

(2025) 12 RAJ CK 1708

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 17588 Of 2025

Krishan Gopal Ajmera

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 02-12-2025

Acts Referred:

Rajasthan Municipalities Act, 2009 — Section 194, 245

Citation : (2025) 12 RAJ CK 1708

Hon'ble Judges : Sunil Beniwal, J

Bench : Single Bench

Advocate : C.S. Kotwani, Tushar Thanvi, Rajesh Panwar, Monal Chug

Final Decision : Disposed Of

Judgement

Sunil Beniwal, J

1. The present writ petition was listed before this Court on 11.11.2025 on which date the respondents were granted a week's time to file an additional affidavit while placing on record the original construction permission in relation to the construction in question so also detailing out as to whom notices were issued as recorded in the proceedings dated 21.08.2025.

2. Learned counsel appearing for the respondents submits that the affidavit as directed by this Court on 11.11.2025 could not be filed, however, the original record of the proceedings is available for perusal of the Court.

3. Learned counsel for the parties submit that the pleadings in the writ petition are complete and the matter may be finally heard.

4. By the present writ petition, the petitioner has made following prayer :-

"It is, therefore, most respectfully and humbly prayed that the instant writ petition may kindly be ordered to be allowed and ;

(i) By an appropriate writ, order or direction, the impugned notice dated

26.08.2025 (Annex.5) may kindly be ordered to be quashed and set aside and respondents may kindly be directed to remove the illegal seizure with immediate effect over the shop in question situated at Shop No.5 Anand Dham Temple Premises, Bhilwara.

(ii) Any other order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case may kindly be passed in favour of the humble petitioner.

(iii) Cost of the writ petition may kindly be awarded in favour of the humble petitioner."

5. The facts in nutshell, as narrated in the writ petition, are that the petitioner is a tenant of Shop No.5, Anand Dham Temple Premises, Bhilwara (hereinafter to be referred as 'Shop in question') constructed by the respondent No.3 – landlord. The petitioner has given a sum of Rs.21 lacs in advance to the respondent No.3 and is also paying sum of Rs.1,000/- per month as rent. Petitioner is in possession of the shop in question since 2020 and is peacefully running his business. The grievance raised in the present writ petition is against the seizure proceedings undertaken by the Municipal Corporation, Bhilwara, whereby the shop in question has been seized on 26.08.2025 on the premise that the shops have been constructed in an illegal manner.

6. While challenging the said seizure proceedings, learned counsel for the petitioner has made following submissions :-

(i)- The seizure proceedings initiated by the respondent are in complete violation of principles of natural justice as the petitioner was never served any notice prior to commencement of the seizure proceedings. Therefore, the seizure proceedings are required to be quashed and set aside on the ground of violation of principles of natural justice.

(ii)- Respondents Nos.2 & 3 are hands-in-glove and are attempting to oust the petitioner from the shop in question.

(iii)- The petitioner has paid a sum of Rs.21 lacs to the respondent No.3 and is regularly paying rent to the tune of Rs.1000/- per month as agreed and no default has been committed by the petitioner. The respondent No.3 is having hands-in-glove with the respondent No.2 and therefore, has purposefully not responded to the notice issued by the respondent- Municipal Council, Bhilwara prior to undertaking the seizure proceedings.

(iv)- The seizure proceedings have been initiated while exercising the powers under Section 194(7)(f) of the Rajasthan Municipalities Act, 2009 ('the Act of 2009'). It is stated that the respondent – Municipal Corporation could not have proceeded under Section 194(7)(f) and same can be invoked only if the construction is going on and the same is found to be contrary to the permission or the same is being raised without permission. In the present case, shops were constructed long back and therefore, the

proceedings under Section 194(7)(f) could not have been initiated. That being so, issuing of notice before seizure so also the seizure notice dated 26.08.2025 is wholly without jurisdiction.

(v)- The respondents could not have proceeded against the petitioner while invoking the provisions of Section 245 of the Act of 2009, as the shop in question is not existing over the public land and therefore, the respondents could not have proceeded against the petitioner while invoking power under Section 245 of the Act of 2009.

(vi)- Reliance has been placed on the judgment passed by the Division Bench of this Court in the case of Hari Ballabh Baheti

Memorial Charitable Trust, Bhilwara & Anr. Vs. State of Rajasthan & Anr. (D.B. Civil Special Appeal No.1233/2013), decided on 29.07.2015 so also the order passed by the learned Single Judge in the case of Lokesh Kumar Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.8143/2014), decided on 24.05.2016 and contended that the respondent authorities could not have proceeded against the petitioner.

7. Per contra, learned Senior Advocate – cum – AAG, Mr. Rajesh Panwar assisted by Mr. Monal Chug appearing for the respondents made following submissions:-

(i)- Learned Senior counsel while taking this Court to the original record, submitted that permission for raising construction of the shops in question was never obtained from the Municipal Corporation, Bhilwara. That being so, the shops in question were

constructed by the respondent No.3 without permission and therefore, the same amounts to illegal construction.

(ii)- While referring to Section 194 of the Act of 2009 and more particularly Section 194(7)(e) and 194(7)(f), learned AAG submitted that the respondent – Municipal Corporation can proceed under Section 194 of the Act of 2009 even in cases where construction is completed. The power under Section 194 of the Act of 2009 cannot be exercised solely on the on-going construction. As a matter of fact, the respondent authorities could also proceed against those persons, who have raised construction without permission or in violation of a permission.

(iii)- The remedy of appeal is available against the impugned order by filing appeal before the Director, Local Bodies under Section 194(12) of the Act of 2009. In view of the efficacious alternative remedy available, the present writ petition is not maintainable.

(iv)- Section 245(10) of the Act of 2009 specifically provides that while confiscating a property, the requirement to issue notice is to the owner of such property or the person from whom possession is taken at the time of seizure or attachment. In the present case, two notices were issued prior to the seizure proceedings. It is stated that owner of the property i.e. respondent No.3 has not

responded to both the notices and in these circumstances, the respondent No.2–Municipal Corporation, Bhilwara rightly proceeded to seize the shop in question.

(v)- While referring to the proceedings (Annex.R/2), learned counsel submits that there is reference given to 11 business persons while undertaking the seizure proceedings. It is stated that the authorities have uniformly proceeded against all the shopkeepers while undertaking the seizure proceedings.

(vi)- The contention of the petitioner that the respondents have proceeded in a discretionary manner and out of 11 shops, only 08 shops were seized, is fundamentally incorrect as from the record it could be verified that the respondent authorities have proceeded against all 11 shops of the Dharamshala. That being so, the allegation of acting in discretionary and arbitrary manner at the behest of respondent No.2 is totally incorrect.

Based on above submissions, learned counsel for the respondents submits that the writ petition be dismissed.

(vii) Reliance has been placed on the judgments passed by the Apex Court in the case of Esha Ekta Apartments Cooperative

Housing Society Limited & Ors. vs. Municipal Corporation of Mumbai & Ors. : (2013) 5 SCC 357 and Rajendra Kumar

Barjatya & Anr. vs. U.P. Avas Evam Vikas Parishad & Ors. : 2024 SCC OnLine SC 3767.

8. Heard learned counsel for the parties and perused the material available on record.

9. The bone of the contention in the present writ petition is to the fact that the petitioner is a tenant and the respondent – Municipal Corporation in collusion with private respondent has proceeded to seize the shop of the petitioner in violation of

principles of natural justice. It is to be noted that earlier notice was issued on 14.05.2025 to the respondent No.3 followed by second notice dated 26.08.2025. When no response was received by the respondent–Municipal Corporation, the seizure proceedings dated 26.08.2025 was undertaken. It is true that notice was not given to the petitioner, however, the notices were issued to the owner of the premises and therefore, it cannot be said that the authorities have proceeded without following the principles of natural justice.

Question as to whether it was essential to give notice to petitioner before undertaking seizure proceedings under Section 194 of the Act of 2009 or not shall be considered in forthcoming paras but first, it would be appropriate to decide the competency of the Municipal Corporation to proceed under Section 194 of the Act of 2009 against the petitioner.

10. The issue which has been raised by the petitioner is with regard to the

applicability of Section 194 of the Act of 2009 in the present case. Before proceeding further, it would be apposite to reproduce Section 194 of the Act of 2009 :-

"194. Provisions relating to erection of all kinds of buildings. - (1)

Within the limits of a Municipality, any person intending, -

- (a) to erect a new building; or
- (b) to re-erect or to make a material addition in a building; or
- (c) to erect or re-erect any projecting portion of a building; or
- (d) to make or enlarge any kind of well or boring ; or
- (e) to erect or re-erect any tower or similar structure on a land or building.

shall submit an application in the prescribed form to the Municipality along with the documents required under sub-Section

(2) before starting the construction.

Explanation.- The term "material addition" means any changes in existing set backs, coverage, height, land use and parking areas wherever such parking areas are mandatory under the law.

(2) (a) The application as mentioned in sub-Section (1) shall be accompanied by the following, namely:-

(i) all documents in support of the title over the land or the building, as the case may be, along with a personal affidavit on oath regarding the genuineness of the documents and undisputed title over the land or the building;

(ii) a photocopy of the receipt of the prescribed fee deposited with the Municipality;

(iii) six copies of the map (showing the details of the proposed work in different colour) and the site plan. The map would particularly show the specification of construction, height of the building, permissible covered area, open spaces, set backs, parking spaces, ventilation etc.; and

(iv) any other information or documents required by the Municipality for its satisfaction, from time to time;

(b) The maps required under clause (a) shall be signed and authenticated by the qualified architect or engineer registered and approved by the Municipality, Urban Improvement Trust, Jaipur Development Authority, Chief Town Planner of the State or by any other authority empowered by the State Government for such purpose from time to time.

(3)(a) The scrutiny of title papers by the. Municipality should be restricted to ensure that the land or the building as the case may be, does not belong to, the

government or any public agency;

(b) The applicant should have legal possession of the land or building on the date of application on the basis of documents submitted by the applicant:

Provided that the sanction of building plans by the Municipality shall not in any manner amount to creating a title in the favour of the applicant.

(4) (a) Municipality may, by bye-laws, provide that the documents required to be submitted under sub-Section (2) may be submitted in electronic form;

(b) The Municipality shall decide the application and convey its written orders within a period of two months from the date of receipt of application. The Municipality or any authority or any committee empowered to grant the permission, shall also be competent to grant or to reject or modify the map or to impose other conditions or restrictions, as may be deemed necessary. In cases where the Municipality fails to convey its decision within two months, the applicant may undertake the construction, after giving one month's clear notice to that effect to the Municipality, considering it as a case of deemed permission. However, it shall be the responsibility of the applicant and the architect or engineer to ensure that in all cases of deemed permission, the provisions of the Act, rules and bye- laws are not violated.

(5) Where the application submitted under sub-Section (1), pertains to a multi-storied building i.e. a building above height of fifteen meters, or any institutional complex or a commercial complex in an area of more than five hundred square meters, the Municipality shall obtain advice of the Regional Town Planner of the State Government, before granting the permission sought for and shall ensure that proposed plan and construction is not inconsistent with the rules, bye-laws and public convenience.

(6) (a) The Municipality shall frame rules and bye-laws under Sections 339 and 340 for uniform applicability regarding the conditions, restrictions, norms, specifications and the manner of processing the application submitted under this Section;

(b) Where the application submitted under sub-Section (1) pertains to non-residential building, multi-storied building, complex or construction of basement, the Municipality shall obtain the advice of the town planner of the area before granting permission sought for and shall ensure that proposed plan and construction is not inconsistent with the rules, bye-laws and public convenience.

(7) (a) No person shall commence any type of construction without written permission of the Municipality, and the Municipality shall decide his application within the period of two months from the date of receipt of application complete in all respect;

(b) If the decision is not conveyed to the applicant within the period of two months, he shall, before commencing the construction, give clear one month's

notice to the Municipality asking to take decision on his application within that period;

(c) If the Municipality still fails to dispose of the application or to inform the person, of the action which is being taken in the matter, the applicant may commence the construction taking it to be deemed permission of the Municipality, but he shall not violate any provisions of this Act, rules or bye-laws made thereunder;

(d) A written permission shall not be required where a person has submitted an application under sub-Section (1) on an area less than 250 square meters the proposal is for construction of an individual single residential unit up to first floor, and the total height of the building is not more than ten meters from the road level, including the thickness of the roof and any other structure. However, this provision shall not be applicable in any walled city area where separate bye-laws are in existence or in any area which has been declared as an heritage area under any law for the time being in force;

(e) The Chief Municipal Officer or any other person authorized by him or Chairman of the Committee authorized to exercise the powers to accord permission shall have power of inspection of site or building and to take measurement at any time for the purpose of deciding the application or to ensure that the work is being carried on according to the sanctioned plan. The Chief Municipal Officer shall issue notice to the person violating the sanctioned plan and the conditions imposed therein while erecting or reerecting the building and it shall be lawful for him to ask such person to remove or dismantle such construction or any construction which may be in violation of the sanctioned plan. It shall also be lawful for the Chief

Municipal Officer to direct the person concerned to stop construction where the construction is going on without permission;

(f) It shall be lawful for the Chief Municipal Officer or any other officer authorized by him in this behalf to seize and take in his possession the whole premises of part thereof and to prohibit the use of such premises for a period specified by him in the notice, for enforcing the provisions of this Section.

(8) The Municipality shall not decide any such application in which change of present land use is involved and permission for such change is needed under Section 182. The applications mentioned in this clause shall be referred to the State Government or the concerned authority under intimation to the applicant and with the directions to him not to commence the work.

(9) (a) After completion of any building having height of more than

15 meters but before its occupancy, the owner of the building, shall submit an application (along with the certificate of safety and verification of other facts by architect / engineer) for issuance of occupancy certificate. The Chief Municipal Officer, after arranging necessary inspection, shall issue such certificate or ask

the owner to remove the defects, if any, as may appear to him to be necessary, within the specific period from the date of receipt of such application. He shall also ensure that the applicant has not contravened the sanctioned map. It shall be the responsibility of the owner not to occupy or to allow such building to be occupied without obtaining occupancy certificate;

(b) Whoever contravenes the provisions of clause (a) shall, on conviction by a competent Court, be punished with fine which shall not be less than thirty thousand rupees but which may extend to fifty thousand rupees and in case of a continuing contravention, with fine of five hundred rupees for each day of contravention, till such contravention continues.

(10) (a) if a person commences, continues or completes any kind of erection or re-erection or makes any material alteration in a building or part thereof, or erects or re-erects any projecting portion of a building in respect of which the Municipality is empowered under Section 192 to enforce a removal of the projecting part or restoration to regular line of set back, or engages himself in the construction or enlargement of a well or boring, without submitting an application under sub-Section (1), he shall, on conviction by a competent Court, be punished with simple imprisonment which shall not be less than one month but which may extend to three months or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees or with both;

(b) If a person commences or continues or completes erection or re-erection or makes any material alteration in a building or part thereof in contravention of the sanctioned plan or violating norms, conditions, restrictions imposed upon him, he shall, on conviction by a competent Court, be punished with simple imprisonment which shall not be less than fifteen days but which may extend to forty five days or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both;

(c) If any person who has submitted an application under sub-Section (1) and has availed the facility provided under clause (d) of

sub-Section (7), contravenes the conditions, restrictions and norms prescribed for such construction shall, on conviction by a competent Court, be punished with simple imprisonment which shall not be less than fifteen days but which may extend to forty five days or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both;

(d) If it is found that the map signed and authenticated by the architect or engineer is inconsistent with the provisions of this Section or the rules, bye-laws or orders made under this Act, such architect or engineer shall be blacklisted and his registration shall be cancelled by the Municipality and he shall, on conviction by a competent Court, be punished with simple imprisonment which shall not be less than one month but which may extend to two months or with fine which shall not be less than five thousand rupees but which may extend to ten

thousand rupees or, with both in each case;

(e) If it is found that any person has submitted fabricated or fake or false documents or has made wrong and false statement or has concealed the material facts in affidavit for obtaining Municipality's permission, he shall be liable to be prosecuted for fabrication, fraud and concealment under the relevant laws. It shall be the responsibility of the Chief Municipal Officer to initiate criminal proceedings against such person or persons including official, if any, of the Municipality involved in the said act, without delay;

(f) The officer or authority empowered for the operation of this Section or official keeping record for this purpose shall be personally responsible if the period fixed for disposal of application received under sub-Section (1) and in case of any notice received under clause (b) of sub-Section (4) is wilfully ignored. The person or persons responsible for such ignorance shall, on conviction by a competent Court, be punished with simple imprisonment for one month or with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees or with both;

(g) An employee of the Municipality, who has been assigned duties for a particular area and made responsible for reporting the matter of violation of the provisions of this Section, shall ensure that such violations are reported properly without delay and the same are entered in the register kept for the purpose and take necessary action to stop unauthorized construction and if it is proved that he wilfully or knowingly ignored to stop such unauthorized construction and to make report, he shall be punished according to the provisions of sub-Section (18) of Section 245;

(h) The Municipality shall have power to stop any work commenced without permission, or violating the norms of sanctioned map or without submitting an application;

(i) In addition to the prosecution of defaulter, the Municipality shall have power to demolish whole or part of the construction which has come up without permission or violating the permission, or where permission was sought by fraud etc. as mentioned in this Section.

(11) No Municipality shall permit construction of dry latrines and if any person constructs or maintains dry latrine within the municipal area the Municipality shall take steps to demolish such latrines.

(12) Any person aggrieved by an order of the Municipality or the committee empowered by it or an order of the prescribed authority, may file an appeal against such order within thirty days from the date of such order to the State Government or to any other officer authorized by it."

On a plain reading of the provision aforesaid, it reveals that the proceedings could be initiated only when the construction is being raised and not thereafter. However, deep analysis of the provision clearly indicates that the authority can

proceed against those persons, who had completed construction, but such construction is either without permission or is in violation of the permission granted.

11. Section 194(1) of the Act of 2009 provides that a person intending to erect, re-erect or to make a material addition in a building would be required to submit an application in a prescribed form to the municipality along with the documents required under sub-section (2) before starting the construction.

11.1 Section 194(7)(a) of the Act of 2009 specifically provides that no person shall commence any type of construction without written permission of the municipality.

11.2 Section 194(7)(e) of the Act of 2009 gives power to the Chief Municipal Officer or any other person authorized by him or Chairman of the Committee authorized to exercise the powers to accord permission, to carry out inspection of site or building for the purpose of deciding the application or to ensure the work is being carried on according to the sanctioned plan. Further, if it is found that the construction is unauthorized then it shall be lawful to seek removal of the construction or to dismantle it.

11.3 Section 194(7)(f) of the Act of 2009 empowers the Chief Municipal Officer or any other officer authorized by him in this behalf to seize and take in possession the whole premises or part thereof and to prohibit the use of such premises for the period specified by him in the notice for enforcing the provisions of this section. The provisions referred above clearly indicate that no person could be allowed to raise construction without permission and if any construction is raised without permission or in violation of the sanctioned plan, then the authorized officer has the power to seize and take in his possession the whole premises or part thereof for specified period for enforcing the provision of this section i.e. Section 194 of the Act of 2009. The words used in Section 194(7)(f) "for enforcing the provision of this Section" indicates the intention of the Legislature was to empower the officer of Municipal Board to proceed / take steps for enforcing the requirements of Section 194 which includes that the application for permission is to be filed before starting construction.

12. The seizure notice, as in the present writ petition, dated 26.08.2025 was issued while granting 90 days' time to rectify the illegal construction and if such rectification is not made, then the seizure proceeding would remain in currency. If the seizure notice is examined in light of Section 194 of the Act of 2009, it would indicate that the seizure notice has been issued while exercising power under Sections 194(e) and 194(f) of the Act of 2009 and time has been granted to the owner of the premises to rectify the

unauthorized construction and remove the same. Such directions are for the purpose of enforcing the provisions of Section 194 as is provided under Section 194(7)(f) of the Act of 2009.

12.1 If the entire Section 194 of the Act of 2009 is read, it provides for the complete procedure from submitting an application for the purpose of seeking permission to erect building so also it provides mechanism for provision of deemed permission, in case application seeking permission to construct is not decided in time bound manner however, such construction also has to be in accordance with Act, Rules and Bye-laws. A duty has been casted upon the Chief Municipal Officer or the authorized officer to ensure that the provisions of Section 194 of the Act 2009 are complied with, which inter-alia, requires proper permission before raising construction. To keep a check on unauthorized constructions, it is provided that the authorized officer can inspect the building so as to satisfy itself with regard to the fact that as to whether the construction is as per sanctioned plan or there is any deviation from approved plan. Further, power of seizure has been entrusted if some unauthorized construction has taken place. In addition to power to prosecute, Municipality has also been given authority under Section 194(10)(i) to demolish whole or part of the construction which has been raised without permission or has violated the terms of permission or has violated the provisions of Section 194.

12.2 A cumulative reading of Section 194 of the Act of 2009 leaves no room of doubt that Municipality is fully competent to

inspect at any time, immaterial at what stage the construction i.e. whether it is under process or has been completed, and satisfy itself regarding compliance with terms of permission/sanctioned plan. In cases of violation of provisions of Section 194, apart from power to prosecute the defaulter, Municipality can proceed to seize, remove, or demolish the unauthorized construction.

12.3 The interpretation proposed by learned counsel for the petitioner is to the effect that if construction is under process then, only action under Section 194 of the Act of 2009 can be taken. This Court is of the opinion that if such interpretation is accepted then, it would frustrate the purpose of the provision and render it futile in event of completed constructions as once the construction is completed, the Municipality would be left powerless to initiate action under Section 194 of the Act of 2009, which details out the complete procedure for raising all kinds of buildings, and such could not have been the intention of the Legislature. In view of the above discussion, the submission made by learned counsel for the petitioner cannot be accepted that the powers conferred under Section 194 of the Act of 2009 can be invoked only in cases where construction is going on. Therefore the said submission raised by learned counsel for the petitioner is required to be rejected.

13. The second issue for consideration is as to whether the notice given to the owner of the property / premises is sufficient

or the occupier of the premises is also required to be separately served.

14. Learned counsel for the petitioner has raised objection that before undertaking seizure proceedings, notice was not given to the present petitioner.

It may be noted that the seizure proceedings have been undertaken by the Municipal Corporation while exercising power under Section 194 and the same is required to be exercised against the person, who has raised construction in an unauthorized manner. Since the construction in question was raised by the respondent No.3, therefore, notice was required to be given to the respondent No.3 alone and not the petitioner, for the simple reason that it is for the respondent No.3 to satisfy with regard to the permission so also the construction, which has been raised by it. That being so, there was no requirement of giving any notice to the petitioner, who has neither raised construction nor he is the person, who is supposed to take permission before raising construction and he simply being occupier was neither required to be heard nor he could be expected to respond and satisfy the authorities with regard to permission and the sanctioned plan. That being so, the proceedings as undertaken in the present case without giving notice to the petitioner cannot be said to be in violation of provisions of law.

15. It is to be noted that though there is no reference of Section 245 of the Act of 2009 in the notices so also in the impugned seizure order, which were issued to the respondent No.3, yet the submissions have been made by both the parties with regard to applicability of Section 245. Section 245 provides for removal of encroachment on public land. The present case is not a case of an encroachment over public land.

16. Learned counsel for the respondent has made submission that as per Section 245(10) of the Act of 2009 before taking action of confiscating of property, the owner of such property or the person from whom it is seized or attached is to be given notice and is to be heard. While referring to Section 245(10), it is submitted that word 'or' as provided under Section 245(10) clearly indicates that the notice is to be either given to the owner of the property or a person from whom it is seized or attached is to be given notice. This provision, prima facie, is not applicable in the instant case and the purpose of providing 'or' in Section 245(10) is perhaps for the reason that encroachment if it is made on a public land, there could be two possibilities. The owner might be claiming to be of its own property and the municipality might be treating it to be a public land and therefore, legislature in its wisdom considered it appropriate to provide the so-called owner an opportunity of hearing to establish his case. The other cases could be a construction by a person on a public land without any title. Considering to cover up such eventuality, the provision is made for giving notice to the person from whom the property is seized or attached. That being so, Section 245 of the Act of 2009 was neither applied in the present case nor in any manner indicates or supports the submission of petitioner that the Municipal Corporation is required to serve a notice on the occupier of the premises.

17. In view of the discussion made above and in view of the observations made, the proceedings initiated by the respondents in seizure of the shop in question while exercising power under Section 194(7) of the Act of 2009 is found to be in

accordance with law.

18. Learned counsel for the petitioner has relied upon judgment passed by the learned Single Judge in the case of Hari Ballabh Baheti Memorial Charitable Trust (supra). It is to be noted that the said writ petition was filed by a Trust and the same was disposed of while negating the challenge to the impugned order passed by the District Collector. Considering the peculiar facts and circumstances of that case, the Court opined that closing of running business shops would not serve any purpose. The judgment as cited by learned counsel for the petitioner is not applicable in the present case for the reason that, firstly, the order was passed considering the peculiar facts and circumstances of that case; secondly, provisions of Section 194 of the Act of 2009 were not under consideration; and thirdly, the writ petition, which was under consideration before this Court was filed by the Trust and not by the tenants. That being so, the judgment passed by the learned Single Judge is clearly distinguishable on facts.

18.1 Even the judgment passed by the Division Bench in the same case as decided on 29.07.2015 is of no help to the petitioner as the Division Bench observed that the Trust was required to be heard and objection with regard to violation of principle of natural justice was accepted. That being so, even the observation made by the Division Bench would not help the present petitioner, who is the occupier of the shop.

19. The judgment passed in the case of Lokesh Kumar (supra) as relied on by the petitioner is also distinguishable on the facts as in the said case there was a discriminatory approach with regard to the seizure proceedings as 27 tenants of the property therein were given different treatments in comparison to the treatment given to the petitioner therein and therefore, considering the facts of that particular case, Court observed that petitioner therein was also required to be given similar treatment as was given in other cases. Be that as it may, even the observation made in the said case in no manner helps the present petitioner.

20. Learned counsel for the respondents relied on judgment passed by the Hon'ble Supreme Court in the case of Rajendra Kumar Barjatya (supra) wherein the Apex Court has observed that unauthorized construction cannot be perpetuated. If the construction is made in contravention of the Acts / Rules, it would be construed as illegal and unauthorized construction, which has to be necessarily demolished. It cannot be legitimized or protected solely under the guise of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent on the said construction.

21. Learned counsel for the respondent has further relied upon the judgment passed in the case of Esha Ekta Apartments Cooperative Housing Society Limited (supra), which deals with an illegal construction and the Apex Court has upheld the action of the authorities therein, who proceeded against the illegal construction and further decision was taken to demolish such construction.

Relying on these judgments, learned counsel for the respondent submitted that if the construction is raised in an unauthorized manner, the authorities could take action in accordance with law.

22. This Court would now examine the objection of the respondents with regard to availability of alternative remedy as provided under Section 194(12) of the Act of 2009 since the same is available to any person, who is aggrieved by the order passed by the municipality while exercising power under Section 194 of the Act of 2009. Since this Court has held that proceeding under Section 194 of the Act of 2009 was rightly initiated in the present case, therefore, petitioner, if at all aggrieved against the seizure proceedings, can avail remedy of appeal under Section 194(12) of the Act of 2009. That being so, this Court is not inclined to entertain the present writ petition on the ground of alternative remedy and therefore, deems it appropriate to dispose of the present writ petition while permitting the petitioner to avail appropriate remedy.

23. Considering the submissions made above, the present writ petition is dismissed while granting liberty to avail alternative remedy as provided under Section 194(12) of the Act of 2009.

24. Needless to observe that if the appeal is filed, the time spent in litigating the present writ petition would be excluded for the purpose of considering the application seeking condonation of delay.

25. Pending application(s), if any, stand(s), disposed of.