
(2007) 07 PAT CK 0110
In the Patna High Court
Case No : CWJC No. 13383 of 2001

Dr. Kunal Hazari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0110

Final Decision : Dismissed

Judgement

Navin Sinha, J.—The original petitioner, Dr. (Mrs) Iva Rani Hazari was the lessee of Khas Mahal lands measuring 6 Kathas 18 Dhurs 5 Dhurkies bearing Holding No. Nil, Circle No. 13, Plot No. 15, Ward No. 10, Block No. C, in Kadamkuan, Khas Mahal T No. 17023 P.S. Pirbahore, under a lease deed executed by the Collector of Patna in favour of her ancestor. She has been deceased during the pendency of this application and was substituted by the present petitioner, the legatee under her will.

2. The writ petition was filed challenging the show cause notice dated 23.8.2001 issued by the Collector, Patna, questioning the construction by her of a multi-storeyed residential apartment styled "Kanika Mehar Apartment" on the Khas Mahal lands leased to her for residential use, through a professional builder thus commercialising the lands, and the user contrary to the conditions of the lease. She was required to show cause why the lease be not cancelled for breach of the conditions of the lease. The writ petition also questioned the consequential orders dated 29.8.2001 and 19.9.2001 of the erstwhile Patna Regional Development Authority (hereinafter referred to as "the PRDA") directing her to immediately stop further construction unless and until the permission of the lessee/Collector was first obtained subject to which condition the building plan had been sanctioned by the PRDA.

3. Learned Counsel Shri Arun Kumar, appearing on behalf of the petitioner, submitted that under the lease deed (at Annexure 1 to the writ petition) construction of one "dwelling house" was permitted. The petitioner on 10.9.1999

informed the Collector that she was constructing a "new residential building in place of the old one through a Developer". The disclosure of the words "Developer" in her application seeking permission for such construction demonstrates, there was no concealment. It was therefore not necessary to inform the Collector that she had prior thereto already entered into a Development Agreement dated 18.6.1999 with the intervener respondent (hereinafter referred to as "the Builder") for the construction of a multi-storeyed residential apartment complex. The lease deed in Clause (6) permitted "other user" with the permission of the Collector. The fact that under the development agreement she had executed an irrevocable power of attorney in favour of the Builder transferring 65 percent of the ownership rights in the lease hold lands and building as also handed over the original land documents to the Builder, were not required to be disclosed to the Collector. The lease deed was from generation to generation with full rights of transfer. Learned Counsel however fairly conceded that the proposed construction was far in excess of "one dwelling house" permitted under Clause 2 and 3 of the lease. It was further conceded, that apart from the aforesaid, there was no other explanation for non-submission of the Development Agreement dated 18.6.1999 to the Collector for such construction along with the application for permission made on 10.9.1999. Though five days later the Collector had required her to submit a copy of the plan of the proposed construction, for his consideration, the same was not done as only one copy of the original plan had been prepared which was submitted to the PRDA, and no Xerox copies of the same had been retained. The plan was submitted to the Collector after sanction by the PRDA on 5.12.2000 as the Collector subsequently only required the plan approved by the PRDA to be submitted and made no further queries with regard to the nature of the proposed construction. There was thus deemed approval by the Collector of the change of user by the proposed construction as evident from the letter-dated 13.11.2000 written by the Collector to the PRDA, at Annexure 11/1. Learned Counsel however fairly acknowledged that till the submission of the plan to the Collector on 5.12.2000 the Collector was not aware of the nature of the proposed construction to be made on the leased land. It was submitted that the show cause notice dated 23.8.2001 in any event did not ask her to stop further construction.

4. Notwithstanding the conditional sanction of the plan by the PRDA subject to grant of permission by the Collector, and the directions of the PRDA dated 29.8.2001 and 19.9.2001 stopping further construction till approval of the Collector, the construction was made and finally completed during the pendency of the writ application under a legitimate expectation that formal approval was a mere formality and would follow automatically. There was therefore no need to seek any stay of the operation of the show cause notice or the directions of the PRDA to stop further construction, in the writ petition, before proceeding with such construction. The construction being residential in nature, based on a presumptive sanction, was not a commercialisation of the property.

Approximately 20 flats had been built which had been sold to bona fide purchasers and therefore it was in the interest of justice because of the subsequent events that the writ petition be allowed and the impugned orders be quashed.

5. Having urged earlier that there was deemed approval by the Collector for the proposed construction, learned Counsel next submitted that under Clause 6 of the lease deed there was no necessity for obtaining the permission of the Collector so long as the construction proposed to be made was residential in nature and character. The requirement for permission would arise only in the event of commercial user of the land. The fact that the petitioner may have desired to build what was not "one dwelling house" under Clause 2 and 3 of the lease deed was of no consequence and that Clause 6 of the lease deed cannot be controlled by Clauses 2 and 3 thereof. The construction of a multi storeyed residential apartment building having several flats on lease hold lands given for residential user did not amount to commercialisation and cannot be said to be for commercial purposes. Referring to Appendix D (2) Rule 13 of the Khas Mahal Manual it was submitted that once the plan was passed by the PRDA, the Collector was obliged to pass the plan as the words used are "shall sign".

6. The conditional sanction given by the PRDA to the construction subject to the approval of the Collector was without jurisdiction as Section 37 of the Bihar Regional Development Authority Act, 1974 (hereinafter referred to as "the Development Authority Act") does not contemplate grant of any conditional sanction. The issuance of the impugned orders dated 29.8.2001 and 19.9.2001 by the PRDA restraining construction till the grant of permission by the Collector was contrary to Section 39 of the Development Authority Act as the construction could be stopped only if it was being made contrary to the sanction u/s 37 or contrary to any provisions of the "Act" or Regulation which was not the case presently. Since the lease was from generation to generation, there was freedom of action in the petitioner and its assignees with limitations on the rights of the Collector. If the Collector was aggrieved by the sanction of the building plan by the PRDA it was for him to challenge the same. Referring to Section 76 of the Development Authority Act learned Counsel submitted that once the sanction was given u/s 37 of the Act, the fact that permission approval or sanction may be required under any other law (read Khas Mahal Manual) cannot make the construction illegal.

7. Learned Counsel for the Builder submitted that once a Khas Mahal lease was granted, salami was paid, with rights of transfer from generation to generation, the builder being a transferee, permissible under the lease, there was no need to revert to the Collector for any permission. This requirement was applicable only in case of a fixed tenure lease under the Khas Mahal with limited rights of renewal. So long as it was a "dwelling house" that was being constructed no permission of the Collector was required. The construction of multi storeyed residential apartment complex consisting of twenty flats is not commercialisation

of the property. Only if it amounts to commercialisation is permission required. The Collector has not applied his mind to this aspect that the construction was of a residential apartment. The plan of the proposed apartment complex after sanction by the Development Authority was given to the Collector on 5.12.2000. The Collector sat over the matter till the issuance of the impugned order dated 23.8.2001. Therefore, by reason of passage of time, there was a legitimate expectation that sanction had been accorded and that the construction was valid.

8. Learned Counsel for the State urged that the development agreement entered into the petitioner and the builder on 18.6.1999 was intentionally and fraudulently withheld from the Collector when the petitioner three months later on 10.9.1999 applied for permission to construct. The letter dated 10.9.1999 of the petitioner seeking permission stated that the present residential building had become uninhabitable and that the petitioner proposed to construct a new residential building in place of the old one through a developer. The Collector therefore on 15.9.1999 required the petitioner to submit a copy of the plan of the proposed construction for approval. This requirement was never waived or modified by the Collector requiring the petitioner to only submit a copy of the plan sanctioned by the PRDA. No sooner that the Collector became aware of the nature of the construction contrary to the conditions of lease the impugned show cause notice dated 23.8.2001 was issued. After repeated reminders the petitioner only on 5.12.2000 submitted the plan after grant of sanction by the PRDA. The nature of construction permitted under the lease was specified as "one dwelling house" in Clause 2 & 3. Clause 6 had to be read subject to the same. Any other user required the approval of the Collector. The construction without the permission of the Collector and while the sanction had been stayed by the PRDA was patently illegal.

9. The Bihar Municipal Act (hereinafter referred to as "the Act") was promulgated in the year 2007 under the Constitution (Seventy-fourth Amendment) Act 1992. By virtue of Section 488 of the Act the Bihar Regional Development Authority Act, 1981, stood repealed. This Court had called for the original records of the present construction from the Patna Municipality. Learned Counsel for the Patna Municipality from the original records, submitted from the noting dated 1.10.1999, that a copy of the Khas Mahal lease in favour of the petitioner was submitted with the proposed plan and was available with the PRDA, which consequently was fully aware of the nature of the lands as Khas Mahal. Under Clause 6 of the lease deed, commercial user was prohibited. The permission of the Collector was mandatory, before the plan could be considered by the PRDA. The consideration of the plan by the PRDA in absence of the permission of the Collector, a pre-condition, was difficult to support as the PRDA literally put the cart before the horse. The construction having been made without the approval of the Collector and after the petitioner was asked to stop construction, the same were patently illegal.

10. On 3.5.2007, when the writ petition was taken up for consideration, Counsel

for the original petitioner sought leave to withdraw from the case on the ground that the original petitioner was deceased on 26.2.2004. Considering the seriousness of the issues involved, this Court requested Sri Chitranjan Sinha, Senior Advocate, to assist the Court as Amicus Curie. At this stage the builder entered appearance and sought permission to intervene, which came to be allowed. Subsequently the present petitioner filed an application for substitution on 5.7.2007 as the legatee, which also came to be allowed.

11. Learned Amicus Curie pointed out that the Development Agreement dated 18.6.1999 between the Petitioner was three months prior in time to the application submitted to the Collector. Barely five days later after having applied for permission to the Collector on 10.9.1999 the plan was submitted for approval to the PRDA on 16.9.1999. Yet the nature of the proposed construction was intentionally concealed from the Collector, despite repeated queries by him, till after grant of sanction by the PRDA. The PRDA sanctioned the plan on 16.12.1999 but yet issued the communication-dated 25.10.2000 at Annexure 7 that it was finding it difficult to sanction the plan in absence of the "No Objection" certificate of the Collector. Then followed the fresh sanction on 23.11.2000 by the PRDA without the "No Objection" certificate of the Collector only on the confirmation sought from the Collector that the lease was a generation-to-generation lease, when the Collector was still not aware of the nature of the proposed construction. Under the Khas Mahal Government instruction dated 11.3.1993 issued vide Letter No. 8/AN Policy 7 of 1993 Kha-344 R, any application for transfer of Khas Mahal lands with the recommendation of the Divisional Commissioner, in so far as the town of Patna was concerned, had to be approved and sanctioned by the State Government. In the present case, there is no application for transfer much less permission of the State Government. The transfer of the lands and interest in property by the petitioner to the builder to the extent of 65% without permission was therefore clearly illegal and a breach of the terms of the lease. Similarly, under the same letter permission from the State Government for change of user of the land was also mandatory which has not been obtained. Section 76 of the Development Authority Act will have an overriding effect only in so far as the question of building specifications of the proposed construction is concerned over the building specifications provided under the Khas Mahal Manual. It does not render nugatory the requirement for permission for such construction from the land owner, the Collector/State Government. To read it in any other manner will create absurd results. The construction made after issuance of the show cause notice by the Collector and twice directions of the PRDA to stop such construction, the absence of any permission to transfer, the absence of any permission to construct from the Collector makes the construction patently illegal. Paragraph 19 of the writ petition read with Annexure 16 dated 29.8.2001 made it apparent that the construction was at infancy when the show cause notice and directions to stop construction were issued and petitioner came to this Court. The counter affidavit of the Collector discloses that during the pendency of

the writ application without stay of the operation of the impugned show cause dated 23.8.2001 or of the direction to stop construction dated 29.8.2001 and 19.9.2001, the multi-storeyed apartment building has been completed and sold to unsuspecting purchasers. In any event the sanction by the PRDA was conditional in nature. The condition not having been fulfilled the sanction was inconsequential and the construction made in pursuance of the same is illegal.

12. The words "Khas Mahal", and what it means has been considered by a Bench of this Court (S.B. Sinha J as he then was) in the case of Rajat Nath Roy and another Vs. State of Bihar and others, . It is what is known in English language as "Government Estate", defined in the Khas Mahal Manual as follows:

16. "Khas Mahal" is what is known in English as "Government Estate". This aspect of the matter has been considered by this Court in Bhola Ram Chaudhary and Others Vs. State of Bihar and Others, , in the following words:

Let us therefore examine whether Khas Mahal was/is intermediary. What is, therefore, Khas Mahal? The word "Khas Mahal" is nothing but what is known in English as "Government Estate". That is defined in the Khas Mahal as follows:

"Meaning of Government estates": The term Government estates is used to mean estates under the direct management of Government whether these are the property of Government or are the estate of private individuals brought under the direct management of Government. It may also mean any land which is the property of Government and as such would include estates owned by Government which have been let in farm and leased for periods and also the waste lands but would not include lands belonging to other departments of Government, e.g. roadside lands, so long as they are not relinquished by the department concerned to the Collector for management. This manual unless it so appears from the context, deals with the principles, policy and procedure for Khas management of estates under the direct management of Government.

From the above there can be no difficulty in appreciating that Khas Mahal is nothing but Government Estate. It is the Estate of the Government. Since it is Estate of the Government, it cannot be a Zamindari. Not being a Zamindari a Khas Mahal cannot vest in the State of Bihar. It has always been in the State of Bihar itself.

13. The State therefore for the purpose of management of this Estate under it has issued executive instructions commonly known as "Bihar Government Estate Khas Mahal Manual" which deals with principles policy and procedure of such management. It also provides for the manner in which such leases are to be granted, the terms and conditions of such lease, the grant of approvals and permissions under such leases in different areas, the nature of user permitted and prohibited, the consequences of such breach, renewal, resumption thereof etc. Rule 14 of this Manual reads as follows:

What constitutes Town Khasmahals: Town khasmahals consist of urban lands not

used or likely to be used for agricultural purposes. They are governed by the Transfer of Property Act and not by the Tenancy Acts except where lands though not used for non-agricultural purposes now were originally leased to raiyats who have subsequently acquired occupancy rights. Particular care is necessary in the case of these lands not merely to safeguard the pecuniary interest of Government but also to prevent the erection of undesirable and in sanitary structures which would be discreditable to Government as landlord.

Rule 170(1)(i) and (iv) of the Khas Manual reads as follows:

170. Conditions of grants (1) In addition to any other conditions, which the circumstances of a particular case may demand or which may be settled in a particular case, all transfers of immovable property shall be made expressly on the following conditions:

(i) That the property shall be liable to be resumed by Government if it is not used, or ceased to be used for the specific purpose for which it is granted or if it is used for any other purpose either in addition to or in substitution for that purpose;

(iv) that if the property is resumed under the terms of the grant for a breach or non-observance of conditions of that grant, the grantee shall not be entitled to any compensation whatsoever for the land or for the buildings or other structures erected by him on the land, but he will be at liberty remove the materials of any such buildings or structures within a specified time, failing which he shall cease to have any right to such buildings or structures or the materials thereof.

It is necessary to set out Clause 2 Clause 3 and Clause 6 of the Lease Deed:

(2). That the lessee shall and will before the expiration of two years from this date at his own cost and charge commence erecting and building and shall and will before the expiration of three years from this date at his own cost and charge erect, build and complete and in a good substantial and workman-like manner finish one dwelling house only together with all necessary out houses and appurtenances upon the demised premises (in accordance with the approved plans and specifications).

(3) That the lessee will have no right at any time to have or erect any buildings other than the buildings specified in Clause (2) on the demised premises.

(6) That the lessee will not use or suffer to be used the building or structure or any part thereof erected, built on or upon the said demised premises as a shop, ware-house or other places for carrying on any trade or business, whatsoever, or otherwise than as a private dwelling except with the consent in writing of the lessor and upon such terms and conditions as the lessor may impose.

14. Clause 2 of the present Khas Mahal lease permits the construction of "one dwelling house only". Clause 3 prohibits any other kind of construction. Clause 6 permits user other than as a private dwelling (which obviously refers to Clause 2

and 3) only with the permission of the Collector. Clause 7 provides for termination of the lease in case of breach of the terms and conditions. Appendix D (2) of the Khas Mahal Manual deals with the Rules for construction of buildings in the Kadam Kuan Government Estate in Patna. Rule 1 of the Appendix prohibits any construction until the Collector has approved the plan and specifications. Rule 2 thereof states that the permission to erect shall be made on form prescribed by the Collector obtainable from his office and must be accompanied by the plan in triplicate duly signed by the applicant. Rule 2 to Rule 12 thereof provide for the requirements, which such plan must comply with. After which under Rule 13 the Collector shall sign the plan in token of his approval as having been passed.

15. The Government instruction dated 11.3.1993, letter No. 8/Kh.M. Policy 7/93Kh-344 R provides that any application for permission for transfer and/or change of user of Khas Mahal lands in Patna had to be approved by the State Government. The note to Clause 8A at Appendix A (1) of the Manual defines Commercial purpose:

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Note: A Khas Mahal Holding shall be deemed to be used for commercial purpose when it is utilised by the lessee for business with a capital outlay of Rs. 5000/- and a monthly income of Rs. 300/-....

16. In the present case the original petitioner, a lady aged about 68 years with no heirs, entered into a development agreement dated 18.6.1999 with the Builder for the construction of a multi-storeyed apartment complex on her lease hold lands far in excess of her personal needs. The agreement described the petitioner as the "absolute owner" with transferable and marketable title free of all encumbrances. That apart from the petitioner none else was entitled or has any share, right, title or interest over and in respect of the property. That the petitioner was interested in constructing a multi-storeyed residential building

complex on the property through a Builder on a consideration of 35 per cent of the built up area in the building complex with the parking spaces, flats to be given to her when the 65 per cent of the undivided share in the property shall be considered sold, conveyed, transferred and/or assigned to the Developer and/or its nominee. In lieu of such consideration the Developer agrees to construct and to bear all fees, cost charges expenses and to pursue the matter on behalf of the owner petitioner by preparation, submission of plan signing the same on her behalf and pursuing the matter generally before the authorities. Clause 8.1 of the agreement provides that the petitioner and her nominees and the Developer and its nominees shall jointly have undivided right, title and interest over the lands also to the extent of their respective shares of 35 per cent and 65 per cent respectively. The petitioner at no point of time shall have the authority to dispossess the Developer from his 65% of the property and lands. The petitioner shall have no right to development of the property except in relation to the owner's area. After execution of the agreement the Developer shall be deemed to be in possession of the entire property. Clause 12 provides that the Developer shall have absolute right to further alienate to third persons 65 % of the total built up area along with rights in the lands, which was his absolute property. The petitioner agreed to execute an irrevocable general power of attorney in favour of the Builder who also had the right to mortgage the property. The original documents and deeds of the properties had to be given by the petitioner to the Developer.

17. The agreement reflects that both the petitioner and the builder were in pari-delicto. Contrary to the status of the petitioner as a lessee of the lands, it describes her as being an absolute titleholder with no conditions and absolute rights over the same. The petitioner in consideration of the development by the builder of 35% area to be given to her transferred alienated and parted with permanently, including lands to the Developer of 65% of the area. The consideration amount for the agreement was therefore far in excess of the amount specified in Clause 8A at Appendix A (1) of the Khas Mahal Manual thus classifying the user as commercial. It is not in controversy that the petitioner never applied for permission for such transfer of interest in the property and lands in favour of the builder or for such change of user as required under the Government instruction dated 11.3.1993 issued vide Letter No. 8/AN Policy 7 of 1993 Kha-344 R. Yet conscious of the nature of the property as leasehold and the need for the approval of the Collector the petitioner applied to the Collector for such permission on 10.9.1999. Despite the fact that the Builder was now a transferred owner of 65% of the lands no application was made for grant of such permission on his behalf. This belies the argument of the petitioner and the Builder that no permission of the Collector was required for construction. Likewise they were both aware that under Clause 2 and 3 of the lease it was only a dwelling house, which could be constructed, and nothing else without the permission of the Collector. The letter-dated 10.9.1999 therefore states that the residential building on the land had become uninhabitable and that the petitioner

proposed to construct "a new residential building in place of the old one through a Developer" and that the construction was in accordance with the lease deed. Further directions were therefore sought from the Collector in terms of the lease. The contradiction between the recitals in the development agreement dated 18.6.1999 and the letter for permission are glaring and speak for themselves about what was being done and what was being disclosed to the Collector. In this background, the development agreement executed three months earlier to the letter for permission was withheld intentionally conscious of the illegality of the same. At this stage the Court considers it necessary to take notice of the fact that the petitioner was 68 years old lady and that actions on her behalf were actually being done and pursued by the Builder.

18. The petitioner takes a incongruous and contradictory stand. Acknowledging the need for permission of the Collector for construction she submits an application seeking such permission. Thereafter the contention is one of deemed approval of the plan and a legitimate expectation of approval. Subsequently making a volte face it is argued that there is no need for permission from the Collector either for transfer or for the nature of the construction, and that the Collector had no jurisdiction to question the construction or transfer.

19. The Collector in response to the letter for permission dated 10.9.1999, on 15.9.1999 required the petitioner to submit a copy of the plan of the proposed construction so that grant of permission for the same may be considered. The petitioner and the builder barely days in time applied to the PRDA for sanction of the building plan on 16.9.1999. On 20.9.1999 the petitioner replied to the Collector reiterating her earlier communication of construction of a new dwelling building through a Developer. That the plan had been submitted to the PRDA and if necessary a copy could be submitted to the Collector after obtaining a copy from the PRDA, otherwise a copy shall be submitted after approval. On 12.10.1999 the Collector remanded the petitioner to submit a copy of the plan of the proposed construction. The petitioner on 13.10.1999 instead of submitting a copy of the plan to the Collector requested the PRDA to expedite the sanction. On 11.11.1999 the Collector again wrote to the petitioner to deposit a copy of the plan before it. The petitioner then on 18.11.1999 requested the Collector to direct the PRDA to expedite the plan. The Collector, therefore, all this while was not at all aware of the nature of the proposed construction to be made on his lands and the transfer of ownership rights already done. Surprisingly after the letter dated 15.9.1999 of the Collector, the language of the communication changes requiring a copy of the plan sanctioned by the PRDA to be submitted. In this background the plan submitted to the PRDA came up for consideration before the PRDA. The Court had called for the original records of the PRDA. The noting dated 1.10.1999 of the PRDA states that the lands were Khas Mahal. From Clause 6 of the lease deed available with the PRDA commercial user of the lands was prohibited. Therefore no objection from the Collector was mandatory. That the plan could be considered subject to the aforesaid condition. The PRDA had the lease deed before it and was therefore also conscious of the fact that the

lands were Khas Mahal. Transfer of leasehold rights and construction contrary to Clause 2 and 3 of the lease deed was prohibited, that there was no approval from the Collector for such transfer and construction, deliberately decided to put the cart before the horse. The file noticing dated 13.10.1999 deliberately gives a twist to the whole matter by noting that the matter was pending for approval before the Collector which established the title of the applicant who had been asked by the Collector to submit a copy of the sanctioned plan. Quite clearly there was no matter pending before the Collector for transfer of part of the property or for the construction of a multi storeyed apartment complex. It is apparent that the Builder who was pursuing the matter before the PRDA managed to raise irrelevant issues to give a twist deliberately to justify such illegal premature sanction.

20. Appendix A under By-laws No. 4.2 of the modified building by-laws of the PRDA approved in 1993 as modified on 24.5.1995 provides for submission of the building plans in "quadruplicate" along with ownership title. This completely belies the submission of the petitioner of her inability to give a copy of the plan to the Collector since only one copy had been prepared and no xerox copy had been made. Clause 4.2 of the Modified Building By-laws provides that the plans shall be on Ferro print, ammonia print, semidry or photographic print of which at least one set of the plan shall be on tracing cloth. The original records show that the petitioner complied this with. Quite obviously an incorrect submission has been made on behalf of the petitioner in the present proceeding. Section 31 of the Development Authority Act deals with the obligation of the owner of the land where it be the Government. Section 32 deals with the requirement of the owner in such a case applying to the Authority in writing for sanction of the plan. Section 36 requires even the State Government to seek sanction of the proposed construction. By law 4, framed by the PRDA under the aforesaid Act prohibits the State Government from making any construction without first obtaining sanction of the plan from the Authority. Notwithstanding the aforesaid statutory provisions, which admittedly were not complied by the Collector, the PRDA thought it prudent not to ask for compliance of the same by the State Government at the behest of the petitioner and the builder for reasons which are not difficult to appreciate given the realities of life.

21. The PRDA then sanctioned the proposed plan on 16.12.1999 subject to grant of permission for the construction from the Collector. Surprisingly after grant of such sanction the PRDA wrote to the Collector on 25.10.2000 that in absence of the lease deed it was finding it difficult to sanction the plan. At this stage the noting of the PRDA dated 1.10.1999 noticed hereinbefore assumes importance as it refers to Clause 6 of the lease deed submitted along with the building plan for sanction. On 13.11.2000 the Collector simply forwarded a copy of the lease deed to the PRDA. To pause at this stage, the Collector was not informed or made aware that transfer of the lease hold rights in favour of the builder had already been done on 18.6.1999 and that in place of a dwelling house a multi-storeyed residential apartment complex far in excess of the residential house of the

petitioner who was issueless was to be constructed in consideration of a 35% interest in land and building to be retained by the petitioner while 65% would vest by transfer in the builder. This receipt of a copy of the lease deed from the Collector, already available with the PRDA since much earlier, was treated by the PRDA as grant of permission by the Collector for such transfer and change of user contrary to Clause 2 and 3 of the lease deed. The PRDA thus proceeded to re-approve the plan on 25.11.2000. The condition imposed at the time of sanction that the construction could commence only after the permission of the Collector makes it apparent that the PRDA was fully conscious of the need for prior permission of the Collector, the lands being Khas Mahal, yet it granted such conditional permission. After the plan had been passed by the PRDA in this manner, the petitioner on 5.12.2000 submitted a copy of the sanctioned plan to the Collector. The builder was still to show his presence to the Collector or the PRDA. No sooner that the plan was submitted to the Collector the impugned show cause notice then came to be issued on 23.8.2001 that the Collector had been made aware that there had been transfer of the leasehold property without permission and that a multi storeyed residential apartment was proposed to be constructed thus also commercialising the property without permission amounting to a breach of the terms of the lease and to show cause why it be not cancelled.

22. The petitioner in her reply-dated 20.8.2001 still did not disclose the development agreement executed with the builder and the transfer of leasehold rights in his favour. It was insisted that since the Collector had passed the plan the construction was in consonance with the Khas Mahal Manual. The reply to the show cause only mulled on the issue of the correspondence between the PRDA and the Collector as noticed hereinbefore in support thereof. The PRDA then wrote to the petitioner on 29.8.2001 that the construction had commenced without permission of the Collector and that the sanction of the plan was conditional in nature and thus she was directed to stop construction when it was at a nascent stage. The petitioner represented to the PRDA on 3.9.2001 when the PRDA on 19.9.2001 reiterated that the construction should remain stayed and prohibited further construction till grant of permission by the Collector.

23. This Court from the aforesaid discussion is satisfied that the conduct of the PRDA personnel also in dealing with the application and sanctioning the plan was acting in league with the petitioner and the builder albeit on extraneous considerations. It defies reason how after being conscious of the need for prior permission before transfer and change of user on 1.10.1999 nonetheless it processed the plan subject to the condition of consent of the landowner which in fact was a precondition. On 13.11.2000 in response from the PRDA the collector only forwarded to the PRDA copy of the lease deed already available with it since 16.9.1999. This was then treated as grant of permission by the Collector, but in order to leave a safety valve for themselves the PRDA then inserted a clause that no construction could be made with the permission of the Collector. If the permission of the Collector was such a necessity of which the PRDA was clearly

satisfied, there was the occasion for it to pass the plan in absence of the same. The conduct of the PRDA personnel leaves much to be desired which this Court will consider subsequently.

24. What the petitioner, the builder and the PRDA did was to indulge in jugglery. While the former two took the Collector on a merry go round seeking permission for construction without telling him what they propose to construct and that the plan had been submitted to the PRDA, the latter authority on the pretext of the receipt of the lease deed from the Collector treated the same as a permission by the Collector for construction.

25. In the aforesaid background the petitioner came to this Court on 8.10.2001 by filing the present pre-mature writ application challenging the issuance of a show cause notice, within jurisdiction of the Collector, and which cannot be said to be arbitrary or irrational as also the direction of the PRDA to stop construction. The records of the writ do not show that there were any interim orders of stay of the impugned orders. Nonetheless, the petitioner and the builder in league with the PRDA personnel proceeded with the construction and completed the same to submit at this stage that the fact that the building was complete and had been sold to unsuspecting persons was an aspect to be kept in mind. Despite the fact that the directions to stop construction and the show cause notice were affecting the rights of the builder who had 65% absolute transferred rights he did not submit any reply to the Collector or the PRDA and neither did he come to this Court in a writ petition challenging the same. It was only when, the Counsel for the original petitioner withdrew from the writ petition that she was dead, when the Court queried from the Collector as to what steps he proposes with regard to the leasehold property when the lessee was no more for resumption, that the builder then filed an intervention application on 4.4.2007 and placed the development agreement on record only after the Court directed him to do so. The present petitioner then filed an application for substitution on 24.5.2007 for substitution of the original petitioner deceased as far as 26.2.2004.

26. This Court finds it difficult to accept that what was being built was "one residential building in place of the old one". The petitioner in her application-dated 10.9.1999 not without reason used this language. The petitioner or the builder never allowed the Collector to know that the transfer of right, title and interest in the property to the extent of 65% had already taken place without permission committing a breach of the condition of the lease and the nature of the proposed construction of an apartment complex. This Court rejects the submission on behalf of the petitioner that the lease being one from generation to generation with rights of transfer, no permission of the Collector was required. The letter of the petitioner dated 10.9.1999 is itself evidence of the awareness of the petitioner and the builder of the requirement for the same. Likewise this Court rejects the argument of the petitioner that the construction of one dwelling house or a multi-storeyed residential apartment are the same and that it was permissible under Clause 6 of the lease which did not control Clause 2 and 3 of

the lease. This Court holds that under the lease only one dwelling house could be constructed. A construction of any other nature could be only with the permission of the Collector, which admittedly is wanting. The letter of the Collector dated 13.11.2000 addressed to the PRDA enclosing a copy of the lease deed by any stretch of logic, reason or common sense cannot be construed as grant of permission for such construction. This Court also rejects the argument that mere use of the word "Developer" in the letter for permission -dated 10.9.1999 to the Collector was sufficient disclosure of the nature of the construction. No reason has been given why the development agreement was not submitted to the Collector along with a copy of the proposed plan. This Court does not accept the submission that the Collector subsequently was no more interested in the nature of the construction after he originally required by the petitioner to submit a copy of the proposed plan for consideration and only required the plan sanctioned by the PRDA. This twist in the language was only what the petitioner and the builder engineered in collusion for their designs. Learned Counsel for the petitioner conceded that the construction was presumptive in nature based on a deemed sanction, conscious of the position that the presumption may turn out to be incorrect with its consequences. The Court rejects the argument that the show cause notice of the Collector did not oblige the petitioner to stop construction or that the order for stoppage of construction was contrary to Section 39 of the PRDA Act. The sanction u/s 37 was subject to the requirement for compliance of the provisions of the building laws. It was sanctioned subject to a precondition. If the precondition was not fulfilled the sanction had no meaning till it was fulfilled. Section 39 of the PRDA Act says that construction could be stopped for contravention of any condition subject to which the sanction had been accorded. In *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, the Supreme Court considering the effect of a conditional order held as follows at paragraph 13 as follows:

13. It stands admitted that Shri Vajhubha did not deposit the entire sum of Rs. 360. The letter dated 19-2-1952 which was issued acceding to the request of the auction purchaser to the effect that he be granted three months time for making payment of balance sum of Rs. 90 was a conditional order insofar as while granting such extension, it was stipulated therein that on failure to do the same, the allotment would be cancelled. An order in writing could have been issued cancelling the allotment and forfeiting the amount of Rs. 270 but once it is held that the said letter dated 19-2-1952 was a conditional one a fortiori upon Shri Vajhubhas failure to deposit the amount the allotment stood cancelled.

27. The submission that there was deemed approval of the Collector does not impress the Court. The Collector was never made aware of the transfer of interest in lands already effected without the approval of the Government or the nature of the proposed construction. The act of his in sending a copy of the lease deed to the PRDA cannot tantamount to a deemed approval. The subsequent submission on behalf of the petitioner that no permission from the Collector was required is directly contradictory to his own submission of a deemed approval by

the Collector and the petitioner's own letter dated 10.9.1999 seeking permission for the construction.

28. The Court rejects the submission on behalf of the petitioner that construction of the residential multi-storeyed apartment in consideration for retaining 35% share in lands and property with transfer of title and interest of 65% in land and property was not commercialisation. Clearly the petitioner had an income from the leased lands in consequence of such transfer far in excess of the amount specified in the note to Clause 8(1) of Appendix A (1) of the Khas Mahal Manual noticed above thus amounting to commercialisation of the Khas Mahal Lands. The Supreme Court in the case of *State of Maharashtra and Others Vs. Karvanagar Sahakari Griha Rachana Sanstha Maryadit and Others and Lokmanyagar Sahakari Griha Karan Sanstha Niyamati and Others*, , while considering the construction of a multi storied residential apartment by a member of a Cooperative Society on his leased hold lands given to him for his residential use, dismissing the appeal has held that such construction clearly amounts to commercialisation of the property upholding the contention of the Society that it would destroy the whole concept of the Society as commercialisation of the plots will set in the residential area. The Court considers it appropriate to also quote the relevant extract at paragraph 10 of the Division Bench judgment in *Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune and Another Vs. State of Maharashtra and Others*, from which the aforesaid appeal arose;

10. ...The permission to construct high rising building on a developed plot in a housing society would certainly give huge benefit to a member but at the cost of other members and in clear violation of the bye-laws....

29. The next submission on behalf of the petitioner and the builder was that there was a legitimate expectation in them that the Collector shall sanction the plan, has only to be stated to be rejected. The principle of legitimate expectation has been considered by the Supreme Court in the case of *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, , It has been held in paragraphs 18, 20, 21 and 25 as follows:

18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

20. Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* laid down that the doctrine of "legitimate expectation" can be invoked if the decision which is challenged in the court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

21. The Indian scenario in the field of "legitimate expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

25. In *Union of India v. Hindustan Development Corporation*, the meaning of the words "legitimate expectation" was again considered. Quoting from the case of *Attorney General for New South Wales v. Quin*, the following lines:

To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling sort of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.

The Court observed as under: (SCC p. 549, para 35)

If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept.

From the aforesaid discussion and the principles of legitimate expectation as explained by the Apex Court, in the facts of the present case the submission is completely misconceived and is therefore rejected.

30. The last submission on behalf of the petitioner and the builder was based on Section 76 of the Development Authority Act. This shall have to be read with Section 2(k) and Section 11.

2(k). "Khas Mahal Land" means land vested in the State of Bihar.

11. Objects of the Authority.- The objects of the Authority shall be to promote and secure planned development of Region in general and Development Area in particular and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, industrial, agricultural and other operations, to execute works in connection with transportation, supply of water and electricity, disposal of sewage, drainage, and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto and the Authority shall be the principal agency to provide all infrastructure for the development of the aforesaid areas:

Provided that save as specially provided in this Act nothing contained therein shall be construed as authorising the disregard by the Authority of any law for the time being in force.

76. Effect of other laws,- (1) The provisions of this Act, and the rules and regulations made there under shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any such other law development in any areas in accordance with the provisions of this Act or rules and regulations made there under shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained.

It was submitted that for reason of the non obstinate clause, once the building plan was sanctioned by the PRDA under the Development Authority Act, the construction undertaken in pursuance of the same was legal. The absence of permission for transfer from the Collector and for the construction was inconsequential and that the sanction by the PRDA had overriding effect. The argument has only to be stated to be rejected. Section 2(k) and proviso to Section 11 of the Development Authority Act read together with Section 32 and 36 of the Act By-laws (4) of the PRDA make it mandatory for even the Collector, the owner of the land to seek sanction from the PRDA of the proposed construction. The application of the lessee - petitioner to the PRDA was required to be accompanied by the permission of the land owner/Collector for such construction. The PRDA was under obligation, under its own laws, to mandatorily require the same before processing the application for sanction. Any other

interpretation shall render the provisions of the Khas Mahal and the rights of the Government as the owner of the lands completely meaningless and redundant. It is settled that that such an interpretation is to be avoided if the two legislations can harmoniously co-exist by a reasonable interpretation. The Court therefore rejects this argument. This Court therefore holds that there was no proper application under law by the land owner before the PRDA for sanction of a building plan on its lands. Sanction purported to have been granted by the PRDA at the behest of a person other than the land owner is no sanction in the eye of law and therefore is of no avail or benefit whatsoever to the petitioner.

31. The Supreme Court in the case of Hotel Sea Gull Vs. State of West Bengal and Others, , was considering the provisions of Section 137 of the West Bengal Town and Country (Planning and Development) Act which reads as under:

Section 137. Overriding effect - (1) The provisions of this Act and the rules and regulations made thereunder shall effect notwithstanding anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any other law -

42. When permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under any other law for such development has not been obtained: this shall not, however, be construed as exemption to application for permission and of payments of such fees and charges as required by such other law.

43. When permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

The argument that once permission had been obtained from the Panchayat, the same was sufficient and that no further approval under the aforesaid Act was required, did not find favour with the Supreme Court which rejected the submission and held that the sanction of the Authority under the Act was mandatory.

32. Upon completion of the construction, the petitioner and the builder were required to obtain a completion certificate under Bye-law 12 framed by the PRDA under the Development Authority Act. Likewise an occupancy and development certificate was also required to be obtained under Bye-law 13 before the building could be occupied. Conscious of the illegality of the construction the petitioner and the builder have not taken any steps for compliance with the aforesaid provision and it is no body's case that the certificates in question has been issued rendering the entire construction and occupation illegal with the PRDA admittedly taken no action.

33. The law with regard to institution of a writ petition against a show cause notice is well settled and stands explained by the Supreme Court in *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, , at paragraph 5 as follows:

5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show - cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

34. Summing up the facts of the present case, the petitioner was a lessee of Khas Mahal lands. She was prohibited from constructing anything than one dwelling house without permission. She was restrained from transferring leasehold rights to another without permission. These were breaches of the lease. She breached the conditions. Transferred interests in the land without permission of the Collector. Proceeded to construct a multi-storeyed residential apartment complex far in excess of one dwelling house without the permission of the State Government. Wilfully concealed the development agreement representing herself as the undisputed absolute title holder to the lands, yet applied for permission to the Collector conscious of the need, withheld from the Collector the nature of the proposed construction, the PRDA conscious that the plan could not be processed without first approval of the Collector, decided to put the cart before the horse, itself ignored the Statutory provisions for permission applicable for construction even on government lands and as a Government body treated the subsequent receipt of a copy of the lease deed from the Collector, already available with it since much earlier, as grant of permission by the Collector, all of which make it apparent that there has been serious breach of the conditions of the lease both with regard to the transfer of the lands held on lease from the Collector and the constructions made upon the same even after it was directed to be stopped. The actions of the petitioner and the builder amount to a complete fraud played upon the Collector and the State Government, the owner of the lands, in connivance with the PRDA in obtaining sanction for the plan. The

Supreme Court in *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , was considering the issue of demolition of a construction in contravention of law by the Nagar Mahapalika entering into an agreement for construction of a shopping complex with the builders against settled norms which was wholly illegal, on the ground that the agreement was a fraud as it had been given for a song and that the construction was in contravention of the provisions of law contained in the Development Act, held at paragraph 73 and 81 as follows:

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 constructions coming to this Court. While directing demolition, 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 the law. In the present case, but for the observation of the High Court, we would certainly have directed an enquiry to be made how the project was conceived and how the agreement dated 4-11-1993 came to be executed.

35. In the case of *Ram Awatar Agarwal and Others Vs. Corporation of Calcutta and Others*, , with regard to unauthorised structures which had been built after the issuance of show cause notice, by the owner in violation of building rules by taking advantage of interim orders of the Court and setting up tenants who also delayed the legal process held at paragraph 8 as follows:

8. In the result, this appeal fails and is dismissed. We further direct that no court shall entertain any suit proceeding in relation to this particular building insofar as the carrying out of the three demolition orders of the Municipal Corporation are

concerned. The Municipal Corporation will be at liberty to take police assistance in executing the demolition orders. However, in order to give the occupants an opportunity to make alternative arrangements we direct that the demolition orders be carried out after three months. As stated earlier, we have come to the conclusion that the appellants have been guilty of abusing the process of the court and it is most unfortunate that Bank of Rajasthan Limited has also been a party thereto. We, therefore, quantify the cost at Rs. 1 lakh.

36. In the case of Royal Paradise Hotel (P) Ltd. Vs. State of Haryana and Others, , the Supreme Court was considering the rejection of a claim for regularisation of the construction made by the predecessor of the appellant in defiance of the provision of law and direction to stop such construction. The Court held at paragraph 7 & 8 as follows:

7. It is clear from the statement of the synopsis and list of dates furnished by the appellant itself, that on 4.2.1998, Mr. Chawla, who put up the construction before it was sold to the appellant received a notice u/s 12 of the Act informing him of contravention of Section 3 or Section 6 and of violation of Section 7(1) and Section 10 of the Act and directing him to stop further construction. When it was found that the appellant was defying the direction to stop, an order was passed on 26.2.1998 under Sub-section (2) of Section 12 of the Act directing him to remove the unauthorised construction and to bring the site in conformity with the relevant provisions of the Act on finding that there was clear violation of Section 7 and Section 12 of the Act. On 16.3.1999, another notice was issued to Mr. Chawla mentioning therein that there is a contravention of Section 7(1) or Section 10 of the Act and directing removal of the unauthorised construction. The copies of the original notices are produced by the respondents along with the counter - affidavit filed on behalf of Respondents 1 to 3. Though the copies of such notices have been produced by the appellant also, we find that there are some omissions in the copies produced on behalf of the appellant. Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorised construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorised and put up in defiance of law. The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of the general public and moving traffic on such highways. Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularisation sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the writ petition filed by the appellant. It is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of the High Courts to ensure that such defiers of law are not

rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regulation of the acts or violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the requirements of the law can alone qualify for regularisation, which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant.

37. Again in the case of Mahendra Baburao Mahadik and Others Vs. Subhash Krishna Kanitkar and Others, , the Supreme Court was considering a case where a person applied for permission to repair the existing single storeyed structure by carrying out repairs. He however proceeded to make a construction of ground plus six floors on that basis, colluding with the Municipal Councillor. The Municipal Council took the objection that the suit was already pending with regard to the construction, that the Municipal Council had the requisite jurisdiction to regularise such unauthorised constructions by compounding after payment of compounding fees. The Apex Court upholding the observations of the High Court that illegal constructions are required to be demolished, concurred with the directions of the High Court for grant of interim relief by and in view of the pendency of the Civil Suit. It held that the landowner got permission for repairs of the existing structure and not for a new construction. This was lieu of certain lands given by him for road winding. The Municipal Council granted permission for repairs only of his old house. No permission of the Municipal Council ever came to be produced in Court. The Court held at paragraph 38 as follows:

38. The Municipal Council being a creature of statute was bound to carry out its functions within the four corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularise unauthorised constructions. Its power is confined to compounding the offences in certain cases. Moreover, even development charges could not be recovered from the appellant in respect of unauthorised constructions in terms of Section 124-E(2) of the MRTP Act.

38. Considering the case laws with regard to illegal construction the court dismissed the challenge to demolition at paragraph 49 as follows:

49. For the reasons aforementioned, these appeals, being devoid of any merit, are dismissed. The Municipal Council is hereby directed to carry out the order of the High Court, as expeditiously as possible and not later than four weeks from date. Having regard to the fact that the appellants have sought to mislead this Court, we think it appropriate to impose costs upon them. The appellants are

hereby directed to deposit a sum of Rs. 50,000 (Rupees fifty thousand) with the National Legal Service Authority within four weeks from date and deposit the receipt thereof in the Registry of this Court.

39. The Apex Court in the case of Virender Gaur and Others Vs. State of Haryana and Others, , was considering the question of settlement of lands by the State Government, which belonged to the Municipality without jurisdiction which was challenged by the residents. The challenge was made soon after the residents were made aware of the grant. Instead of awaiting decision on merit, the settlee proceeded with the construction in post haste and expended money on the construction. The Court held that they had deliberately chosen to take a risk. Therefore, the question of validating the illegal action deliberately chosen, as a premium could not be a ground not to order demolition. The settlee could have awaited the decision and then proceeded with the construction. "Since the writ petition was pending, it was not open to them to proceed with the construction and then to plead equity in their favour". Demolition was ordered with a compliance report to be submitted to the Court.

40. In the case of Friends Colony Development Committee Vs. State of Orissa and Others, , the owner of the property gave a Power of Attorney to the builder for construction of a multi-storeyed apartment. The Authority accorded sanction for a four-storied building. The construction was made in excess of the sanctioned plan for all the floors and also a fifth floor had been built. Proceedings were initiated by the Cuttack Development Authority why demolition be not ordered. The builder stated that the deviations were minor calling for sympathetic view and compounding instead of demolition. The appellants who were residents of the colony, challenged it that the construction damaged the environment, endangered life and safety not only of the occupants but also inhabitants of the locality. Demolition of the fifth floor and of excess construction on each floor was directed by the Authority. On appeal, the appellate authority stayed the demolition subject to the condition that the builder shall stop all further construction. The builder however proceeded with the building activities contrary to the stay order. Finally, the Builder's appeal was dismissed. The builder filed a writ petition in the High Court. The appellant was not joined as a party respondent though it was his application before the Development Authority which set the law in motion. The High Court rejected his application for intervention. The Apex Court at paragraphs 20, 21, 22 and 25 of the judgment noticed as follows:

20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure

consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they do not act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance.

21. The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorised. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression (Sic) prove to be young.

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning though highly complex, is a matter based on scientific research, study and experiences leading to rationalization of laws by way of legislative enactments and rules and regulations framed there under. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological

considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.

25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and there from develop a welfare fund which can be utilised for compensating and rehabilitating such innocent and unwary buyers who are displaced on account of demolition of illegal constructions.

And paragraph 29(7) gave liberty to the High Court to take suo motu notice and register a public interest litigation for the rampant, illegal, unauthorised building activities in Cuttack, monitor the same by issuing direction to curb the tendency and fix liability and accountability,:

29(7) The High Court, if it feels that illegal/unauthorised building activities in Cuttack are so rampant as to be noticed judicially, may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.

This perhaps applies with equal force to the city of Patna.

41. The next question which arises for consideration is of the unsuspecting purchasers who have been made pawns in the hands of the builder and the petitioner. From the conspectus of the case laws discussed above, sympathy cannot persuade this Court on principles of equity to allow the construction to stand for the aforesaid reason. It is settled law that equity follows the law and not that law follows equity. The interest of the unsuspecting purchasers shall be adequately protected in terms of the judgment of the Supreme Court in *Mrs. Manju Bhatia and Anr. v. New Delhi Municipal Council and Anr.* 1997 (2) P.L.R. 15. The builder, one of the respondent obtained sanction for construction but built in violation of the regulations. Consequently the flats of the top four floors came to be demolished. The Apex Court after a detailed discussion of the law of tortious liability and equity with regard to unsuspecting purchasers of flats on these four floors held at paragraph 11, 12 and 13 as follows:

11. In this backdrop, it would be seen that the tort liability arising out of contract and tort, equity steps in and tort takes over and imposes liability upon the defendant for unquantified damages for the breach of the duty owed by the defendant to the plaintiff. Equity steps in and relieves the hardships of the plaintiff in a common law action for damages and enjoins upon the defendant to make the damages suffered by the plaintiff on account of the negligence in the case of the duties or breach of the obligation undertaken on failure to truthfully inform the warranty of title and other allied circumstances.

In this case, it is found that four floors were unauthorisedly constructed and came to be demolished by the New Delhi Municipal Council. It does not appear that the owners of the flats were informed of the defective or illegal construction and they were not given notice caveat emptor. Resultantly, they were put to loss of lacs of rupees they have invested and given as values of the flats to the builder-respondent.

12. The question arising for consideration is whether the appellants should be re-compensated for the loss suffered by them? The High Court in the impugned judgment has directed the return of the amount plus the escalation charges. We are informed that the 73 escalated price as on the date is around 1.5 crores per flat. In this situation, taking into consideration the totality of the facts and circumstances, we think that the builders-respondent should pay Rs. 60 lacs including the amount paid by the allottees within a period of six months from today. In case there is any difficulty in making the said payment within the said period to each of the flat owners, the builder-respondent is given another six months per-emptorily for which, however, the builder-respondent will have to pay interest @ 21 per cent per annum on the said amount from the expiry of first six months till the date of payment.

13. The builder impleaded suo motu, as one of the respondents, is also directed to obtain the certified copy of the title deeds and secure the loan, if he so desires. After the payment is so made, the appellants are directed to deliver the original title deeds taken custody of on March 1, 1994. It appears that with regard to the payment of Rs. 1 crore as the price of the flats, property and money are kept under attachment. The attachment will continue till the said amount is paid over.

42. The Court had observed earlier that it shall give suitable directions with regard to the PRDA. This Court has already noticed the conduct of the PRDA that it acted in collusion with the petitioner and the builder for extraneous considerations and proceeded to consider and sanction the plan conscious of its limitation in doing so without the permission of the Collector/State Government. The construction on a busy main road of Patna in a thickly populated prime area continued unabated leading to a ground plus five storied structure with the PRDA taking no action whatsoever. The observations in paragraph 20 of the judgment in the case of Friends Colony (Supra) are of great relevance and are applicable presently with equal force. The Supreme Court in the case of Dr. G.N. Khajuria

and others Vs. Delhi Development Authority and others, , was considering the illegal allotment, sanction of and the construction of the School. Even while it held that the construction was to be demolished as it was illegal notwithstanding that it has been completed, held at paragraph 10 and 11 as follows:

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 orders of the Courts, the illegality is not taken care of fully in as much as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scott-free. Those should not, however, 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 concerned citizen, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, 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.

11. We, therefore call upon the respondent No. 1 to make an enquiry and inform the Court within three months as to who are the officers who made the unauthorised allotment and permitted unauthorised construction. On knowing about this, such further orders shall be passed as deemed fit and proper.

43. Again in Delhi Development Authority Vs. Skipper Construction and another, , while considering the illegality in auction sale by the concerned officials the Supreme Court held at relevant extract at paragraph 6 that "so far as the members of public are concerned, they lost heavily because they believed in and acted upon several advertisement and proclamation made by Skippers. The members of the public, it appears, had lost more 20-30-Crores in the bargain. This Court not have happened but for the active connivance and collusion of some of the officers of DDA. The interest of justice demands that the officers found indulging in such acts be proceeded against and dealt with sternly so that it may serve as a lesson to others. A democratic government does not mean a lacks Government. The Rules of procedure and/or principles of natural justice are not made to enable the guilty to delay and defeat the just retribution. The wheels of justice may appear to grind slowly but it is the duty of all of us to ensure that they do grind sadly and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless...." Directions were then given to initiate departmental actions and impose appropriate penalty in individual cases of minor or major or individual officers along with a compliance report to be submitted to the Supreme Court even while directing disciplinary proceedings against certain others.

This view has been reiterated by the Supreme Court at paragraph 81 in the case of M.I. Builders Pvt. Ltd (Supra) noticed hereinabove.

This has been followed by a Division Bench of this Court in what was referred as the "naukari scam" in the case of Ajay Kumar @ Ajay Sharma @ Ajay Kumar Sharma Vs. The State of Bihar and Others .

44. This Court therefore directs the Secretary, Department of Urban Development, Government of Bihar, to hold an enquiry against the officials of the Patna Regional Development Authority and the Patna Collectorate, at all levels, who dealt with the file of the petitioner for grant of sanction and granted such sanction, fix responsibility, and then submit a detailed report to this Court within six months when the matter shall be listed under the heading "orders" to consider such further directions / and orders as may be necessary.

45. This Court, therefore, holds that the construction in question as illegal. It is accordingly directed to be demolished by the Town Municipal Commissioner, Patna. However, considering that the unsuspecting purchasers who shall require time to make alternative arrangements occupy it presently, this Court considers it proper to direct that such demolition be carried out after six months from today to enable the unsuspecting purchasers to make alternative arrangements for themselves. The cost for demolition shall be recovered from the petitioner and the builder, if necessary, also under the Bihar and Orissa Public Demand Recovery Act.

46. This Court further directs the petitioner and the builder to pay back the present market value of the flats purchased by the unsuspecting owners within a period of six months. Directions are additionally issued to the builder to obtain loans from Financial Institutions for such payment on guarantees to be furnished by him independently. This shall be without prejudice to the rights of the unsuspecting purchasers to institute civil and/or criminal proceedings against the petitioner and the builder for any further claims.

47. The writ petition is dismissed with cost of Rs. one lakh jointly against the petitioner and the builder to be deposited within one month before the Patna Legal Aid Authority.