premises of APMC Ahmednagar, whereas, writ petition Nos. 8894 of 2012 and 8946 of 2012 filed by lease holders of APMC, taking exception to the order dated 12.10.2012 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar directing removal of unauthorized construction. Writ petition Nos. 9013 and 9022 of 2018 have been filed by individual lease holders of APMC assailing the order dated 21.7.2018 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar thereby rejecting the proposal of the APMC, seeking regularization of construction raised on final plot No.23 situated within the premises of the APMC, Ahmednagar and also seeks to challenge the communication dated 1.8.2018 addressed by APMC Ahmednagar to petitioners / lease holders to act upon order dated 21.7.2018. Writ petition No. 7741 of 2020 has been filed by the APMC, challenging the order of the Minister, Urban Development, Mantralaya, dated 15.7.2019 passed in appeal thereby confirming order passed by the Commissioner, Municipal Corporation, Ahmednagar dated 21.7.2018 thereby rejecting proposal for regularization of construction moved by APMC.



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3. Although, chronology of facts appearing in each of the writ petition is different, for convenience and brevity, the facts as appearing in W.P. No. 7741 of 2020 filed by APMC Ahmednagar are taken up, so as to deal with common question of facts and law raised in respective writ petitions.

4. The petitioner – APMC, Ahmednagar impugns the order dated 15.7.2019 passed by the Minister, Urban Development Department, Maharashtra State i.e. respondent No.1 in appeal No. TPS 1618/Pra/Kra/222/2018/NV-9, that was filed assailing the order dated 12.07.2018 passed by the Deputy Commissioner, Municipal Corporation, Ahmednagar refusing to entertain proposal made by APMC for regularization of unauthorized construction.

5. The petitioner-APMC, contends that it has been established under the Maharashtra Agricultural Produce (Development and Regulation) Act, 1963. It owns and possess final plot Nos. 17,19 and 22 and 23 of Town Planning scheme No.3 at Ahmednagar. It has constructed a principal market yard on said plots. The licensed traders of the market committee are carrying on the trading activities in the said premises. According to petitioner, the final plot No.23 was lying vacant, therefore, on 26.5.2006, the market committee had passed a resolution to construct a 'Grading Shade' on said plot with the approval of the Deputy Engineer, Maharashtra State. In pursuance thereof, 'Grading Shed' had been constructed and used till year 2011. However, after construction of the sub-market yard at village Nepti, the grading shed constructed on plot No.23 was abandoned. On 23.5.2016, the market committee passed resolution No.2 to allot plots to traders for construction of shops in grading shade area. The plan qua proposed construction of shops was



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submitted to the District Deputy Registrar, Cooperative Societies. On 26.7.2016, the District Deputy Registrar, Ahmednagar granted permission to market committee to lease out the plots carved on plot No. 23 to the traders. On 23.6.2017, applications of the interested traders seeking allotment of plots on lease basis were placed before the Managing Committee. On 28.6.2017, allotment letters were issued to the traders in terms of lease agreements for the period of 21 years.

6. Admittedly, construction has been raised without permission of planning Authority in final plot No. 23, specifically earmarked as open space in Sanctioned layout plan for APMC as well as town planning scheme. On 26.9.2017, one Mr. Dilip Satpute, a Corporator of the respondent No.2, made a complaint to Corporation, alleging that the petitioner APMC has raised illegal construction and the same is liable to be removed. So also, petitioner market committee submitted a proposal dated 30.6.2018 to Municipal Corporation, Ahmednagar seeking regularization of construction. Petitioner-APMC contends that under Section 12(2) of the APMC Act, 1963, it is deemed to be local authority and entitle to undertake development work within its area with approval of the Director of Marketing, Pune. The provisions of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act, for short) has no application to the construction raised within the premises of APMC. The Municipal Corporation would have no jurisdiction to direct removal of such construction. Pertinently, on 18.7.2018, the leaseholders of the premises applied to add them as party in the proceeding pending with commissioner municipal corporation and sought an opportunity of being heard.

7. On 21.7.2018, the Deputy Commissioner, Municipal



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Corporation, Ahmednagar passed order rejecting the proposal of APMC seeking regularization of construction. Consequently, he issued further direction to remove the illegal construction. The order dated 21.7.2018, passed by the respondent No.2 Municipal Corporation has been assailed by the traders in W.P. Nos. 9013 of 2018 and 9022 of 2018 before this Court. However, the petitioner market committee approached respondent No.1/Minister for Urban Development, Maharashtra, purportedly invoking the provisions of Section 56(2) of the MRTP Act. The respondent No.1 vide impugned order dated 15.7.2019 rejected the appeal, upholding the order passed, observing that the construction sought to be regularized has been raised on open space earmarked in the layout plan and cannot be regularized. Similarly, the remedy of appeal under Section 56(2) of the MRTP Act, 1966 is not available against order refusing to regularize unauthorized construction raised on open space earmarked in sanctioned layout plan.

8. Mr. S.B. Deshpande Sr. Counsel I/b Mr. P.S. Gaikwad advocate for the APMC would submit that the petitioner APMC is a body corporate and is entitled to own and possess the property. The final plot Nos. 17, 20, 22 and 23 of the Town Planning Scheme No.3 for Ahmednagar Municipal Corporation are owned by the market committee. The construction has been raised to set up a market yard. Grading Sheds are required in market yard for trading activities carried through licensed traders. The final plot No.23 was initially lying vacant. Thereafter, construction of grading shed was raised in the year 2006. Subsequently, in the year 2016 the area of grading shed has been allotted to the traders for construction of shops. The shops have been constructed with approval of the District Deputy Registrar, Cooperative Societies, Ahmednagar. The traders are allotted the premises as per the lease agreement for the



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period of 21 years. Learned advocate would submit that as per Section 12(2) of the APMC Act, the market committee is deemed to be a local authority and entitled to regularize the construction within its own area. The MRTP Act, 1966 may not be applicable to the construction raised within the premises of the APMC. The respondent No.2 Corporation has no authority to issue notices for demolition of construction in exercise of powers conferred under the Maharashtra Municipal Corporation Act, branding the construction raised within the APMC area to be unauthorized or illegal.

9. In the alternative, it is submitted that the proposal was moved with Corporation by APMC to regularize the construction, however, same has been rejected on erroneous grounds. The respondent No.1 – Minister for Urban Development failed to grant sufficient opportunity of hearing to the petitioner while dealing with the appeal filed under Section 56(2) of the MRTP Act, 1966. The traders, who are in actual possession and occupation of the property were not given fair opportunity of being heard either by the Commissioner for Municipal Corporation or by the Minister.

10. Learned AGP for the respondent No.1 would submit that the very appeal filed by the petitioner invoking Section 56(2) of the MRTP Act, 1966 was not maintainable. The learned AGP would submit that the subject property is situated within the limits of Ahmednagar Municipal Corporation, which is the planning authority and authorised to implement the provisions of the MRTP Act read with powers conferred under the Municipal Corporations Act. He would submit that the order passed by the Commissioner, Municipal Corporation, Ahmednagar thereby refusing proposal for regularization was beyond the scope of



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Section 56(2) of the MRTTP Act. He would point out that the construction of shops on the area earmarked as “open space” in the sanctioned layout plan cannot be regularized in terms of Development Control and Promotional Regulations for ‘D’ class Municipal Corporation. Hence, refusal to entertain proposal seeking regularization of such unauthorized construction cannot be faulted. Learned AGP would submit that opportunity of hearing was granted to all concerned. The hearing of appeal took place before Minister on 7th August, 2018. The representatives of the appellant- APMC along with advocate were present at the hearing and after considering the submissions of all concerned, the order has been passed mainly on the ground that the appeal itself is not maintainable. The learned AGP would further submit that the respondent No.2 Corporation has passed order after granting sufficient opportunity of being heard to the petitioner APMC and other stake holders.

11. Mr. V.S. Bedre, learned advocate for the respondent No.2 Corporation would submit that the final plot No.23 demarcated in town planning scheme No.3 is part of open space. No construction can be allowed on such space. He would submit that the Corporation had issued notice for removal of unauthorized construction. He would submit that the provisions of the MRTTP Act, 1966 are binding even on APMCs and they cannot raise any illegal construction taking resort to provisions of Section 12 of the APMC Act. He would point out that the proposal submitted by the petitioner APMC for partial modification in the layout plan was incomplete and defective. Further, such proposal cannot be entertained in respect of open spaces earmarked in the town planning scheme.



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12. We have heard the learned advocates appearing for respective parties and with their assistance, we have gone through the record. Pertinently, on 4.12.2001, vide Resolution No. 406, the competent town planning authority has sanctioned layout submitted by the APMC. Final Plot Nos. 17, 20, 22 and 23 from town planning scheme No.3 are part of the layout. The final plot No.23 is specifically earmarked for open space. It was initially used as grading shed, in pursuance of the resolution dated 26.5.2006 passed by the APMC. It appears that grading shed was in use till 2011. However, after establishment of the sub-market area at village Nepti by the market committee, the use of the grading shed was abandoned. The APMC resolved to lease out plots in area under grading shed to the traders for construction of shops. The District Deputy Registrar Ahmednagar granted permission for transfer plots/shops on lease to the traders. The applications were invited from interested traders. Thereafter with approval of the Managing committee of the APMC lease agreements for the period 21 years have been executed. Consequently, the traders are functioning on the constructed shops within final plot No.23.

13. Apparently, on the complaint dated 26.9.2017 made by the Corporator Mr. Dilip Satpute, the respondent No.2 Corporation swung into action, and issued notices under Section 52,53 and 54 of the MRTTP Act, 1966 read with Section 260(1)(2) and Section 478 of the Maharashtra Municipal Corporations Act directing APMC to remove illegal construction raised on open space of plot No 23. On 27.11.2017, notices were duly served to the APMC. On 12.4.2018 the petitioner APMC appeared before the Deputy Commissioner of Municipal Corporation Ahmednagar and sought adjournment for the purpose of



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engaging advocate and making written submissions. On 3.7.2018, written submissions were filed on behalf of the APMC contending that the proposal dated 30.6.2018 has been submitted with the Town Planning Department of Municipal Corporation to accept compounding charges and consider regularization of construction. It appears that on 11.7.2018, the Assistant Director, Town Planning, Ahmednagar informed petitioner that the proposal for regularization of construction submitted by APMC has been disposed of as construction sought to be regularized is raised on open space of final plot No.23 of Town Planning Scheme No.3. It appears that on 17.7.2018, the petitioner APMC tendered written submissions pointing that on 16.7.2018 they have moved a proposal for shifting of the open space in layout plan. It appears that such proposal was incomplete, hence it is rejected on 19.07.2018 by competent authority. After considering all these contentions, the Deputy Commissioner, Ahmednagar Municipal Corporation passed impugned order dated 21.7.2018 directing petitioner-APMC to remove construction raised on open space within a period of 15 days, else, the Corporation shall take steps for removal of construction and recover the expenses from the market committee.

14. The petitioner – APMC assailed the aforesaid order before the Minister for Urban Development Department, Maharashtra State, invoking the appellate jurisdiction under Section 56(2) of the MRTTP Act, 1966. The Perusal of the proceeding before the Minister shows that the appeal was heard on 7th August, 2018. However, decision has been rendered in December, 2018 and same has been communicated to the petitioner – APMC along with communication dated 15.7.2019.

15. Record reveals that the petitioner APMC was represented by



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the advocate before minister. The Secretary and Director of the petitioner APMC have also attended hearing. The Municipal Corporation was represented by the In-charge Assistant Director of Town Planning. Finally, the appeal has been rejected mainly on the ground that provision of Section 56 (2) has no application in facts of present case. Apparently, the reason given appears to be in consonance with the scheme under the MRTTP Act. Section 56 has no application, when unauthorized construction is raised on open space earmarked under the Town Planning Scheme or layout plan. Such construction can be dealt with only in terms of Section 52, 53 and 54 of the MRTTP Act read with Section 260 (1)(2) and 478 of the Maharashtra Municipal Corporations Act. Section 56 comes into play when planning Authority intends to discontinue authorized use of land or building in interest of proper planning and issues such direction. Aggrieved authorized user can invoke appellate remedy in terms of Section 56 (2) of MRTTP Act. In present case regularization of unauthorized construction raised on open space was sought by APMC which is beyond the purview of section 56 of MRTTP Act.

16. The notice dated 21.7.2018 issued by the Municipal Corporation appears to be in tune with the applicable provisions under MRTTP and Maharashtra Municipal Corporations Act. Similarly, no provision under relevant law enables regularization of construction raised on open spaces earmarked in development plan or Town Planning Scheme. Apparently, the petitioner was aware of the aforesaid provisions, therefore attempted to move another proposal dated 16.7.2018 before Municipal Corporation for shifting of open spaces earmarked in sanctioned layout plan. Although, such course would not be available in present case as open spaces are earmarked in town planning scheme itself. Therefore, action taken by the respondent No.2 Corporation under



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impugned order appears to be in tune with the scheme under the MRTTP Act read with provisions under Municipal Corporation Act.

17. The contention of the petitioner that in view of Section 12(2) of the APMC Act, 1963 the market committee is deemed to be local authority and not susceptible to the rigors of the MRTTP Act or the Municipal Corporation/Planning Authority has no jurisdiction to monitor the construction within its area, cannot be accepted. The issue is no more res-integra. This Court in the matter of *Goroba Pandurang Gadekar Vs. State of Maharashtra reported in 2018(2) BCR 17*, has elaborately dealt with the similar submissions. Further reference is given to the earlier judgment of the Division Bench of this Court in W.P. No. 838 of 2005 dated 22.2.2008 in the matter of APMC, Jalgaon Vs. State. The para. 3 of the said judgment reads thus :-

“3. This argument is misconceived in law. Section 2(3) and (8) defines the expression “Appropriate Authority” and “Development Authority” under the Maharashtra Regional and Town Planning Act, 1966 and Section 43, proviso (ii) & (iii) states that no permission as contemplated under section 43 of the Act is required for carrying out works by any authority by exercise of powers under any law for time being in force. None of these provisions refer to “local authority” under the Maharashtra Agricultural Produce Marketing Act, 1963. Certainly, the Committee is a body corporate and can hold an own property in its own name as required under section 12 of the Act. Sub-section (2) of section 12 states that notwithstanding anything contained in any other law for time being in force, every Market Committee shall, for all purposes be deemed to be a local authority. The reference to the expression ‘local authority’ is obviously for the purpose and object of Maharashtra Agricultural Produce Market Act, 1963 and Regulations framed thereunder. This law cannot



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override the provisions of the Maharashtra Regional Town Planning Act, 1966 as that is a special legislation for the purpose of development and contemplates that every person or body is expected to get the plan sanctioned before they raise construction, so as to keep in conformity with the development plan published by the Town Planning Authority in accordance with law. Merely because the petitioner is a Committee cannot frustrate the basic law and raise construction in its own way infringing the law in force.”

18. In view of the observations as quoted above, apparently, no construction could have been raised by petitioner APMC on final Plot No.23 earmarked as open space under Town planning scheme as well as sanctioned layout plan. Further, the petitioner cannot plead immunity from obtaining necessary construction permission from the authorities under the Planning law. Admittedly, in the present case, no permission under Section 44 of the MRTPA Act has been obtained from the planning authority and construction has been made on the area of open space. Pertinently, the layout sanctioned by the competent planning authority clearly depicts that plot No.23 is earmarked as open space. Admittedly huge construction has been raised by the petitioner in violation of the law. In no case, such construction can be regularized. In that view of the matter, we are of considered view that respondent corporation is justified in directing removal of the unauthorized construction. The petitioner, failed to make out case before us to cause interference in impugned orders in exercise of jurisdiction under Article 226 and 227 of the Constitution of India.

19. The second set of writ petition Nos. 9413 of 2018 and 9022 of 2018 is filed by the traders in occupation of premises challenging the



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order dated 21.7.2018 passed by the Deputy Commissioner Corporation and communication dated 1.8.2018 issued by the APMC to petitioners to comply directions of corporation. The learned counsel for the petitioners would submit that the petitioners had responded to the invitation of APMC published in the newspapers for leasing out the plots in grading shed. The petitioners had received allotment letters of plots subject to deposit of Rs. 5 Lakhs and further payment of agreed rent. The petitioners entered into lease agreement for a period of 21 years, since then, running their business in the premises. According to petitioners, the construction has been raised by them on the plots leased by the respondent APMC. The petitioners further contend that the respondent Municipal Corporation has initiated action due to political reasons. According to petitioners, they are not given opportunity of hearing by the respondent Corporation before passing the impugned order. Even the notices preceding the impugned order were served only on market committee. Apart from the aforesaid submissions, the petitioners have taken stand analogous to that of APMC for assailing the order.

20. Apparently, construction of shops has been raised by petitioners on the plots owned by the APMC. The petitioners in these two writ petitions are lease holders from the APMC and claiming through it. Admittedly none of them have sought permission from the Planning Authority before raising the construction. The APMC has been served with notice for demolition of illegal construction raised on open space of sanctioned layout plan by the Municipal Corporation, Ahmednagar and sufficient opportunity of being heard has been given to APMC. In that view of the matter, for the reasons assigned while dealing with facts and contentions in Writ Petition No. 7741 of 2020 filed by the APMC, the petitioners are not entitled for any relief. The petitioners cannot have



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independent right to be heard, Particularly, when they are claiming through APMC and occupying illegal and unauthorized construction raised on final Plot No. 23 i.e. the open space earmarked under the sanctioned layout plan so also Town Planning Scheme. We do not find substance in arguments advanced by petitioners that principles of natural justice are violated in any manner, when APMC was heard before passing impugned order. In that view of the matter, in exercise of writ jurisdiction under Article 226 of the Constitution of India, we are not inclined to entertain the challenge raised by petitioners to the impugned order dated 21.7.2018 passed by the Deputy Commissioner, Ahmednagar Municipal Corporation,

21. Writ Petition nos.8894 and 8946 of 2012 are filed by the petitioners, who are the lease holders of the APMC, Ahmednagar and presently occupying the premises/constructed shops in final plot no.17 situated at market yard, Ahmednagar. The petitioners are challenging the order dated 12.10.2012 passed by the Deputy Commissioner, Ahmednagar declaring that the construction on plot no.17 is illegal with further directions to remove the same. The petitioners have challenged the consequential letter issued by respondent no.2 - APMC, by which the petitioners are directed to implement the order passed by the Municipal Corporation. Learned counsel appearing for the petitioners would submit that the petitioners have responded to the offer made by respondent no.2 Market Committee to permit the Traders to construct the shops and pay the regular rent with initial deposit. According to the petitioners, on 5.3.2010 such applications were invited by the respondent no.2 APMC. On 27.11.2010 the petitioners were permitted to raise construction of the shop. Written agreement dated 16.12.2010 with allotment of plot admeasuring 250 sq. feet has been executed. The petitioners and



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similarly situated 13 persons have raised construction as approved by the Director of Marketing. According to the petitioners, respondent no.1 Municipal Corporation vide impugned order dated 12.10.2012 directed demolition of shops within the period of 15 days. Such action has been taken without granting opportunity of hearing. According to the petitioners, the action is tainted with malafides. Learned counsel appearing for the petitioners has further raised similar contentions as has been dealt with in earlier paragraphs of this judgment. According to the petitioners, in view of section 12 (2) of the APMC Act, 1963, the APMC is a local authority and entitled to monitor and regularize the construction within its area. The Director of Marketing, Pune is final authority to grant construction permission as per the special building by-laws. According to the petitioners, although by virtue of section 43 of the MRTP Act, 1966, a person interested to raise construction has to apply for permission in terms of section 44 of the MRTP Act, such requirement is exempted for local authority. Hence, only because construction permission is not obtained, respondent no.1-Corporation could not have passed the impugned order.

22. We have considered submissions and perused the record. The impugned order dated 12.10.2012 shows that the Municipal Corporation has carried out necessary inspection and found illegal construction of 13 shops in APMC area. Notice dated 21.1.2012 was served upon the market committee calling upon them to furnish the details regarding building permission. Apparently, the construction has been raised on open space earmarked under lay out plan in final plot no. 17. The notice was duly served upon the APMC and has been replied stating that a proposal for regularization of the construction is submitted.

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It appears that the APMC has clearly admitted that construction has been raised without seeking due permission of competent authority. Even, the proposal for regularization of construction submitted by APMC to the Town Planning Department has been rejected vide order dated 31.5.2012. In that view of the matter, the impugned order has been passed directing the respondent APMC to remove the illegal construction within the period of 15 days. Pertinently, respondent no.1 APMC did not challenge the said order and directed petitioners under its communication dated 16.10.2012 to comply with the order dated 12.10.2012 passed by the Corporation and remove the construction. Perusal of the layout plan shows that the construction of the shops has been raised on the open space from final plot no.17. Petitioners, who are lease holders of the APMC would not have independent right to continue their possession and occupation of illegal/ Unauthorised construction on the open space earmarked from final plot no.17 as per the sanctioned lay out plan. In that view of the matter and for the reasons stated above while dealing with writ petition no.7741 of 2020 filed by the APMC we are not inclined to show indulgence in favour of petitioners in exercise jurisdiction of this court under Article 226 and 227 of the Constitution of India.

23. So far as writ petition no.11220 of 2020 is concerned, it has been filed by the Ahmednagar Vegetables and fruit Commission Agents Association. The members of the petitioner-association are carrying their business within the premises of APMC, Ahmednagar as per the licenses issued to them. According to the petitioners, as per the sanctioned lay out plan in respect of plot no.17, 20, 22 and 23, the specific area has been demarcated as open space, internal roads, parking space, service road, etc. However, huge encroachment has been made by the Traders



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who are not in agricultural activities. Due to haphazard and uncontrolled encroachments the safety of market yard dwellers has been jeopardized. According to the petitioners, the Municipal Corporation, Ahmednagar has issued an order dated 30.4.2011 for removal of illegal encroachments on open spaces. Even, further orders are passed on 22.9.2011 and 12.10.2012 for removal of encroachments from open space earmarked in final lay out plot no.17. However, no further action is taken. The petitioners, therefore, seeks to issue writ of mandamus against the respondent authorities, particularly, respondent no.3 Municipal Corporation, Ahmednagar to remove the encroachments and illegal constructions and restore the open space, parking space, public utilities and service road space as demarcated in sanctioned lay out plan dated 4.12.2001. The petitioners further seek directions against respondent nos.1, 2 and 5 i.e. the State of Maharashtra, Divisional Commissioner, Nashik and Collector, Ahmednagar to cause inquiry into the illegalities in the nature of constructions raised over the open space, parking utilities and service roads of APMC and fix the responsibility against the concerned officers.

24. Mr. Girish Thigle, learned counsel appearing for the petitioners invited attention of this Court to the lay out plan dated 4.12.2001 sanctioned vide Resolution no.406 of the Municipal Council (Now Ahmednagar Corporation). He states that the open spaces and roads have been specifically earmarked in final plot no.17. He would invite attention of this Court to various notices issued by the Municipal Corporation, Ahmednagar to APMC along with the occupants of constructed shops, invoking powers under section 260 (1)(2) and 478 of the Bombay Provincial Municipal Corporation Act, 1949 read with

section 52, 53, and 54 of the MRTP Act, 1966. It directs APMC to remove illegal construction raised on open space falling in final plot no.17, of market yard, Ahmednagar. Learned counsel Mr. Thigle would further invite attention of this Court to the orders dated 22.09.2011 and 12.10.2012 passed by the Commissioner, Municipal Corporation, Ahmednagar declaring that the construction on open space from final plot no.17 market yard, Ahmednagar to be illegal with further directions to remove the same within the period of 15 days. Pertinently, the name of all 13 shop holders along with the Chairman and Secretary of the APMC appears in the title clause of the said order. Mr. Thigle, further relies on communication dated 5.7.2019 issued by the Minister, Urban Development, Maharashtra State, to show that attempt of regularization of the construction by APMC is not entertained by the Municipal Corporation and thereafter by the appellate authority (said order pertains to final plot no.23). Learned counsel Mr. Thigle would further invite attention of this court to the various representations made by the petitioners and would submit that the respondents have failed to discharge their statutory obligation and remove illegal/unauthorized construction which is not in conformity with sanctioned lay out plan. Mr. Thigle, learned counsel appearing for the petitioners placed his reliance on the reported Judgment of the Supreme Court of India in the matter of **Manohar Joshi vs. State of Maharashtra and others reported in (2012) 3 SCC 619** and the judgment in **Civil Appeal No.5041 of 2021 in the matter of Supertech Limited Vs. Emraled Court Owner Resident Welfare Association and others with connected appeals dated 31.8.2021**. Mr. Thigle, would further rely upon the judgment of this Court in **WP no.838 of 2006 in the matter of Agriculture Produce Market Committee, Jalgaon Vs. The State of Maharashtra and another dated 22.2.2008**.



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25. The respondent no.6 APMC filed its affidavit-in-reply through in-charge Administrator stating that the issue is sub-judice in writ petition no.7741 of 2020 filed by the APMC before this Hon'ble Court, wherein interim protection has been granted. Reply filed by the respondent no.3 Ahmednagar Municipal Corporation states that since there is interim protection granted by this Court in group of writ petitions tagged with writ petition no.7741 of 2020, further action could not be taken.

26. Learned counsel Mr. R.B.Narwade Pati appearing for respondent nos.6 to 19 submits that the shops which are subject matter of this writ petition are located in Bhusar Market. He would submit that the shops in possession of respondent nos.6 to 19 are part of plot no.17 since the year 1990. He would submit that final plot no.17 consists of open space as well as the constructed shops allotted for carrying on business by traders. He would submit that the APMC, Ahmednagar has executed registered lease deed dated 2.7.2021 for 21 years. Respondent nos. 6 to 19 are regularly paying the rent and prays for dismissal of the writ petition.

27. We have considered submissions of respective parties, Pertinently, the grievance of the petitioners is regarding encroachment on open spaces and public utilities demarcated under the sanctioned lay out plan dated 4.12.2001. The Municipal Corporation/respondent no.3 appears to have already taken steps after identifying the encroachment on the open spaces demarcated under the lay out plan from final plot no.17 possessed by APMC, Ahmednagar. Even, the orders are passed



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declaring the constructions of shop in final plot no.17 to be illegal after hearing the concerned parties. It appears that the APMC was served with the notice for removal of encroachments /unauthorized construction and after elaborate hearing the order dated 12.10.2012 has been passed by Municipal Corporation.

28. So far as contention of respondent Nos 6 to 19 that they are authorized users of plots, which are not part of open spaces earmarked in layout plan, we need not delve in to the factual dispute. We are considering prayers in this petition only to the extent of issuing direction to remove illegal/ unauthorised construction raised in open spaces earmarked in final plot No. 17 and 23 as per sanctioned layout and town planning scheme. The respondent No. 6 to 19 are at liberty to approach corporation at earliest and demonstrate their case on the basis of documentary evidence possessed by them. In that case corporation would be at liberty to consider same and pass appropriate orders within time line prescribed in operative part of this order. No prayer for extension of time would entertained on this ground.

29. We do not see any impediment for respondent Municipal Corporation to proceed further to remove illegal / unauthorized construction except the interim orders those were operating in writ petition No. 7741/2020 filed by the APMC challenging decision of corporation thereby rejecting proposal for regularization /compounding of illegal construction. We have already dealt with the writ petition no.7741 of 2020 with connected matters and recorded detailed reasons for declining interference in the orders passed by the Municipal Corporation, Ahmednagar and consequential orders passed by the appellate authority directing removal of unauthorized construction on



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open space earmarked in final lay out plan particularly in of final plot no.17 as well as 23.

30. For the aforesaid reasons, Writ Petition no.11220 of 2021 deserves to be allowed and directions for removal of illegal/unauthorized construction needs to be issued. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition No.8894 of 2012, 8946 of 2012, 9013 of 2018, 9022 of 2018, 7741 of 2020 are dismissed.
- ii. Writ Petition No.11220 of 2021 (Ahmednagar Vegetables and Fruits Commission Agent Association Vs. The State of Maharashtra and others) is partly allowed.
- iii. Respondent no.3 Municipal Corporation, Ahmednagar shall take necessary steps for removal of illegal, unauthorized construction/encroachments raised in area of open spaces earmarked in sanctioned lay out plan for APMC Ahmednagar, particularly part of final plot no.17 and 23 of town planning scheme of Ahmednagar Municipal Corporation in pursuance of notices already served to Respondent APMC u/s 52, 53, 54 of MRTP Act, 1966 read with section 260 (1)(2) and 478 of the Maharashtra Municipal Corporation Act and submit the report of compliance to this Court within three months from the date of this order.
- iv. Writ Petitions are disposed of in aforesaid terms.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

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After passing of the order, learned Senior Advocate Mr. S.B. Deshpande submitted that the interest of the petitioners was protected by this Court during pendency of these petitions. The interim protection was operating in their favour till disposal of the writ petitions.

Considering the nature of the dispute, long standing construction possessed by respective shop holders and the fact that interim protection was granted to the petitioners during pendency of the writ petition, it would be just, proper and in the interest of justice to continue such protection for the period of eight (8) weeks, so as to enable them to avail appropriate remedies including filing of Special Leave Petition before the Supreme Court. As such, operation of the order passed by this court shall be kept in abeyance for the period of eight weeks from today.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-



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EXHIBIT-C

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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)**

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

Signature Not Verified

Digital Signature
Visual Appeal
Date: 2024/2/17
10:50:05 IST
Reason: -

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

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

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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.

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.