
(2008) 12 RAJ CK 0032
In the Rajasthan High Court

Jagat Singh Rathore

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Rajasthan Municipalities Act, 1959 — Section 203

Citation : (2009) 3 RLW 2195

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Like the Biblical story of David and Goliath, this is a case of an individual pitted against the colossal State. Having bought some properties at Pushkar, an ancient and a holy city in Rajasthan, the petitioner has been running a hotel in the name and style of "Hotel Pushkar Palace" since 1981. There were certain legal battles fought between the petitioner and the Municipality Board ("the Board", for short), Pushkar-the respondent No. 3 before this Court. The Board lost these battles. The Board claims to have served a notice on the petitioner on 22.4.06 directing him to remove the illegal constructions/encroachments made by him, within three days. But notwithstanding the said notice, on 22.4.06 itself, the Board demolished a part of the hotel and sealed thirty-eight rooms of the hotel. When the petitioner protested against the illegal action of the Board, the Board issued yet another notice on 28.4.06. Stunned by the demolition, aggrieved by the notice dated 28.4.06, the petitioner has knocked at the gates of this Court and has sought refuge.

2. This case has a long and chequered history. However, the history is pertinent for appreciating different aspects of the issues which would emerge in this case. Hence, it is essential to narrate the details of running battles and skirmish between the petitioner and the Board.

3. Near Ajmer, nestled among the Aravali Hills, lies the ancient and holy city of Pushkar. According to Puranic mythology, Lord Brahma performed a Yagyna at

the Pushkar lake (Pushkar Sarover). However, as his consort, the Goddess Saraswati was not ready to join him in the Yagyna, according to the story, Lord Brahma created another Goddess. Taking her to be his lawful-wedded wife, he performed the Yagyna with her. Upon knowing that another Goddess had substituted her, Goddess Saraswati cursed Lord Brahma that he shall not be worshiped anywhere else in India, except at Pushkar. Hence, the only known temple of Lord Brahma in India exists in Pushkar. According to another Puranic mythology, when the fight ensued between the Gods and the demons over the pot of nectar, Lord Vishnu, in the form of Mohini, stole the pot of nectar from the demons. While Mohini ran with the said pot, drops of nectar fell into the Pushkar Lake (Pushkar Sarovar). Thereafter, Hindus believe that a bath in the Pushkar Sarovar would free the soul from the cycles of births and deaths. In Rajasthan it is common for the people to submerge the ashes of those who have expired in their family in the Pushkar Lake, Thus, like Allahabad and Varanasi, Pushkar is a favorite site for performing the last rites for the dead. Because of these religious stories, Pushkar has held special significance in the minds of Hindus since time immemorial.

4. In modern days, Pushkar is famous for its Cattle Fair which is generally held in the months of October-November, The Pushkar fair has attracted the attention the world-over. Not only the villagers come to sell their cattle, but foreign tourists descend on Pushkar to enjoy, the sites, the sounds & the colors of Rajasthan. Thus, the town is one of the favorite destinations for tourists in Rajasthan; it is vital to the economy of the State.

5. Wanting to establish a hotel business, wanting to cater to the needs of the tourists, both national and international, on 26.10.1980, the petitioner and one Smt. Harminder Kaur purchased an estate on "Bangla Ghat" through a registered sale-deed. Subsequently, Smt. Harminder Kaur sold her share to the petitioner. Hence, the petitioner became the owner of the estate. In 1981, the petitioner established a hotel in the name of "Hotel Pushkar Palace". In order to expand the premises of the hotel, on 18.2.1983, the petitioner purchased a property lying on the southern side of "Bangla Ghat", popularly known as "Kishangarh Kunj". The petitioner submitted building plans before the Notified Area Committee ("the Committee", for short) Pushkar (presently the Municipal Board, Pushkar, respondent No. 3) way-back in the year 1983. According to petitioner, the building plans were approved on 16.12.1983 and 14.12.1984 The building, including the dinning hall, kitchen, pantry, store etc. were constructed in accordance with the approved building plans. From 1983 till 1986, the petitioner was running the hotel with due permission and approval of the Committee.

6. However, on 26.2.1986 the Committee issued a notice to the petitioner canceling the permission which was earlier granted by it. The petitioner challenged the said notice/order by Tiling a civil suit for permanent injunction along with application for temporary injunction. The suit was registered as Civil Suit No. 28/1986 before the court of Additional Munsif and Judicial Magistrate

Ajmer City (West) Ajmer. Vide order dated 10.3.1987, the learned Magistrate passed a temporary injunction in petitioner's favor. Since the committee was aggrieved by the stay order, the Committee filed an appeal before the learned Additional District Judge No. 1 Ajmer. However, the learned Additional District Judge, vide order dated 20.2.1992, dismissed the appeal. Eventually, vide judgment dated 20.5.1992, the learned Magistrate, decreed the suit in favor of the petitioner. According to the said judgment, learned Civil Court held that the property known as "Kishangarh Kunj" was in the ownership and possession of the petitioner. It was also held that once the sanction for construction was given by the Committee, it had no right to cancel the same or to remove the construction in pursuance thereof. The stand taken by the Committee that, the property was described as Ghat, therefore, it belonged to State Government, and therefore, the permission for construction could not have been given, was out rightly rejected. Consequently, the Committee was restrained by permanent injunction not to take any action in pursuance of the notice dated 26.2.1986. Moreover, they were directed not to demolish the property of petitioner known as "Kishangarh Kunj" and not to dispossess him there from.

7. As in the case of "Kishangarh Kunj", so in the case of petitioner's property situated at "Bangla Ghat", the Committee issued a notice dated 26.2.1986 canceling the approval granted by it to the petitioner on 14.3.1983. Again the petitioner filed a civil suit, namely, Civil Suit No. 27/1986, for permanent injunction before the same court. Vide order dated 10.3.1987, the learned civil court stayed the operation of the notice dated 26.2.1986. As earlier, the Committee filed an appeal before the Court of Additional District Judge No. 1 Ajmer. However, vide order dated 20.2.1992, the said appeal was dismissed. Thereafter, vide judgment and decree dated 20.5.1992, the trial court decreed the suit in favor of the petitioner. The trial Court held that the Committee had failed to prove that the petitioner had made any encroachment on additional land or had raised construction on the land belonging to the Committee. Therefore, the Committee was restrained from demolishing petitioner's property situated at "Bangla Ghat". The committee was also prohibited from dispossessing the petitioner from the said property.

8. In 1991 considering the sacred and secular importance of Pushkar City, the Pushkar (Pushkar Sarowar Swachhata, Pavitrata Evam Saudaryakaran Up-Vidhiyam), 1991 (herein after to be referred as "Bye-laws 1991") were promulgated. Bye-laws 1991 were published in the Gazette on 14.11.1991. These bye-laws were aimed at preventing the pollution of and at cleaning the Pushkar Lake. It was also felt necessary that the construction around the lake should be regulated and supervised by the Municipality.

9. After passing of the Bye-laws 1991, in the year 2002 the petitioner was served with a notice holding that he was constructing new rooms in place of old rooms at the Hotel Pushkar Palace. The petitioner replied and contended that as walls of old building were thick, he was merely reducing the size of the walls. Therefore,

it was not a case of new construction, but merely a case of renovation. Moreover, as there was no construction towards the Lake, therefore, he was not violating Bye-laws 1991. However, for the purpose of compliance of Bye-laws 1991, the petitioner submitted his plans for permission of construction/re-construction.

10. On 20.8.2002, the Building Construction Committee of the Board recommended the petitioner's case to the Collector, Ajmer for granting of permission for the proposed construction/renovation. On 7.5.2003, the petitioner's hotel was inspected by a team of Officers comprising of Additional Collector (Admn.) Ajmer, Executive Engineer, PWD, District Division Ajmer, and Executive Officer, Municipal Board Pushkar. According to their report, it was discovered that the main building of the hotel was four stories high. Internal walls on eastern side of the building, which were previously about 3 to 3 1/2 ft. in size, were reduced to 11/4 to 11/2 ft., so as to increase the inner area of the rooms. Thus, it was clearly a case of renovation. Despite the recommendation of the Building Committee of the Board and in spite of the report dated 7.5.2003, according to petitioner, the Collector, Ajmer has yet to decide the case of the petitioner.

11. On 14.4.2006 the Board published a public notice under byelaw 4(1) of Bye-laws 1991. According to said notice in accordance with bye-law 4(1) of Bye-laws 1991 neither any house could be converted into hotel, nor any building could be constructed near the Ghat, without the permission of the Board and the Collector. Furthermore, any hotel or commercial activities or illegal construction carried out after 18.4.2006 would be seized by the Board. Therefore, the public at large was directed to stop such activities forthwith, otherwise action under the provisions of Rajasthan Municipality Act, 1959 ("the Act of 1959", for short) would be carried out against such a person.

12. On 19.4.2006 a notice was allegedly sent to the Manager of Hotel Pushkar Palace, wherein it was pointed out that illegal construction was carried out by the hotel at "the Bangla Ghat" and "the Kishangarh Kunj". The said construction was in violation of the bye-law 2(10)(11) of the Bye-laws 1991. A period of twenty-four hours was given to the petitioner to remove the alleged illegal construction, failing which action would be taken against the petitioner. But, according to petitioner, he never received the said notice.

13. Suddenly on 22.4.2006, the petitioner was served with a notice purporting to be under bye-law 4(2) of Bye-laws 1991. According to the notice, the petitioner was informed that the hotel was within 100 ft. of "the area of Pushkar Sarovar". According to the notice, the hotel had been constructed illegally. Therefore, the permission under byelaw 4(2) of Bye-laws 1991 could not be granted. For, the grant of such permission would be against "the prestige" of the Sarovar. Therefore, three days time was granted to the petitioner to stop the commercial activities and to close down the hotel. In case the hotel were not closed down within three days, the Board claimed that it would take necessary action against the petitioner. According to petitioner, the notice was sent during his absence

from Pushkar. Most importantly, although three days time was given to the petitioner to close down the hotel and the commercial activities, yet the officers of the Board, armed with bulldozers and the demolishing squad, started demolishing parts of the hotel on 22.4.2006 itself. About 38 rooms of the hotel were also sealed by the officials of the Board. Despite protest by the staff of the hotel, the demolition continued for three days i.e. from 22.4.06 to 25.4.2006.

14. Upon his return, the petitioner complained about the demolition and the sealing of the rooms to the higher authorities, including the Hon''ble Chief Minister of the State. The Hon''ble Chief Minister directed the Divisional Commissioner, Ajmer to enquire into the matter and submit his report. This report shall be referred to later in this judgment.

15. Since enquiry had been ordered against the officials of the Board, according to petitioner, on 28.4.06 yet another notice was issued purporting to be under bye-law 4(1) of Bye-laws 1991 and Act of 1959. According to the said notice those persons/firms/Institutions which fell within the area of 100 ft. from the Lake, they could not convert their house into hotel, restaurant and use it for other commercial activities. Moreover, further construction/reconstruction/conversion/addition/alteration could not be carried out, without the permission of the Board and the recommendation of the Collector. The notice further informed that the owners of the hotels/restaurants etc should stop the illegal activities with immediate effect. Notice also contained a list of twenty-six hotels, dharamshalas, restaurants against whom action u/s 170 (11) and 203 of the Act of 1959 was to be taken. Lastly, according to the notice, no permission for carrying out commercial activities within 100 ft. of the Sarovar area was granted and the persons were directed to stop such commercial activities.

16. The petitioner has specifically challenged the validity of the notice dated 28.4.06. However, as the earlier notices dated 14.4.06, 19.4.06 and 22.4.06 have merged in the notice dated 28.4.06, the petitioner has also questioned the validity of these notices. In fact, since the petitioner is aggrieved by the illegal action of the Board in demolishing part of his hotel and in sealing the rooms of his hotel, he has questioned the entire action of the Board before this Court. Hence, in order to do substantial justice, this Court is required to examine the legality of the four notices mentioned above and to consider the legality of the actions of the Board.

17. Mr. A.K. Sharma, the learned Counsel for the petitioner, has raised plethora of contentions before this Court: firstly, the actions of the Board in issuing notice, demolishing part of the hotel and in sealing the rooms are unreasonable, unjust and unfair. The Board has misinterpreted the scope and ambit of Bye-laws 1991. Bye-law 4 (1) and 4(2), in fact, operate in two different time-frames. While byelaw 4(1) deals with post-1991 period, bye-law 4(2) deals with pre-1991 period. While the former contains an absolute embargo, the latter bestows a limited power on the Board to control, to supervise, and to issue directions for the functioning of hotels which were running prior to 1991. According to the

learned Counsel, since the petitioner's hotel was running prior to 1991 his hotel is covered only by bye-law 4(2), and not by bye-law 4(1). Therefore, notices in which power under bye-law 4(1) has been invoked, such notices are, ipso facto, inapplicable to the petitioner's hotel. Therefore, the impugned notice dated 28.4.06, ostensibly invoking the power under bye-law 4 (1), is inapplicable to the petitioner's hotel. Therefore, the said notice suffers from the twin virus of non-application of mind, and from colorable exercise of power.

18. Secondly, the notice dated 22.4.2006, purported to have been issued under bye-law 4(2) of Bye-laws 1991, the said bye-law does not empower the Board demolish or to seal the hotel building. Further, according to the said notice three days time was granted to the petitioner to remove the alleged illegal construction. But without waiting for the stipulated period, the demolition was started by the Board on 22.4.2006 itself. Therefore, the giving of the notice is merely an eye-wash; it is a sheer formality. It places the entire law with regard to the giving of notice on its head.

19. Thirdly, according to the judgments of the civil courts, as mentioned above, the petitioner was the owner of the property situated in "Bangla Ghat" and "Kishangarh Kunj". According to the judgments, the petitioner could neither be dispossessed, nor his peaceful possession be disturbed by the Board. However, the brutal action of demolition, on the part of the Board, had clearly made a mockery of the judgments passed by the civil courts in favor of the petitioner.

20. Fourthly, the petitioner's case does not fall within the provisions of Sections 170 and 203 of the Act of 1959. Therefore, the Board has wrongly invoked the said provisions.

21. Fifthly, even the report of the Commissioner is against the Board. Since the Report was prepared by the Divisional Commissioner, the State cannot disown the report. According to the Report, the action of the Board was held to be illegal.

22. Lastly, the notices issued and the action of the Board are clearly in violation of the fundamental rights of the petitioner under Articles 14, 19, 21 and 300A of the Constitution of India.

23. On the other hand, Mr. K.N. Gupta and Mr. R.P. Garg, the learned Counsel for the Board, have raised a preliminary objection that the petitioner has already filed a civil suit for permanent injunction, bearing Civil Case No. 36/2006, before the Additional District Judge No. 1 Ajmer. The petitioner has prayed for identical reliefs both in the suit and in the writ petition. But, once a civil suit has been filed and is pending, the petitioner is pre-empted from filing the writ petition. Therefore, the writ petition is not maintainable.

24. Secondly, there is no distinction between the bye-law 4(1) and 4(2) of Bye-laws 1991. While bye-law 4(1) creates an absolute bar against running of hotels, bye-law 4(2) merely creates an exception for those hotels which were already running when the Byelaws 1991 were brought into force. Moreover, bye-law 4(2)

of Byelaws 1991 bestows a discretionary power on the Executive Officer of the Board to decide as to how to control or supervise the functioning of the hotels/restaurants/houses. Since there is no distinction between the bye-laws 4(1) and 4(2), it is immaterial whether the impugned notices, as mentioned above, were issued under bye-laws 4(1) or 4(2) of Byelaws 1991.

25. Thirdly, prior to issuance of notices, a survey report was prepared to demarcate those premises which fell within 100 ft. of the Pushkar Lake. In order to protect the lake from encroachment and pollution, the Executive Officer of the Board was within his power to issue notice and to demolish the encroachment/illegal construction.

26. Fourthly, from 14.4.2006 till 28.4.2006, repeatedly notices were issued to the petitioner to stop his illegal construction and to seek prior permission of the Board. Since the petitioner did not pay any heed to the said notices, the Board had no other option, but to remove the illegal construction and seal the rooms of the hotel.

27. Fifthly, since ample opportunities were given to the petitioner, the demolition carried out by the Board on 22.4.2006 was absolutely justified and, therefore, legal.

28. Lastly, according to Mauka-report (Annexure R-3/13) the petitioner had illegally raised construction. The Board has ample power under Sections 170 and 203 of the Act of 1959 to remove, the illegal construction/encroachment done by the petitioner. Therefore, the Board was justified under Sections 170 and 203 of the Act of 1959 in demolishing the same.

29. While echoing the arguments of Mr. Gupta and Mr. Garg, Mr. G.S. Gill, the learned Additional Advocate General, has contended that whereas bye-law 4(1) of Bye-laws 1991 is a general provision, bye-law 4(2) is an exception. The petitioner's case is certainly covered by bye-law 4(2) of Bye-laws 1991. However, once the appropriate authority has decided not to permit the petitioner to run his hotel, his case falls within the general provision contained in byelaw 4(1). Thus the Board was justified in issuing notice under bye-law 4(1) of Bye-laws 1991. Secondly, the petitioner is a trespasser as the petitioner has carried out certain construction without the prior permission of the Collector. The petitioner could not have carried out renovation/construction till the collector has expressed his opinion. Therefore, the petitioner's illegal construction/encroachment could be demolished.

30. Heard learned Counsel for the parties, examined the impugned notice, and perused the record.

31. The preliminary objection raised by the learned Counsel for the Board is unacceptable. For, according to both the parties the civil suit was filed prior to issuance of the notice dated 28.4.2006. Therefore, in the civil suit the notice dated 28.4.2006 was not under challenge. However, in the present writ petition

the said notice is under challenge. Thus, the relief prayed in the civil suit and the writ petition are not identical in nature. Moreover, since the State has violated the fundamental rights of the petitioner, as will be discussed herein below, the petitioner is certainly entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, the preliminary objection is, hereby, rejected.

32. This case raises interesting legal issues which are as under:

1. What is the scope and ambit of Bye-laws 1991?
2. How are bye-laws 4(1) & 4(2) to be interpreted?
3. What is the scope and ambit of Sections 170 and 203 of the Act of 1959?
4. Are these provisions applicable to the petitioner's case?
5. Does the Board have the power to seal rooms or to demolish illegal construction/encroachments?
6. Under the principles of natural justice is the giving of notice an essential requirement?
7. What are the requirements dealing with giving of notice?
8. Can the Board demolish the alleged illegal construction within the period specified in the notice for removing the illegal construction/encroachment?
9. Whether the brutal use of force by the State, in demolishing the building and sealing the rooms, has violated the petitioner's fundamental rights under Articles 14, 19, 21 and 300A of the Constitution of India or not?

33. For centuries, the State, whether monarchical or dictatorial, feudal or oligarchies, have crushed the people. When "We the people" created the Constitution of India, we conferred the role of archangel on the Judiciary. The founding fathers bestowed vast powers on the High Courts under Article 226 of the Constitution of India. It is the duty of the High Court to protect the people from the might of the State. It is the duty of the High Court to promote the interest and the rights of the people. As the guardians of the people, it is the duty of the judiciary to be sensitive to the needs, the plight, the conditions of the people. This duty is not only a constitutional one, but also verges on being a sacred one. It is for this reason that the Hon'ble Supreme Court has observed that under Article 226 of the Constitution of India "the sky is the limit when injustice is being chased". On the other hand, the failure to perform this duty would undermine the trust of the people in the judiciary. It would, also, weaken democracy as we know it. Plato in his book. The Republic, has warned that democracy degenerates into an anarchy. If anarchy is to be prevented, the judiciary must fulfill its constitutional role. The flames of Liberty, Equality, Justice and Fraternity have to be kept alive if we are to thrive as the largest democracy in the world.

34. With the 73rd Amendment of the Constitution, and the insertion of Part IX A into the Constitution, vast powers and responsibilities have been conferred on the municipalities. Undoubtedly, it is the duty of the municipality to create, maintain and improve the infrastructures of urban centers, to ensure clean environment, to guarantee quality of life to the people. At the grass root level, the municipality is the reflection of the State. Thus, while discharging its functions, it should be alive to the constitutional philosophy and mandates. The Constitution has created a relationship of trust between the State and the people. While the sovereignty lies with the people, the responsibility of protecting and promoting the interest of the people lies with the State. Hence, the State, too, should be sensitive to the needs, the interest and the rights of the people. In case the State were to act in a despotic or maverick manner, it would be violating the responsibility reposed by the Constitution. Different parameters of the Constitution require that the State must act in a reasonable, just and fair manner. Wisely it has been said that reasonableness runs like a golden thread through the Constitutional fabric. But the thread doesn't stop at the seams of the Constitution; it continues through the weaves of the statutes and through the tapestry of Rule of Law. Hence, every State action should be tested on the touchstone of reasonableness, justness and fairness. Any action which is unreasonable, unjust or unfair would be an anathema to the Constitutional tenor. An action which violates the Constitutional dicta can never be upheld by the Courts.

35. In order to safeguard the pristine quality of Pushkar, the Bye-Laws 1991 were promulgated. Since the interpretation of some of the provisions of the Bye-laws is the bone of contention in this case, the relevant provisions are reproduced as under:

Bye-law 2(5) defines the word "a house" as under:

House means a temporary or permanent house, premises or place which is used by the people, or for the animals, or for collection of things, or which is used for residential, commercial, or religious purposes.

Bye-law 2 (10) defines "the Sarovar" (the lake) as the entire area of Khasra No. 858 as mentioned in the Revenue record.

Bye-law 2(12) defines the word, "a hotel" as under:

A house, which is used by Indian or foreign tourists for staying, temporarily or otherwise, for eating and drinking, for staying overnight, or for the purpose of washing themselves, where consideration is paid for using the facilities. It also includes "dharmashalas" (accommodations provided by religious or charitable institutions). Since Bye-law 4 is the bone of contention in this case, it is being reproduced in Hindi as under:

4?1? iq"dj {ks= dh lhek esa cus gq, edkuksa dks bu mifof/k;ksa dks izHkko"kh gksus ds i"pkr gksVy ds mi;ksx esa ugh fy;k tkosxk vkSj u gh mDr edkuksa dks

gksVy esa ifjofrZr fd;k tkosxk A

(After coming into force of these Bye-laws, houses, falling within the area of Pushkar Lake, can neither be used as hotels, nor can be converted into hotels)

4?2? iq"dj ljksoj {ks= dh lhek esa dksbZ gksVy bu mifof/k;ks dks izHkko"khy gksus ls iwoZ pyk;k tk jgk gS rks ml gksVy dks fu;fer] fu;af=r djus ds vko;"d funsZ"k bu mifof/k;ksa dks fdz;kfUor gsrq iznku djus dk iw.kZ vf/kdkj iq"dj ds vf/k"kk"kh vf/kdkjh dks gksxk A

(The Executive Officer shall pass the necessary directions for regulating, controlling the functioning of those hotels which fall within the area of the Pushkar Lake and which were functioning prior to the coming into force of these Bye-laws.)

Bye-law 7 (1) empowers the Inspector, Executive Officer, Sanitary Officer or any other authorised officer of the Board to inspect the house between sunrise and sunset. The owner of the house is legally required to permit such authorised person to inspect the building. In case dirty water or drainage is found to flow towards the Sarovar, or in case any construction is found in the Sarovar area without the permission, or in case any violation of Bye-laws is discovered, then the Board is required to give a notice to the owner to inform him about the violation and to comply with the bye-laws. The person served with such a notice can file an appeal before the Board within seven days of receipt of the notice.

By-law 7(2) further states that in case compliance is not made by the owner of the building, the Executive Officer can comply with the requirement of the bye-laws at the expenses of the owner, which shall be recovered from the owner.

Bye-law 8 contains a penal provision and states that a person who fails and does not comply with the Bye-laws even after serving of the notice and directions, he shall be presented before a Magistrate and is liable to be penalized with fine of minimum of Rs. 100/- and maximum of Rs. 500/-. In case the person is found to repeat the violation of the Bye-laws, he shall be liable to pay a fine of Rs. 50/- per day. In case he fails to pay the fine, the person shall be liable to suffer three months of simple imprisonment.

Lastly, bye-law 9 deals with repeal and savings.

36. A bare perusal of bye-law 4 clearly shows that it is divided into two parts, These two parts deal with two different time sequence. The first part, bye-law 4 (1), deals with the post-1991 period. It deals with conversion or utilization of the houses into a hotel after the Bye-laws have come into effect. The second part, bey-law 4 (2), deals with the pre-1991 period. It deals with those houses which were already running as hotels/restaurants/dharmashalas prior to the coming into force of the Bye-laws. The former absolutely prohibits the conversion or the utilization of a house into a hotel. The latter grants a limited power to the Executive Officer "to regulate, to control, or to give directions" for the purpose of carrying out the aims of the Bye-laws 1991. Therefore, while the former grants a

vast power to the Board to absolutely prohibit the conversion or utilization of a house into a hotel, the latter vests a limited power on the Board. Thus, the total bar contained in bye-law 4(1) cannot be applied to those houses which were running as hotels etc. prior to 1991. In other words, under bye-law 4 (2), the Executive Officer does not have the power to absolutely ban the running of the hotel etc.

37. The contention raised by Mr. R.P. Garg that there is no difference between the two parts of Bye-law 4 is clearly untenable. For, such a contention is against the canons of interpretation, namely that no provision is meant to be redundant. In case bye-laws 4 (1) and 4(2) were identical in their scope, then bye-law 4 (2) is redundant. Redundancy could not be the intention of the creator of the Bye-laws. Thus, such a contention deserves to be rejected.

38. The contention raised by Mr. G. S. Gill that once the permission under bye-law 4 (2) is rejected, the case would fall under bye-law 4 (1) is equally unacceptable. For the plain and grammatical meaning of bye-law 4 does not lead to such a conclusion. Thus, such an interpretation is an artificial one having no legal basis.

39. Obviously, bye-law 4 has divided the homogeneous class of houses/hotels/restaurants/dharmshala, situated within hundred feet of the Lake, into two different classes: those which were operating as hotels etc. prior to 1991, and those which would be converted/utilized as hotels after 1991. The two classes are dealt with differently. This classification has a logical purpose too. Considering the importance of Pushkar as a tourist destination, considering the economic benefits from the tourism industry, obviously all the hotels which fall within the hundred feet of the Lake can not be closed, especially since many of them are running for number of years. These hotels, at best, can be controlled, supervised or issued directions so as to minimize pollution of the lake. But those houses which are not yet converted/utilized as hotels etc after 1991, they can be banned from such conversion and utilization, so as to eliminate the increase in pollution in the area of the lake.

40. A bare perusal of the Bye-laws 1991 also reveals that under the garb of "controlling, supervising or issuing directions", the Board does not have the power to demolish or to seal the rooms of a hotel. According to bye-law 7 if any violation of the Bye-laws is discovered, the Board is required to give a notice to the violator. The person so served with a notice also has a right to file an appeal against the notice within seven days of the receipt of the notice. Further, bye-law 8 contains a penal provision. The person who fails to comply with the Bye-laws even after service of the notice and directions, such a person shall be produced before a Magistrate and is liable to fine. If the person repeatedly defaults in following the directions or continues to violate the Bye-laws he is liable to pay the fine on daily basis. In case he defaults in paying the fine, then the person is liable for three months of simple imprisonment. Hence, the only action the Board can take against a defaulter is under Bye-laws 7 and 8. Under the Bye-law 1991,

the Board cannot demolish the illegal construction/encroachment, or seal rooms of a hotel.

41. The parties are consensus ad idem that the petitioner's hotel started functioning in 1981. Thus, the petitioner's hotel was running prior to 1991. Hence, clearly, petitioner's case is covered under byelaw 4(2) and not by byelaw 4(1) of the Bye-laws 1991.

42. A bare perusal of notice dated 14.4.06 clearly reveals that the said notice was issued under bye-law 4(1) of Bye-laws 1991. Therefore, the said notice could not have covered the hotel run by the petitioner. Moreover the said notice gives a threat that the hotel would be seized. But the power seize the hotel has not been bestowed under the Bye-laws 1991. Therefore, the said notice is ultra vires the powers of Bye-laws 1991.

43. There is some dispute between the parties regarding the service of notice dated 19.4.06 on the petitioner. According to petitioner the said notice was never served upon him. But according to Board, the said notice was served upon the petitioner. Even if the said notice were served upon the petitioner, the said notice does not help the case of the Board. For, according to notice the petitioner had encroached upon "Bangla Ghat" and "Kishangarh Kunj". Thus, he was directed to remove the encroachment within twenty-four hours. However, according to "Najri-Naksha", submitted by the Board as Annexure R-3/15, the wall of the hotel which was demolished did not exist either in "Kishangarh Kunj" or in "Bangla Ghat". In fact, the said wall existed on "Jaipur Ghat". Thus, while the petitioner was directed to remove the encroachment at "Kishangarh Kunj" and "Bangla Ghat", yet the wall at "Jaipur Ghat" was demolished. Therefore, the notice dated 19.4.2006 does not relate to the part which was eventually demolished on 22.4.2006. Interestingly, it is not the case of the Board that the petitioner had encroached upon "Jaipur Ghat". Yet, according to Annexure R-3/15 the walls constructed by petitioner at Jaipur Ghat were demolished. Therefore, the demolition of walls of petitioner's hotel was absolutely illegal.

44. Moreover, in the map (Annexure R-3/15) the existence of "Kishangarh Kunj" and "Bangla Ghat" has not even been shown. From this map it is unclear as to on which part of "Kishangarh Kunj" or "Bangla Ghat" the encroachment was made by the petitioner. Another map, Annexure R-3/32, submitted by the Board does show the existence of "Bangla Ghat". But this map is conspicuously silent about the existence of Hotel Pushkar Palace. The very location of Hotel Pushkar Palace at "Bangla Ghat" and alleged encroachment made by petitioner are, hence, absolutely unclear. In absence of documentary evidence, the Board has failed to prove the alleged encroachment made by the petitioner at "Bangla Ghat" or "Kishangarh Kunj".

45. According to the petitioner, the notice under bye-law 4(2) dated 22.4.2006 was never served upon him. According to him, he received the same only on 27.4.2006. However according to the Board, as the Manager of the Hotel refused

to accept the said notice, the notice was pasted on the wall of the hotel before two independent witnesses. According to notice petitioner's hotel falls within 100 ft. area from Sarovar. Furthermore, the Executive Officer declined to grant permission, as the grant of permission would be against the prestige of the Sarovar. Moreover, the notice had granted 3 days time to petitioner to close down the commercial activities and close down the hotel.

46. According to both parties, despite giving of the notice for 3 days, the demolition started immediately on 22.4.2006 itself. The Board has admitted this fact in its report (Annexure R-3/12) entitled "Pushkar Clean Abhiyan Report". According to said report, on 22.4.2006 rooms of the Hotel Pushkar Palace were seized and walls constructed at Bangla Ghat were demolished. According to the report, 3-4 ft. of the said walls was demolished on 22.4.2006 itself. Furthermore, the demolition continued up to 24.4.2006. Restaurant of the hotel was demolished on 25.4.2006. The debris was removed till 26.4.2006. This report has been signed by the Executive Officer.

47. The action of the Board was also subject matter of the enquiry conducted by Mr. Deepak Upreti, IAS, Divisional Commissioner, Ajmer. The said report has been submitted before this Court and is available on record. The said report was prepared after recording of the statements of Sub Divisional Officer, Naib Tehsildar, Executive Officer, Municipal Board, Addl. S.P. Rural, the petitioner and other social organisations such as Teachers Parents Union, District Ajmer Puspa Vikas Sanstha, Mahatma Jyotiba Phoolke Rastriya Jagrati Manch Ajmer, Pushkar Food Utpadak Vikas Sanstha. Before the Divisional Commissioner twenty-one documents were also submitted.

48. The report contains scathing comments on the action of the Board. According to report, prior to carrying out the demolition, the Board did not carry out any survey to see which building/hotel/house, or restaurant fell within 100 ft. of the lake. Secondly, the hotel was constructed on the land owned and possessed by the petitioner. Thirdly, the construction was carried out as per the approved plans-plans approved by the Board itself. Fourthly, the Building Committee had recommended to the Collector, in 2002, for approval of the renovation of the rooms. However till date the matter was pending before the Collector. Fifthly neither under Bye-laws 1991 nor under the provisions of Act of 1959 the Board has power to seize the rooms or to demolish the alleged illegal construction. Sixthly the demolition of petitioner's property was carried out prior to ending of the stipulated period of three days in the notice dated 22.4.2006. Lastly, that the demolition of property was carried out only against the petitioner's hotel and not against any other hotel which fell within 100 ft. of the lake. Thus, the learned Divisional Commissioner concluded that the Board had discriminated against the petitioner in a hostile manner; the officer of the board had acted ultra vires their jurisdiction. Therefore, he held them personally liable for their illegal action.

49. Interestingly, the inquiry was held by the Divisional Commissioner of Ajmer under whose jurisdiction Pushkar falls. In his Report, the learned Commissioner

has exposed the illegalities committed by the Board, Since the Report was prepared at the behest of the State, the State cannot disown it. In fact, it is bound by it. Even this Court is in agreement with the findings of the Report.

50. Notice dated 28.4.2006 has been passed under bye-law 4(1) of Bye-laws 1991. This notice has been challenged by the petitioner. But, before this notice can be analyzed, it is pertinent to refer to the importance of notice. Notice is a part of principles of natural justice and its requirement is part of administrative law. Hence, let us first consider the principles of natural justice and the requirements of administrative law.

51. Principles of natural justice, part of Natural Law theory of jurisprudence, have an ancient lineage. According to Natural Law theorists" law originates and derives its existence from a divinity, or from Nature itself. According to these jurists, Man, being a noble soul, can decipher the existence of laws in nature and can apply them to his own conduct. Thus, unlike Positive Law, natural law pervades Nature and has been granted by the divine power. The concept of law from divinity infused morality into positive law. Although Positive School denied the divine origin of Law, nonetheless it does believe that there are certain principles of natural justice which pervade and envelop even positive law.

52. One of the fundamental principles of natural justice is embodied in the Latin maxim "audi alteram partem", which means "hear the other side". This principle requires that before any adverse action can be taken against any person, the person should be put to a notice, or should be informed about the circumstances, which have arisen, or which warrant that an adverse action is contemplated against him. Thus, a notice has to be given to the person whose interest or rights, civil or fundamental, are about to be adversely affected. Consequently, opportunity of hearing has to be granted, wherein the person has an opportunity to put up his defense, or place his side of the story before the authority contemplating action against him. Hence, this principle requires a two tier procedure.

53. In case of Canara Bank and Others Vs. Shri Debasis Das and Others, , the concept of principles of natural justice was extensively dealt with by the Hon"ble Supreme Court. The Apex Court observed as under:

Natural justice has been variously defined. It is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure

that may be adopted by a judicial, quasi judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law; As Lord Buckmaster said, no form or procedure should ever be permitted to. exclude the presentation of a litigants defence. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognised by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

While dealing with the contents of the Principles of Natural Justice, the Apex Court observed as under:

Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" that is, "no man shall be a judge in his own cause". The second rule is "audi alteram partem", that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

With regard to giving of notice, the Apex Court held as under:

Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time.

54. In the present case the notice dated 28.4.2006 as well as the previous notices need to be examined under the above principles annunciated by the Hon''ble Supreme Court. During the course of arguments, this Court asked the learned Counsel for the Board to produce the survey which was carried out before the issuance of notices referred to above. Although the counsel claimed that such a survey report existed, but they failed to produce the same before this Court. According to the Report of the Divisional Commissioner, no such survey was carried out prior to the Board issuing notices to the petitioner. Thus, till 28.4.2006, it was absolutely unclear whether the petitioner's hotel fell within 100 ft. of the Lake or not. Yet the notice 28.4.2006 claims that large number of hotels, including the petitioner's hotel, falls within the 100 ft. of the Lake. In the absence of any survey report, it is rather surprising that the Board has concluded that hotels, restaurants and institutions fell within the 100 ft. of the lake. Such a conclusion is not based on any empirical data; the conclusion seems to be based on conjectures and surmises drawn by the Board. However, any adverse action contemplated against a person must be based on empirical data and objective assessment. Thus, the very basis for issuance of notice dated 28.4.2006 is nonexistent. Therefore, the notice dated 28.4.2006 suffers from non-application of mind.

55. The impugned notice has been issued under bye-law 4(1) of Bye-laws 1991. As interpreted earlier, bye-law 4(1) of Bye-laws 1991 does not apply to the petitioner's hotel. Hence, the notice cannot be applied to the petitioner's property. In fact, the notice does not make a distinction between the properties which started running as hotel prior to 1991, or which started after 1991. The Bye-laws 1991 warrant that such a distinction be made. Thus, the notice again suffers from non- application of mind.

56. As interpreted earlier, bye-law 4 of Bye-laws 1991 creates two distinct classes as per its clauses. However, the impugned notice merges the two distinct and separate classes into a homogeneous class. Hence it violates the very concept of equality. For, equality demands that two separate and unlike groups cannot be treated alike.

57. As stated above, while bye-law 4(1) of Bye-laws 1991 contains an absolute

bar, bye-law 4(2) give a limited power to the Executive Officer of the Board "to control, supervise and to issue necessary directions" for the functioning of hotels, restaurants and other institutions. However, in the garb of exercising its power under bye-law 4(1) of Bye-laws 1991, the Executive Officer over stepped his jurisdiction to cover the petitioner's hotel. Therefore, qua the petitioner's property, the notice dated 28.4.2006 is ultra vires the jurisdiction of the Board.

58. Furthermore, the said notice suffers from a great weakness as it nowhere specifies the nature of illegal construction or encroachment carried out. Moreover, it does not give a reasonable time for the petitioner to remove the alleged illegal construction/encroachment. Instead it holds a threat of coercive action against the petitioner u/s 170(11) and 203 of the Act of 1959.

59. Section 170 of Act of 1959 reads as under:

170. Provisions relating to erection of buildings.:

(1) Before beginning within the limits of the municipality:

(a) to erect a new building or new part of a building, or

(b) to re-erect or make a material alteration in a building in a building,

or

(c) to erect or re-erect any projecting portion of a building in respect of which the board is empowered by Section 166 to enforce a removal or set-back, or

(d) to make or enlarge a well, the person intending so to erect or reerect or make or enlarge shall give notice of his intention to the board.

(2) The notice referred to in Sub-section (1) as required in the case of a building shall only be necessary where the building abuts on, or is adjacent to a public street or place or property vested in the State Government or in the board, unless, by a bye-law applicable to the area in which the building is situated, the necessity of giving notice is extended to all buildings.

(3) An alteration in a building shall, for the purpose of this section and of any bye-law in relation thereto, be deemed to be material:

(a) if it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene, or.

(b) if it increases or diminishes the height of the area covered by, or the cubical capacity of, the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any bye-law, or

(c) if it converts into a place for human habitation a building or part of a building, originally constructed for other purposes, or

(d) if it is an alteration declared by a bye-law made in this behalf to be a material

alteration.

(4) Where a bye-law has been made prescribing and requiring any information and plus in addition to a notice, no notice under Sub-section (1) shall be considered to be valid until the information and plans, if any, required by such bye-law, have been furnished to the satisfaction of the board.

(5) Where no such bye-law has been made the board may within a fortnight of the receipt of the notice under Sub-section (1), require the person who has given such notice to furnish a plan and specification of any existing or proposed building or part of a building or well together with a site plan of the land with such reasonable details as the board may specify in its requisition and, in such case, the notice shall not be considered to be valid until such plans and specifications have been furnished to the board.

(6) Save as otherwise provided in this Act or the rules or byelaws thereunder, the board may:

(a) give permission to execute any work of which notice has been given under Sub-section (1), or

(b) impose in writing conditions in accordance with this Act and the rules and bye-laws thereunder as to level, drainage, sanitation, design, materials and cubical capacity of rooms, doors, windows, and apertures for ventilation or as to the number of storeys to be erected or with reference to the location of the building in relation to any existing building or existing street or as to the purpose for which the building is to be used, or

(c) direct that the work shall not be proceeded with, unless and until all questions connected with the respective location of the building and any public street have been decided to the satisfaction of the board.

(7) In the case of a city the council may before issuing any orders under Sub-section (6) and within one month from the receipt of the notice under Sub-section (1):

(a) issue a provisional order directing that for a period which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or

(b) demand further particulars.

(8) Should the board neglect or omit for one month after the receipt of a valid notice under Sub-section (1) or after the receipt of further particulars demanded under Clause (b) of Sub-section (7) to make and deliver to the person who has given such notice and order of the nature specified in Sub-section (6), such person may by a written communication call the attention of the board to the omission or neglect and, if such omission or neglect continues for a further period of fifteen days from the date of such communication, the board shall be deemed to have sanctioned the proposed work absolutely and such work may be

proceeded within the manner specified in the notice: Provided that nothing in this sub-section shall be construed to authorise any person to act in contravention of any provision of this Act or of any bye-law thereunder.

(9) No person who becomes entitled under Sub-section (6) or Sub-section (8) to proceed with any work of which notice is given under Sub-section (1) shall commence such work after the expiry of the period of one year from the date on which he has become entitled so to proceed therewith except in pursuance of a fresh permission granted in accordance with the foregoing provisions of this section.

(10) The chairman, the executive officer and, if authorised in this behalf by resolution, any other member, officer or servant of the board, may at any time and without giving notice of his intention to do so inspected any work in respect of which notice is required under Sub-section (1) while under construction, or within one month of the receipt of a report that it has been completed or, in default of such report at any time after the completion and may by written notice specify any matter in respect of which the execution of such work may be in contravention of any provision of this Act or of any bye-law thereunder, and require the person executing or, who has executed the work or, if the person who has executed the work is not owner thereof, the owner of the work, to cause anything done contrary to any such provision or bye-law to be amended or to do anything which by any such provision or bye-law, he may be required to do, but which has been omitted.

(11) Whoever begins, continues or completes the erection or re-erection of, or any material alteration in, a building or a part of building or a part of building or the erection or re-erection of any projecting portion of a building in respect of which the board is empowered by Section 166 to enforce a removal or set-back or the construction or enlargement of a well without giving the notice required by Sub-section (1) or in contravention of any provision of this section or of an order of the board made under Sub-section (7) shall be liable on conviction to a fine which may extend to two hundred rupees and the board may at any time by written notice:

(a) direct the owner or occupier to stop the erection, reerection or alteration of a building or any projecting portion thereof, or of any part of such building or projecting portion or the construction or enlargement of a well, and

(b) require such building, projecting portion, alteration or well to be demolished.

(12) Any person aggrieved by an order of a board under Clause (a) or Clause (b) or Clause (c) of Sub-section (6) or Clause (a) or Clause (b) of Sub-section (11) may, within thirty days from the date of such order, exclusive of the time requisite for obtaining a copy thereof appeal to the Collector and no such order shall be liable to be called in question otherwise than by such appeal.

Provided that in relation to a corporation, this sub-section shall have effect as if

for the expression "the Collector", the expression "the State Government or such officer as may be authorised by it in this behalf were substituted therein.

(13) The appellate authority may, if it thinks fit, extend the period allowed by Sub-section (12) for appeal.

(14) The order of the appellate authority shall be final.

(15) No order passed by the board shall be modified or set aside in appeal under Sub-section (12) until the appellant and the board have had a reasonable opportunity of being heard.

60. A bare perusal of Sub-sections 11 and 12 of Section 170 of Act of 1959 clearly reveals that a duty has been cast on a person, who wishes to construct a building or erect a part of the building etc. to inform the Board by sending a notice. Sub-section 11 of Section 170 of Act of 1959 contains a penal provision. It makes a person liable to fine. It also empowers the Board to send a notice to the person to stop the erection, re-erection or alteration of a building etc., or require the person to demolish the building, projecting portion or alteration. Sub-section 12 of Section 170 of Act of 1959 further bestows the right of appeal to the person to file the appeal within a period of thirty days of the order issued by the Board under Sub-section 11. A bare perusal of this provision clearly reveals that the said provision does not empower the Board to demolish the construction, re-erection, material, alteration, in a building. Therefore, in the instant case the Board could not have derived the power to demolish the petitioner's property. Moreover, notice dated 22.4.2006 does not refer to Section 170 or 203 of 1959 Act. Hence, the Board could not have demolished the petitioner's property in the garb of invoking its powers u/s 170 of 1959 Act. Furthermore, although the impugned order dated 28.4.2006 does refer to the Sections 170 and 203 of Act of 1959, but no action could be taken by the Board for a period of one month, as sub-section 12 of Section 170 confers a right to appeal within thirty days of the impugned order. Hence, the threat of taking action u/s 170 of Act of 1959 is meaningless.

61. Section 203 of Act of 1959 reads as under:

203. Encroachment or obstruction upon public land.-(1) whoever makes any encroachment in any land or space not being private property, whether such land or space belongs to or vests in the Board or not, except steps over drain in any public street shall on conviction be punished with simple imprisonment which shall not be less than one month but which may extend to three years and with fine which may extend to twenty thousand rupees:

Provided that the court may for any adequate or special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one month.

(2) Whoever makes any obstruction in any land or space not being private property, whether such land or space belongs to or vests in the Board or not,

except steps over drain in any public street shall on conviction be punished with simple imprisonment which may extend to one month or with fine which may extend to two thousand rupees or with both.

(3) The Board or any officer authorised by it in this behalf shall have power to remove any such obstruction or encroachment and the expenses of such removal shall be paid by the person who has caused the said obstruction or encroachment.

(4) Whoever not being duly authorised in that behalf removes earth, sand or other material from any land or space as aforesaid, shall be punished on conviction with imprisonment which may extend to six months or with fine which may extend to ten thousand rupees or with both.

(5) Notwithstanding anything contained in the foregoing provisions, the Board or the officer authorised by it in this behalf shall, in addition to the action taken as provided in this section, also have power to seize or attach any property found on the land or space referred to in this section or, as the case may be, attached to such land or space or permanently fastened to anything attached to such land or space.

(6) Where any property is seized or attached by an officer authorised by the Board, he shall immediately make a report of such seizure or attachment to the Board.

(7) The Board may make such orders as it thinks fit for the proper custody of the property seized or attached, pending the conclusion of confiscation proceedings, and, if the property is subject to speedy and natural decay, or it is otherwise expedient so to do, the Board may order it to be sold or otherwise disposed of.

(8) Where any property is sold as aforesaid, the sale proceeds thereof after deduction of the expenses of any such sale or other incidental expenses relating thereto, shall:

(a) where no order of confiscation is ultimately passed by the Board; or

(b) where an order passed in appeal so requires, be paid to the owner thereof or the person from whom it is seized.

(9) Where any property is seized or attached under Sub-section (5), the Board may order confiscation of such property.

(10) No order for confiscating a property shall be made under Sub-section (9) Unless the owner of such property or the person from whom it is seized or attached is given:

(a) a notice in writing, informing him of the grounds on which it is proposed to confiscate the property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(11) The order of any confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act.

(12) Any person aggrieved by an order made under Sub-section (7) or Sub-section (9) may, within one month from the date of the communication to him of such order, appeal against it to the District Judge of the District in which property is seized or attached.

(13) On such appeal the District Judge may, after giving an opportunity to the appellant and the respondent to be heard direct the order to be stayed pending disposal of the appeal, or may modify, alter or annul the order and make any further orders that may be just.

(14) Whenever any property is seized or attached pending confiscation under this section, the Board or the District Judge shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or other authority shall not have jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such property.

(15) Where any person is prosecuted of an offence under Sub-section (1) or Sub-section (2), the burden of proving that he has not committed the offence shall be on him.

(16) Nothing contained in this section shall prevent the Board from allowing any temporary occupation of or erection in any public street on occasions of festivals and ceremonies, or the piling of fuel in any streets and spaces for not more than four days and in such manner as not to inconvenience the public or any individual

(17) Nothing contained in this section shall apply to any projection duly authorised under Sub-section (1) of Section 94 or in any case where permission has been given under Sub-section (16) of this section.

(18) Whoever, being an employee of the Board, specifically entrusted with the duty to stop or prevent the encroachment or obstruction punishable under this section, willfully or knowingly neglects or deliberately omits to stop or prevent such encroachment or obstruction shall, on conviction, be punished with simple imprisonment for a term which may extend to one month or fine which may extend to one thousand rupees or with both: Provided that no court shall take cognizance against such employee for the offence punishable under this sub-section except with the previous sanction of the Board.

(19) No investigation of an offence under this section shall be made by an officer below the rank of a Deputy Superintendent of Police.

62. A perusal of Section 203 clearly reveals that while subsections 1, 2 and 4 are penal in nature, sub-section 3 empowers the Board, or any officer authorized by

it, to remove any obstruction or encroachment on any land, or space not being private land, whether such land or space belongs to or vests in the Board or not. Subsection 5 bestows power on the Board to seize or attach any property on the land or space, as mentioned above. Sub-section 6 imposes responsibility upon the officer authorized by the Board to report to the Board about the seizure or attachment of property. Sub-section 7 authorizes the Board to hold the property so seized and attached in custody till confiscation proceedings are concluded. If the property is subject to speedy and natural decay or it is otherwise expedient so to do, the Board may order for its disposal. Sub-section 9 empowers the Board to confiscate such property. However, sub-section 10 imposes a duty on the Board to give a notice, in writing, prior to confiscating the property and to give opportunity of hearing to the person. Subsection 12 confers a right of appeal upon the aggrieved person..

63. Since rest of the provisions are not germane to the controversy in issue, they need not be discussed here. What is pertinent is that while subsection 10 requires issuance of notice prior to confiscation being made, subsection 3 is silent on this point. However, in case the legislature in its wisdom wanted to oust the principle of natural justice, it would have clearly mentioned the ouster. Therefore, the principle of natural justice, specially necessity of giving of notice, has to be read even in the provision of subsection 3. Since destruction of a property, alleged to be an encroachment or illegal construction, would adversely affect the civil rights of a person, a notice is sine qua non before taking action u/s 203 of 1959 Act. Whether the public property has been encroached upon, or obstructed is a disputed question of fact, which would require a quasi-judicial or judicial adjudication. Therefore an opportunity of hearing has to be given before the encroachment or obstruction can be removed by the Board.

64. However, interestingly in the present case notice dated 22.4.2006 does not mention Sections 170 or 203 of Act of 1959. Therefore, the justification offered by respondent No. 3 before this Court, that they demolished the petitioner's property while exercising their powers u/s 203(3) of Act of 1959 is clearly an afterthought. As notice dated 22.4.2006 does not mention that the power u/s 203(3) of Act of 1959 is being invoked, obviously the demolition carried out by the Board was without any legal basis. The demolition seems to have been carried out in most arbitrary, unjust and unfair manner.

65. It is, indeed, trite to state that every action of the Government has to be just, fair and reasonable. Hence, the Board is expected to have given a precise notice, to have given a reasonable time, to have given an opportunity of hearing to the petitioner before deciding to take coercive action against him. Therefore, the said notice suffers from the virus of colorable exercise of power. By no stretch of imagination, can the said notice be held as legal.

66. From the Age of Enlightenment to the Post-modern world, the concept of inalienable rights or fundamental rights, acts as a gravitational force binding the very concept of democracy. From the clarion call of the American and the French

revolutions to the India's freedom struggle, the concept of Liberty, Equality and Justice is imprinted on the American, the French and the Indian Constitutions. Although the Indian Constitution does not recognize the right of property as a fundamental right, but nonetheless Articles 19 and 21 of the Constitution guarantee the fundamental right of "life" and "of livelihood". Article 21, dealing with the concept of life, prohibits the State from depriving a person of his right to life or of his right to livelihood, without following a procedure established by law. The Hon'ble Supreme Court while interpreting the scope and ambit of Article 21 has also transfused the entire concept of "due process of law" into the said Article. Indeed, Article 21 of the Constitution has been visualized as the soul of the Constitution. It is an Article that not only limits the power of the State, but also defines the function of the State. Simultaneously the Article protects the individual from the onslaught of the State machinery. It, therefore, places an armor around the individual's right "to life" and right "to livelihood" against the leviathan State. Under Article 21, before any adverse action can be taken against an individual, not only the procedure established by law has to be followed, but the due process of law also has to be observed immaculately.

67. As stated above, the Board, which is an embodiment of State, has to be alive to the constitutional mandate. In its action it cannot ignore, circumvent or violate the constitutional dicta. For, no State or instrumentality of the State can be permitted to commit sacrilege of the Constitution.

68. In the present case, the Board owed a constitutional duty to the petitioner to be fair, just and reasonable in its action. Before any notice could be issued to the petitioner, the Board was legally required to carry out a survey to see which hotel, restaurant, house or institution fell within the corridor of 100 ft. of lake. Admittedly, the Board singularly failed to carry out such a survey. Despite the lack of all these empirical data, the Board started spewing one notice after another, in its hot haste to implement the Bye-laws 1991.

69. Curiously from 1991, when the Bye-laws 1991 were promulgated, till 2006 the Board seems to have been hibernating. It hardly seems to have taken any effective steps for cleaning, beautifying, upgrading and maintaining the Pushkar Lake. Suddenly, in 2006, in a maverick fashion, the Board started issuing notices. It started invoking powers that did not exist. It started exercising the powers under the provisions, which were inapplicable in the case of petitioner. In its zeal to restore "the prestige" surrounding the lake", the Board demolished the petitioner's property.

70. Notice dated 19.4.2006 spoke of the illegal construction made by the petitioner at "Bangla Ghat" and "Kishangarh Kunj". The said notice gave only twenty-four hours time to remove the illegal construction. Surprisingly, as stated above, the very existence of "Bangla Ghat" and "Kishangarh Kunj" is in doubt. It is further unclear as to what illegal construction was carried out by the petitioner on these two Ghats. The notice is silent on the point of nature and extent of illegal construction and encroachment. The notice grants only twenty-four hours

to remove the illegal construction and encroachment. The time of twenty-four hours is highly inadequate and insufficient for the petitioner to remove the alleged illegal construction and encroachment. Thus the said notice suffers not only from vagueness, but also from unreasonableness.

71. On 22.4.2006 another notice was given to the petitioner. According to the said notice the permission could not be granted as it would be against "the prestige" of the lake. The very term "prestige" is not defined in the Bye-laws 1991. On what basis the Board has concluded that the grant of permission would be against the prestige of lake is not even spelt out. Moreover, in the notice three days time was granted to the petitioner to close down the commercial activities and to report the same to the Board. However, most shockingly, the bulldozers of the Board started demolishing the walls and restaurant of the petitioner, within the three days time so granted by the Board for closing down the commercial activities. It is, indeed, a settled principle of law that in case time has been given to a person to comply with the notice, no coercive action can be taken by the authority during that period. After all, a chance has to be given to citizen to set at right the default pointed out by the appropriate authority. During this period, the Board should have stayed its hand. But instead, the Board, with its might and machinery, started demolishing the property which was ironically constructed in accordance with the approved plans. During this period of three days the Board also sealed the rooms, although the Board does not have power to seal the rooms. Thus, the Board crossed all limitations of law. The illegal action of the Board has been commented upon adversely in the report of learned Divisional Commissioner. Clearly, the petitioner's fundamental rights under Articles 14, 19 and 21 of the Constitution of India have been trampled upon. The action of the Board cannot be upheld by any court of law. Since the Board has used its colossal power to pulverize the fundamental right to livelihood, the said action is deprecated in the harshest terms.

72. During the course of arguments learned Counsel for the Board and for the State have vehemently argued that the petitioner had encroached upon "Bangla Ghat" and "Kishangarh Kunj" and even on public road. Although no cogent and convincing evidence has been produced to buttress this contention, but nonetheless, this contention has been repeated like a mantra. In the absence of cogent and convincing evidence on record, it is difficult for this Court to conclude that the petitioner has, indeed, encroached upon Ghats or "public road". In fact, the petitioner has vehemently denied this allegation before this Court. Of course, it is not for this Court to go into this disputed aspect. But, even if this contention were true, even then the Board is not justified in issuing vague notices and demolishing the petitioner's property.

73. In case of Bishan Das and Others Vs. The State of Punjab and Others, the Hon'ble Supreme Court dealt with a case wherein a Dharamshala had been constructed on government land. The State of Punjab was of the opinion that legal heirs of original trustees were trespasser. Therefore, they could be ousted

from Dharamshala, temple and shops which were in dispute. In this background, the Hon"ble Supreme Court observed that if the State decides that trustees should be removed, it was open to the State to take legal action for that purpose instead of evicting them forcefully."

74. Similar view has been reiterated by the Hon"ble Supreme Court in case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others,

75. Similarly, in the case of Karam Singh and Others Vs. The State of Rajasthan and Others, a person, who was in possession of certain land on the basis of lease given by the Municipal Council, was ousted by the use of police force. This Court was of the opinion that in such a situation the remedy is to take action in accordance with Law. The court deprecated the use of police force to oust the person. Therefore, in the present case also the Board could not have used force against the petitioner. The Board is expected to take recourse to the legal remedies available to it.

76. It is, indeed, trite to state that the greater the power, the more judiciously it should be used. But, unfortunately in the present case, maturity on the part of the Board is conspicuously missing. The Board has ignored that it is a facet of the State- a State duly bound by the constitutional dicta. It is lamentable that the executive should behave so ruthlessly towards a citizen. Such high handedness, such acts of arrogance, such exhibition of executive fiat would surely shake the trust of the people in the Government; it would also undermine the concept of democracy. If such actions are not prevented, then democracy would certainly degenerate into anarchy as feared by Plato.

77. Therefore, for the reasons mentioned above, this Court has no hesitation in quashing and setting aside the impugned notice dated 28.4.2006 and declaring the action of the Board as illegal. There shall be no order as to costs.