

(1999) 04 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 17368 of 1995

Narahari Rao

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1999) 1 KLJ 969

Hon'ble Judges : K. Narayana Kurup, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : S.V.S. Iyer, K.N. Narayana Pillai and Dinesh R. Shenoy, for the Appellant; T.R. Govinda Wariyar, (Sr.), R. Ramadas, K.P. Dandapani, N. Haridas, N. Hemalatha and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Narayana Kurup, J.—This is an unfortunate episode in which a family feud between the petitioner who is none other than the nephew of the 6th respondent has snowballed into a major legal controversy relating to the construction of a multi-storied building in the City of Cochin. The petitioner is the owner of 16.5 cents of land comprised in Sy. No. 710/1 of Ernakulam Village with a residential building thereon bearing Door No. 40/ 293 of Cochin Corporation. The adjacent property on the east belonged to the 6th respondent which he obtained as per a partition deed. The properties are separated by compound wall belonging to the petitioner. The 6th respondent is the Managing Director of a company under the name and style "Woody's Hotel (P) Limited" which is the 7th respondent in this Original Petition who is putting up a multistoried hotel-cum-shopping complex under the aforesaid name and style through the agency of its construction contractors M/s. Kunnel Engineers and Contractors (P) Ltd., Kochi. The construction of the building commenced in 1993 and is being carried on, according to the petitioner, in blatant violation of the Kerala Building Rules and the Building permit issued to the 7th respondent. According to the petitioner, no

open space has been left out on any side of the proposed building as required by law. Proper and adequate precautions for fire safety are also not being provided. The construction itself is made trespassing into the properties of the petitioner and of some other neighbours. The valuable rights of the neighbouring property owners including the petitioner have been ignored completely and violated. It is contended that Ext. P1 building permit and the approved plans are not in accordance with the exemption orders of the Kerala Building Rules. The plans themselves are vitiated by contradictions and discrepancies and are against the building permit. The 7th respondent has obtained two orders of exemption from the Government, namely, Exts. P2 and P3 granting blanket exemption to the building under construction from the operation of eight of the most important requirement of the Kerala Building Rules, 1984. According to the petitioner, exemption has been granted arbitrarily without any rhyme or reason. During the year 1993-94 respondents 6 and 7 indiscriminately used heavy machineries like pile drivers in the property for their construction activities causing heavy damage to the land and building owned by the petitioner. According to the petitioner, operation of the mechanical pile drivers and heavy generator by respondents 6 and 7 in the plot of land adjacent to the petitioner's property without any adequate safeguard has aggravated the damage caused to the petitioner's building which has driven him to file O.S. No. 17 of 1995 before the Sub Court, Ernakulam against the 7th respondent and the children of 6th respondent for damages and injunction restraining the defendants from trespassing upon the plaint schedule property, removing lateral support to the petitioner's property, operating mechanical pile drivers or heavy generators in the property immediately to the east of the plaint schedule property and for injunction restraining any further construction in violation of the Kerala Building Rules and the Building permit and for other reliefs. On 4-1-1995, the Sub Court granted injunction in I.A. No. 49 of 1995 restraining the respondents from trespassing upon the plaint schedule property and from causing any damage to the structures therein by removing lateral support and from carrying on any construction using pile drivers and operating heavy generators in the plot of land immediately to the east of the plaint schedule property. Another application filed in the same suit as I.A. 1737/95 for injunction restraining the respondents therein from carrying on any further construction till the disposal of the suit is now pending adjudication before the Sub Court, Ernakulam? Though in the suit the petitioner filed I.A.252 of 1995 praying for a direction to the respondents therein to produce the approved building plan and the building permit for the disputed structure (Woody's Hotel) the petitioner would state that the respondents had not produced either the building permit or the approved plan issued for the construction of Woody's Hotel. However, when the plan and permit were eventually produced by the 7th respondent it is seen that the same is not the proper plan in compliance with the requirements of the Kerala Building Rules. There is no proper location plan or site plan showing the locality and other buildings in the neighbourhood as required under Rule 8(3)(a) of the Kerala Building Rules. The site plan has been produced deliberately omitting to mention

the area of the plot with its boundaries, including within itself portions of properties belonging to neighbouring land owners with the malicious intention to trespass upon and to annex these properties with the properties of the 6th respondent in the course of construction and the 4th respondent has facilitated this illegal aspiration of respondents 6 and 7. In fact, it is alleged by the petitioner that the property belonging to the adjoining "Madhwa Mandir Temple" has been trespassed upon and annexed by the 6th respondent. Such an attempt to trespass upon the petitioner's property was also made by the 6th respondent herein. Further the petitioner would allege that there is large scale violation of Rule 15(1) of the Kerala Building Rules, 1984. It is further alleged that the new structure which is being constructed is touching and connected to the old "Woodlands" building on the south and that the 7th respondent has not obtained any exemption from the operation of Rule 15(1). The specific case pleaded by the petitioner is that the plan produced by respondent Nos. 6 and 7 is not covered by any building permit or Government order. The plan also shows that the building is constructed with the petitioner's wall as one of its walls which is clearly illegal and a clear case of trespass and the 4th respondent Corporation of Cochin has no business to approve such plan and if at all it has been approved, such approval is illegal and liable to be struck down. Further complaint of the petitioner is that the sound and air pollution that would be caused due to the operation of generators in the construction site will make life unbearable to him and other neighbours. The oil soak-pit proposed to be built in the construction site will pollute the water in their wells which also cannot be countenanced. The petitioner relies on Ext. P6 Commission Report prepared by the Advocate Commissioner appointed in O.S. No. 17 of 1995 to show that respondent Nos. 6 and 7 have trespassed into petitioner's property. The further case set up is that site plan is clearly misleading insofar as the building indicated in the plan is shown 3 metres away from the property belonging to the petitioner and Madhwa Mandir, but the 7th respondent has now constructed upto the northern and western boundaries of this plot. In fact, a suit has been filed by the Madhwa Mandir Trust as O.S. No. 664 of 1995 against the illegal act of trespass committed by respondent Nos. 6 and 7 before the Sub Court Ernakulam and an interim order has been obtained against the 7th respondent. A specific complaint projected by the petitioner is that the entire northern site open space has been annexed to and built in to the basement and stands at a height of one meter above ground level, which is clearly illegal and that no set-back is maintained as prescribed in Exts. P2 and P3. The further complaint of the petitioner is that on the basis of Exts. P2 and P3, the 6th respondent is proceeding with the construction without providing the normal parking space required for the hotel. In support of his contention, he would submit that at the time of construction of the old Woodlands Hotel in 1986 the 6th respondent had given an undertaking to the 4th respondent Cochin Corporation that he would provide adequate parking space for "Woodlands" at the site where the present "Woody's Hotel" is being constructed. This was done to avoid action being taken against him under Sec. 263 of the Kerala Municipal Corporation Act, 1961. The present action of the 6th

respondent in not providing parking facilities is a clear violation of law. It is also complained that proper fire exit has not been provided by the 6th respondent and the entire construction is in violation of fire safety regulations. Another point highlighted in the writ petition is that the building plan does not reveal the "Floor Area Ratio" or details of the "Project at a Glance" as normally required and shown in all standard architectural civil engineering drawings, so also no terrace plan and no service plan approved by the Corporation of Cochin, both of which are mandatory under the Kerala Buildings Rules, 1984. It is also pointed out that the basement plan differs from the details shown in the site plan regarding open space. According to the petitioner, the disputed construction touching the new Woodlands Hotel on the south is clearly illegal and violative of R. 15 of the Kerala Buildings Rules. The petitioner would state that the exemption orders evidenced by Ext. P2 and P3 are clearly vague, arbitrary and illegal. According to the petitioner no rational basis is there for grant of such exemption and that such blanket exemption was never contemplated by the legislature. The petitioner would brand the exemption as arbitrary and quixotic exercise of power which goes against the letter and spirit of the Kerala Municipality Act and the Kerala Building Rules, 1984. The exemption orders are, therefore, liable to be declared arbitrary, ultravires and illegal. He has a further case that no guidelines or principles are laid down for the authority to act upon the Rule viz. Rule 5 of the Kerala Building Rules and hence the Rule is violative of Art. 14 of the Constitution and is beyond the scope and powers of the rule making authority of the Government. The further apprehension of the petitioner is that respondent Nos. 6 and 7 are trying to get an order regularising the unlawful construction made by them taking advantage of Sec. 407 of the Kerala Municipality Act, 1994 and in that view the first respondent State is liable to be restrained from granting any order regularising the illegal construction made by respondent Nos. 6 and 7. Section 407 of the Kerala Municipality Act 1994 which confers power to compound the offence on the Government is also assailed as highly arbitrary and unbridled since no guidelines or limits are laid down therein. Subsequent to the filing of the writ petition on 1-6-1996, respondents 6 and 7 obtained new exemption orders granted by the first respondent and a building permit and two approved plans issued by respondents 3 and 4. Exts. P7 and P8 are the true copy of the exemption orders and the building permit. According to the petitioner, the grant of exemption order in respect of the "Woody's Hotel" is an act of wilful disregard of the authority of this Court. The exemption order purports to exempt the construction of an "extension" to an "existing commercial building". The point canvassed is that as per Exts. P7 and P8 an attempt has been made to give legal colour to the illegal construction made by respondents 6 and 7 by including the illegally constructed floor area in Ext. P8 permit and the plans thereunder. Ext. P7 is attacked on the ground that it does not comply with the requirements prescribed under the Act and Rules and is a fraud on the court. Therefore, Exts. P7 and P8 are also liable to be quashed. On the above averments the present writ petition has been filed for declaring Secs. 407 and 410 of the Kerala Municipality Act, 1994 as unconstitutional, ultravires and void; for a writ of

certiorari to quash Rules 5 and 5 A of the Kerala Building Rules, 1984 and for a writ of certiorari to quash Exts. P2, P3, P7 and P8 Government orders and for a writ of mandamus directing the respondents to stop further construction work and to demolish all illegal constructions made at "Woody"s Hotel (P) Limited" and for other incidental reliefs.

2. Respondent Nos. 6 and 7 have filed a counter-affidavit repudiating the various charges levelled against them and contending, inter alia, as follows:

The construction of the Hotel building is already over. Furnishing and some other finishing works are in progress. Any delay in commissioning the project would entail in irreparable loss, injury and hardship to us about which the petitioner and other members of his family are also fully aware of. That is why, in order to cause unnecessary hardships and loss to us, the petitioner has chosen to institute a series of frivolous proceeding including the above original petition.

The Civil court being the fact finding court, considered all the materials produced before the said court by the parties and did not think it necessary to stop the construction of the building. In fact, we are proceeding with the construction strictly in accordance with the plan approved.

It is submitted that the authorities under the Act, respondents 3 and 4 are making periodical check up at the construction site and that they are closely monitoring whether we are making any unauthorised construction or construction deviating from the approved plan. We are making the construction only in accordance with the approved plan. If there was any deviation or violation, certainly 4th respondent ought to have initiated action in the matter.

The compound wall collapsed was in the portion so trespassed by the petitioner.

It is absolutely incorrect to state that no open space has been left out on any side as required by law. Sufficient open space has been left out as per the plan approved. The allegation that the construction itself is made trespassing upon the properties of some of the neighbours, is totally wrong and the said statement is highly mischievous. In fact, the Commissioner and the Taluk Surveyor deputed in O.S. No. 17/95 measured the properties and prepared a sketch and plan. The said sketch and plan clearly proves that it is the plaintiff who trespassed upon certain extent of property belonging to us and also a small extent of property belonging to Madhwa Mandir. It is totally incorrect to state that the rights of the neighbouring property owners and the petitioner have been ignored and violated.

The building permit and the approved plan are in accordance with the exemption orders issued by the first respondent. There is absolutely no contradictions or discrepancies either in the building permit or in the plans.

There is no merit in the statement that the plans submitted were vague and designed to mislead any person examining them. There is no merit in the statement that the Government granted blanket exemption. Government considered out plan properly and acted legally. Exts. P1 to P3 are perfectly legal

and valid.

It is true that we excavated soil at the western side of our building and the eastern side of the then existing compound wall for the purpose of constructing water tank. There was absolutely no violation of the Building Rules in having done so. It is totally incorrect to state that we excavated soil to a depth of 3 meters without making any arrangement to maintain lateral support to the petitioner's land or the compound wall.

The statement that the 4th respondent is colluding with us is highly irresponsible and mischievous statement.

The statement that we and our agents trespassed upon the petitioner's eastern boundary and deliberately caused soil there to collapse and subside is totally wrong. We have made all precautionary arrangements to protect the then existing compound wall... In fact, the petitioner was waiting for an opportunity to enable him to rush to the court raising absolutely false allegations.

It is totally incorrect to state that during the year 1993 and 1994 we indiscriminately used pile drivers in our property for our construction activities. We never used pile drivers for our construction activities. We have used D.M.C. piling and that too for 2 months early in the year 1993. It is absolutely incorrect to state that we have been using heavy pumps to drain out water from the pit excavated in our property, for the foundation work of the building. We have completed excavation for basement and piling during summer. At that time, there was no accumulation of water in the excavated portion. There was absolutely no necessity to use heavy pump set as alleged by the petitioner.

Since we did not use mechanical pile drivers in our property, all other averments in para.7 are incorrect and hence denied.

Most of the averments contained in para.9 of the Original Petition are incorrect. At first, the contention before the Sub Court in O.S.17/95 was that we have not left open space as provided under the approved plan on the sides of the main building constructed by us. Therefore, we thought it necessary to produce only the site plan. When we produced the site plan, the petitioner did not insist for the production of the entire plan. Fourth respondent was also directed to produce copy of the plan of the building. Fourth respondent had also produced only site plan. In view of the points in controversy involved in the suit, the production of the rest of the plans were not necessary. It is only later the petitioner insisted for the production of the entire plan. Accordingly, we produced the entire plan. We have been doing the said construction in accordance with the plan approved.

Rule 15(3)(c) of the Kerala Building Rules enables the authority to permit a building to abut on the side boundary of the plot if there are not opening such as doors, windows or ventilator etc. on that side of the building. It is in exercise of that power, the plan has been approved. Our plan has been approved to construct the plant room in the manner in which we are constructing. As

submitted earlier, later we submitted a revised plan and the Government considered the same and accorded sanction.

First respondent is perfectly justified in having issued Ext. P7. 4th respondent has rightly issued Ext. P8 also. Exts. P7 and P8 cannot be attacked. They are legal and valid.

It is absolutely incorrect to state that 7th respondent does not possess a proper building plan as required by the Kerala Building Rules. We have complied with all procedural formalities and the authority concerned sanctioned the plan.

There is absolutely no infirmities in the plans submitted by us. In fact, there is absolutely no truth in the statement that we have trespassed upon the property belonging to Madhava Mandir. The real facts are otherwise. It is the petitioner who had trespassed upon the property belonging to Madhava Mandir and myself.

There is absolutely no violation of Rule 15(1) of the Kerala Building Rules.

It is incorrect to state that no building permit has been granted for the construction of the proposed electrical and Air-conditioned room being constructed touching southern portion of the petitioner's eastern compound wall. Again I can only submit that such statements are being made by the petitioner either because of his ignorance or for the purpose of misleading this Hon'ble Court.

The plan approved earlier produced before court and even Ext. P7 now produced by the petitioner along with the application for amendment would clearly establish that even in the earlier approved plan, the area of the electrical and Air-conditioned plant room was included.

It is totally incorrect to state that we have trespassed into the property belonging to the petitioner. If that is so, the proper remedy lies elsewhere. The civil suit filed by the petitioner is even now pending. If he feels himself aggrieved, he can agitate and seek appropriate remedies in the suit. Such allegations cannot be raised and reliefs cannot be sought for before this Hon'ble Court in a proceeding under Art. 226 of the Constitution of India.... The disputed facts cannot be taken for adjudication by this Hon'ble Court in a proceedings under Art. 226 of the Constitution of India.

Rule 10 of the Kerala Building Rules provides that during construction of any minor deviation is being made, it need only be incorporated in the completion plan. So also, in our case there will be certain minor deviation like shifting of location of lift room staircase, doors etc. at certain place, which cannot be considered as a serious alteration, which requires sanction after furnishing a revised plan before commencement of the construction. We are strictly following in complying with the various requirements and changes being insisted by the Electrical Inspectorate as well as the Department of Fire. Various averments in para.17 are totally baseless. All provisions which are essential for high-rise building are provided in our building as well. Statement contained in para. 18 are

not fully correct. Without ascertaining the exact floor area ratio, no building plan will be approved and no building permit will be issued. It is the look out of the statutory authority concerned and the said authorities have discharged their statutory obligations properly as well. Therefore is no violation of Floor Area Ratio as far as our building is concerned.

No rule stipulates that there must be a "project at a glance". There was absolutely no irregularity or illegality in the procedure or process adopted by the authorities concerned in having approved the plan and issued building permit.

There is no merit in the statement that the basement plan differs from the details shown in the site plan regarding open space. Even the expert engineer of the petitioner's choice has unambiguously stated that the construction of the basement as well as open space are in accordance with the plan approved. It seems that the petitioner is guided by wrong informations and notions.

It is absolutely incorrect to state that exemption granted by the 1st respondent is a blanket exemption. 1st respondent granted the exemption taking into consideration of all relevant aspects and exercised the powers vested with the 1st respondent legally and properly. Petitioner has no right to challenge the right (sic) of the 1st respondent in having granted the exemption.

This Hon"ble Court had occasion to consider the question of validity of Rule 5 of the Kerala Building Rules. This Hon"ble Court held the view that Rule 5 is legal and valid and the power given to the 1st respondent in Rule 5 is not arbitrary.

There is no question of going for any regularisation. The question of making an application for regularisation will arise only when there is some unauthorised construction. In our case, there is no unauthorised construction. So, there is no necessity to go for any regularisation. The validity of Secs.407 and 410 cannot be questioned by the petitioner especially in view of the earlier rules (sic) on identical provisions contained in the Kerala Building Rules. Those provisions are legal and valid. Those provisions cannot be treated as unconstitutional or void.

3. The other respondents have filed counter and also advanced oral arguments sustaining the rules and orders assailed in the original petition.

4. In C.M.P. No. 29531 of 1996 this Court appointed an Advocate Commissioner to verify the constructions made by the 7th respondent and submit a report. The Advocate Commissioner submitted his report. The order and warrant appointing the Advocate Commissioner required him to submit a detailed report regarding the points enumerated therein, which are as follows:

1. Whether the constructions now made at Woody's hotel are in accordance with the approved plans now before the court or as per the plans submitted earlier before the Government and rejected by them (found in the files produced before court)?

2. Whether the constructions made at the terrace level are in accordance with

Exts. P1 to P3 and the approved plans?

3. Whether the constructions at the basement level the northern side of the building and at the electrical and A/c. room are in accordance with the exemption order, the two building permits and the two sets of approved plans?

4. Whether the building being constructed by respondents 6 and 7 touches or is jointed to any other structure and whether this is in violation of the Kerala Building Rules and the building permit and the approved plans?

5. Calculate and submit the plinth area of each floor of the building being constructed by respondents 6 and 7 including the floor area of the bay windows?

6. The changes, additions and deletions made in the approved plans vis-?-vis the plans submitted before the Government with regard to the building being put up by respondents 6 and 7?

7. Whether the requirements of the fire safety norms prescribed by the National Building Code are complied with the Woody's Hotel and the extent and nature of the violation, if any?

8. Nature of the constructions being carried on by respondents 6 and 7 on the basis of Exts. P7 and P8 with reference to the residential house of the petitioner?

9. Any other points that may be requested to be noted at the time of inspection by any of the parties?"

5. After inspection the Commissioner submitted a report on the following lines: On the first point, the Commissioner reported that the constructions now made in the "Woody's Hotel" are noticed to be not in accordance with the approved plans before the court, namely, Ext. A2 approved plan. Such constructions are also not as per the plans submitted earlier before the Government and rejected by them (Exts. C1 to C10). In the approved plan the proposed building abuts the boundary for a length of 14 metres at the south eastern corner. There is no mention of abutting into any existing building in the approved plans. However, on inspection the proposed building abuts into the existing building for a length of 11.40 metres along the northern wall of the existing building.

6. On point No. 2, it is reported that the construction at the terrace level are not in accordance with Exts. P1 to P3 and the approved plans. On the seventh floor of the proposed building a kidney shaped pool with facilities of drainage and overflow of water with provision for illumination on the sides beneath the water level is constructed. This is noticed in Ext. E5 and the pool is noted in a different shape as a swimming pool in Ext. E5. It is also noted that the eighth floor is constructed on the west of the pool over which at the ninth floor level on the northern side spherical shaped blue coloured storage tanks with machineries are provided. However, the report says that in the approved plans there are no such provisions for construction of the swimming pool and other constructions noticed. Constructions carried out at the seventh floor level more or less tallies with Ext.

E5 plan.

7. On point No. 3, it is reported that on inspection it is noticed the constructions at the basement level, the northern side of the building are not in accordance with Exts. P2 and P3 exemption orders, Ext. P1 building permit and Exts. A2 and A3 approved plans. The Commissioner has noticed that the basement constructed in the proposed building abuts to the northern boundary of the site over the entire length of the building on the northern side. Six ventilators are provided on the northern side of the basement, which open into the compound adjacent to the "Madhwa Mandir". It is further reported that there are no significant deviations in regard to the construction of electrical and A.C. room, Ext. P8 exemption order and Ext. P7 building permit and Ext. A4, Ext. B1 and B2 approved plans.

8. On point No. 4, it is reported that the existing building and the proposed building are touching each other from the first floor level onwards.

9. On point No. 5, the Commissioner has annexed AC 4 to his report showing the total area as per construction and the excess area beyond the approved plan together with remarks.

10. On point No. 6, among other things, the Commissioner has reported that the basement constructed in the proposed building abuts to the northern boundary of the proposed building over the entire length of the building on the northern side, except the water tank and that the internal lay out as per Ext. A2 approved plan is significantly changed at the ground floor level. It is further reported that an additional plinth area of 45.87 sq. metres is created in the ground floor in between the existing and the proposed building in the south eastern corner. The report further states that 2.5 sq. metres is in excess in each floor from the first floor onwards upto the sixth floor. Besides, the Commissioner has noticed that from second floor to the sixth floor, 70 bay windows both carved and rectangular types are constructed at the time when Ext. A2 approved plan does not provide for any such windows. A lift from the second floor to the sixth floor at the north eastern side as provided in Ext. A2 approved plan is seen deleted.

11. On point No. 7, the Commissioner reported that respondents 6 and 7 assured him that on completion of the proposed building provision will be made for a stair case as fire safety device to reach the ground. It is further reported that respondents 6 and 7 also pointed out to the Commissioner a smoke alarm and fire alarm inside and outside each room from the second floor onwards. To be specific, the operative portion of the Commissioner's report is noted below;

.... Respondents 6 and 7 also took me to a small room providing for fire alarm on the ground floor on the southern side assuring me that this room provided for Telephone Operator will be manned for 24 hours. A water tank is provided for in the basement level at the north western corner and on the west open space of the proposed building. I also noticed on the roof of the basement over the car parking area red coloured pipes zig zagging and also provided with provision for

sprinklers.

12. On point No. 8, it is reported that there is no opening of the plant room at the western side facing the residential house of the petitioner. The ground floor of the plant room contain machineries for generating electric power. The first floor of the plant room house the machineries for air conditioning and the third floor being utilised as a boiler/laundry room. The air, noise and sound pollutions that could be created by the machineries in the first and second floors being generated is an aspect where the Commissioner expressed his inability to report before this Court. According to him, it is basically and essentially a matter for the Kerala State Pollution Control Board.

13. On point No. 9, the Commissioner noted certain points that were requested to be noted at the time of inspection by either side.

14. To the commission report both the petitioner and respondents 6 and 7 filed their respective objections and respondents 6 and 7 in addition, filed a reply to the objections to the commission report filed by the petitioner. Elaborate arguments were addressed on both sides with reference to the voluminous documents produced in the case.

15. As already noted, the original petition has been filed for a declaration that Sees. 407 and 410 of the Kerala Municipality Act, 1994 and Sec. 263-A of the Kerala Municipal Corporations Act, 1961 are unconstitutional, ultravires and void as violative of Art. 14 of the Constitution of India and for a writ of certiorari quashing Rule 5 and 5 A of the Kerala Building Rules 1984 and Exts. P2, P3 and P7 Govt. Orders and for other reliefs.

16. Regarding the vires of Secs.407 and 410 of the Kerala Municipality Act, 1994 and Sec. 263-A of the Kerala Municipal Corporation Act, 1961 no arguments were submitted by the Senior Counsel for the petitioner. The challenge to the constitutionality of the provisions was in fact given up in the final stage of oral hearing. Learned Senior Counsel appearing for the petitioner specifically submitted that he is not pressing the contentions based on the constitutionality of any of the statutory provisions. In this connection, we may also notice that the validity of Rule 5 of the Kerala Building Rules issued by the Government in exercise of their powers under Sec. 367 of the Kerala Municipal Corporations Act, 1961 read with Sec. 238 thereof and also under the corresponding provisions of the Kerala Municipalities Act, has been upheld by a Division Bench of this Court in the decision reported in Dr. Raman v. State of Kerala (1994 (1) KLT 1029). The correctness of the said decision was not challenged before us. The principles enunciated in that decision squarely applies to the facts of the present case as well. Learned Senior Counsel for the petitioner while challenging the correctness of Exts. P2, P3 and P7 or the permits Exts. P1 and P8 restricted his contention that the impugned orders were issued without following the procedure prescribed by law. In the aforesaid view, we are unable to find any reason for declaring that the statutory provisions including the Building Rules are unconstitutional or void.

We accordingly hold that the impugned provisions are constitutional and not liable to be struck down on any of the grounds urged in the original petition.

17. The next question to be considered is whether the impugned orders, viz. Exts. P2, P3 and P7 were passed without following the procedure prescribed by law and whether the allegation of the petitioner that the orders under challenge were passed arbitrarily or for extraneous grounds and/or were "orders procured for extraneous considerations" and whether the impugned orders are vitiated by non-application of mind and failure to observe the principles of natural justice as alleged in the original petition? The application for construction of the multi-storyed hotel building was made as early as on 12-2-1988. On account of the paucity of space to technically comply with the rigour of the Building Rules, the 6th respondent filed petitions to the Government for exemption, from some of the provisions of the Rules to enable him to make optimal use of the available land without in any way causing any detriment to public interest. The exemption order Ext. P2 was passed by the Government only on 14-5-1990. It discloses that Ext. P2 was issued in consultation with the Chief Town Planner (C.T.P.). The pleadings of the parties and the files produced in court disclose certain facts, viz. on 12-2-1988 an application was filed by the 6th respondent for sanction to construct a building with 48600 sq. feet as floor area. Adequate set backs were not shown in the plan. The plan was forwarded by the Greater Cochin Development Authority (GCDA) being the authority to whom the application had to be filed to the Corporation of Cochin which had to sanction the plan if it was in order. The Corporation rejected the plan on 21-5-1988, being in violation of the Building Rules. Only the State Government is given power to grant exemption from Building Rules after consulting the C.T.P. The plan was resubmitted to the G.C.D.A. on 1-10-1988 with an application praying for exemption from some of the Rules and enclosing a chalan for Rs. 40,300/- being the required fee. The G.C.D.A. forwarded this to the Corporation with their comments on 19-11-1988. The Corporation forwarded it to the Government with their comments on 7-12-1988 in accordance with the procedure laid down in the relevant Act and Rules. On 10-2-1989 the C.T.P. who had been consulted by the Government and the Government jointly gave a hearing to 6th respondent. The C.T.P. objected to the plan and suggested a revised plan with lesser floor area as per the letter dated 28-2-1989. The revised plan was given on 1-5-1989 on which the Government again asked the C.T.P. for his comments. The C.T.P. pointed out some violations and said that the exemption sought for are not recommended. On 10-1-1990, the C.T.P. wrote a note to the Minister giving three reasons for his objections. Government called for the original documents and after scrutiny, the C.T.P. in his report D3/3565/90 to the Government admitted that the earlier reasons given in support of his objections were not factually correct. Still the C.T.P. suggested a set back of 8 meters on the eastern side and 4 meters on the north. Ext. P2 order was passed on 14-5-1990 granting exemption subject to the conditions of a set back of 8 metres on east and 4 meters on north as recommended by the C.T.P. The factual background being as it is, the solitary

contention raised by the petitioner is that Ext. P2 exemption order was passed without consulting the C.T.P. This contention is factually incorrect and has been made without any bonafides. No material has been placed before this Court to show that the Government acted arbitrarily or for extraneous reasons. On a perusal of the relevant records, we are satisfied that the Government has acted in accordance with law and that the impugned orders are legal and not liable to be set aside. The same is the position regarding Ext. P7. The records show that the views of the C.T.P. were ascertained. The entire matter was discussed in more than one meeting held in the Secretariat in which the Minister, some Government officers and the C.T.P. were present. In one or two meetings, the 6th respondent was also allowed to be present. Consultation with the C.T.P. does not mean that the Government must concur with him. This is a case where the C.T.P. himself raised objections without verifying the correct facts. At the same time he recommended exemption with a set back of 8 meters on the east and 4 meters on the north which is in excess of the statutory requirement. The C.T.P. continued to stick on to the objections even after finding that his views were based on incorrect facts. Even so, the Government while granting exemption as per Ext. P2 stipulated the conditions regarding set back of the building from the road and the adjacent property on the north as suggested by the C.T.P. It was only when it was brought to the notice of the Government that the insistence on a set back of 8 meters on the road side and set back of 4 meters on the north would not serve any public interest, that Ext. P3 order was passed allowing the building to be constructed with a set back of 6 meters on the east as against the statutory requirement of the Rules having regard to the total number of floors and 3 meters on the north as against 4 meters recommended by the C.T.P. on erroneous facts. Under the circumstances, no special favours have been given to the petitioner and it is not possible to hold that ground justifying the invalidation of Exts. P2 and P3 in exercise of the power of judicial review have been made out in this case. On a scrutiny of the files regarding the passing of Ext. P7 order also we are of the view that the order does not suffer from any infirmities justifying its invalidation. The C.T.P. who was consulted, did not offer any objections. Accordingly, we have no hesitation in repelling the argument of Learned Counsel for the petitioner against the impugned orders and hold that Exts. P2, P3 and P7 were passed by the Government in accordance with law and after following the procedure including consultation with the C.T.P. No extraneous considerations have been specifically alleged or established by the petitioner justifying interference with Exts. P2, P3 and P7 which, in our view, has been passed after following the procedure prescribed by law and after proper application of mind to all relevant aspects.

18. The next point to be considered is whether the permits Exts. P1 and P8 and the approved plan Exts. A1 to A4 are in conformity with the Building Rules read with the exemption orders Exts. P2, P3 and P7. The materials available in the files show beyond doubt that Exts. P1 and P8 permits and "A" series plans were prepared by incorporating the effect of the exemptions granted by Exts. P2, P3

and P7 in the plans submitted for approval. No material was brought to our notice justifying a contrary view being taken. We are not satisfied that the statutory authorities have committed any error in issuing Exts. P1 and P8 permits. Accordingly, we hold that the permits Exts. P1 and P8 and the approved plans marked A1 to A4 are in conformity with the Building Rules read with exemption orders Exts. P2, P3 and P7.

19. Yet another aspect to be considered is whether the construction of the building which is now completed has been made in violation of the Building Rules read along with the exemption orders. The petitioner alleges that the sanctioned plan has been departed from in the actual construction of the building. The 6th respondent had filed C.M.P. No. 35702/97 praying that he may be allowed to apply for an occupancy certificate to enable him to apply for electricity and water connection and the prayer was allowed on 2-4-1998 by this Court, subject to the condition that business should not be commenced without further orders. Thereafter, the Town Planning Officer of the Corporation had meticulously measured the main building, the basement, the ground floor and floor Nos. 1 to 6 separately. He had also measured each of the 3 floors of the plant, building, the lift room and the hot water tank slab etc. The file in which the measurements and calculations are recorded has been produced in court as directed by us. We have carefully scrutinised those measurements. As against the approved area of 44406.38 sq. metre, the actual area constructed was found to be 4400.82 sq. metres. It is thus clear that the construction does not exceed the sanctioned floor area ratio or the area allowed to be constructed. The set backs on east, north and west have been provided for as stipulated by the Government. The abutting of the building with the New Woodlands Hotel over a portion on the south(?) is statutorily permitted. The average vacant area on the south where the buildings do not abut is wider than the requirement of Ext. P1 to P3. It is seen from the Corporation file that an Occupancy Certificate under Rule 12(2) (g) and 13(3) (stated to be provisional on account of the pendency of the original petition) has been issued on 17-6-1998 by the Town Planning Officer of the Corporation of Cochin. In view of the pendency of this original petition a condition is added that respondents 6 and 7 should not occupy the building and start hotel business until final orders in this original petition. The Town Planning Officer has certified after inspection that the building was inspected by him and that the building constructed is in accordance with the building permit and the provisions of the Building Rules and also that the building is now fit for occupation.

20. It is true that the report of the commissioner states that the area actually built up would come to 4033.83 sq. meters for F.A.R. purposes. There is thus a discrepancy between the area built up as recorded in the Corporation's file and the area calculated by the commissioner. However, the difference in the area as reported by the commissioner and recorded by the Corporation is not significant having regard to the total built-up area. We are concerned only with the area for "floor area ratio" purposes and what is reported by the Commissioner is less than

the area shown in the completion certificate. The difference is only marginal. The actual linear measurements recorded by the Commissioner is not produced in court and it is difficult to decide how exactly the difference between the measurements shown in the files produced by the Corporation and the Commissioner's report has arisen in spite of the fact that the linear measurements are available in the Corporation file. It might be on account of slight differences in recording measurements in some or other part of the building or it may be on account of mistakes committed by the persons engaged by the commissioner for taking measurements. No record of the actual measurements recorded by the Commissioner was produced with the report and even after a petition for production of such records was filed by the 6th respondent and notice given to the Commissioner. There is a contention that measurements were taken after court hours when there was no sufficient light. The difference is not significantly high. At any rate, we are not inclined to go into such meticulous matters depending on disputed questions of fact and to record findings on fact in exercise of the power of judicial review. The statutory occupancy certificate cannot be set aside without cogent reasons. Almost all the discrepancies are regarding constructions in the interior of the building. It is evident that the Commissioner has taken into account additional excess areas consequent on some windows being fashioned as "Bay Windows", construction of an intermediate floor in a portion of the very large store room provided for the hotel which is characterised as a "mezzanine floor", measurements of platforms or supports provided for placing the water tanks, area beneath the roof of the lift room and some other internal constructions. All these are variations in the internal arrangements within the building which are permissible under Rule 10(2) of the Building Rules. The statutory authorities are treating these as variations justifying any punitive action against respondents 6 and 7. None of these interfere with the comfort of the customers who may stay in the hotel or with the rights or convenience of any members of the public. 2-91 M2 is shown by the Commissioner as excess area occupied by the basement a width of 3 metres to the north. The utilisation of small area as a part of the basement was only to provide more car parking spaces. It does not reduce the width of the open space left on the north and it only advances public interest and does not adversely affect the convenience of any one. The actual area constructed each of floors one to six is less than the sanctioned. The construction of an additional slab in the store room is shown as a "Mezzanine floor". The remaining areas on the terrace. We do not think that any of the material furnished by the commissioner are conclusive or sufficient to find that serious violations have been made in the course of construction. The statutory authority has certified that the constructions made do not violate any of the Rules read with the Exemption Orders Exts. P2, P3 and P7 and they have not thought it fit to exercise their powers under Rule 11 of the Building Rules or Sections 395 or 406 of the Kerala Municipality Act, 1994. The occupancy certificate could be issued under Rule 13(3) only after the authority is satisfied that there are no violations. There are no grounds to suspect that there has been a dereliction of statutory duty of the Town Planning Officer of the

Corporation of Cochin. Nor would we be justified in setting aside the occupancy certificate by reconsidering the factual materials available in the case and coming to independent conclusions in exercise of the power of judicial review under Art. 226 of the Constitution of India. We may also observe that neither public interest nor the health or convenience of the prospective customers in the hotel nor the convenience or rights of neighbours would be adversely affected even if the contentions put forward by the petitioner are factually established. The Hon'ble Supreme Court have laid down the approach to be followed when instances of exceeding the sanctioned floor area are brought before courts with a prayer for demolition of the building. We are fortified in our view by the following decisions:

21. In *Corporation of Calcutta Vs. Mulchand Agarwalla*, , serious violations and constructions in excess of the sanctioned area had been made, but the High Court interfered with an order for demolition made by the Corporation. In an appeal by the Corporation the Supreme Court reversed the High Court decision. In para. 13 of the judgment the Supreme Court stated thus:--

It must be remembered that building rules are enacted generally for the benefit of public and where those Rules are violated and proceedings are taken for an order for demolishing the building under Sec. 363, what has to be decided is whether the breaches are of a formal or trivial character, in which case the imposition of a fine might meet the requirements of the case, or whether they are serious and likely to affect adversely the interests of the public, in which case it would be proper to pass an order for demolition.

Sardar Mohan Singh Ahluwalia (Dead) by Lrs. Vs. Maitrai Park Co-operative Housing Society Ltd. and Another, is a case where construction in excess of permissible floor area ratio was in fact made by a builder. The Supreme Court, in allowing the appeal by the builder against an order for demolition made by the High Court in a public interest litigation, held as follows in para.20 of the judgment:

The permissible limit of compounding being 5 per cent of the permissible F.A.R. , which works out to 1940 sq. ft. the actual area of deviation outside the permissible compounding limit seems to be not larger than 72 sq. ft. In the circumstances, in the light of what the commissioner says about the practice of the Corporation in regard to the commencement certificate and in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the 1st respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonestly or fraud or negligence on the part of the builder. See the principle stated by Sabyasachi Mukharji, J. in *Ramsharan Autyanuprasi and another Vs. Union of India and others*, and Khalid, J. in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, . Accordingly, we set aside

the impugned order of the High Court in so far as it permits or directs the demolition of the 6th floor and affirm in the above terms.

Applying the aforesaid principles to the facts of the case, we have no hesitation in repelling the contentions advanced by Learned Counsel for the petitioner for quashing the impugned orders and other reliefs. Though there are certain deviations from the approved plan, we are satisfied, that such deviations are of a trivial nature having no bearing on public safety whatsoever, in which case, the imposition of a fine might meet the requirements of law as has been observed by the Apex Court in the decision noted *supra*, viz. *Corporation of Calcutta Vs. Mulchand Agarwalla*, .

22. Another contention raised by the learned Senior Counsel was that the vacant area set apart by the new construction encroaches into the vacant area set apart for "New Woodlands" hotel in the south. This was the view originally expressed by the Chief Town Planning Officer. However, the documents produced by the Chief Town Planning Officer and the Government make it clear that the "New Woodlands Hotel" had been exempted from the Set Back Rules on all sides by the then Government in 1966 and 1981. Learned Senior Counsel made a submission regarding construction of the plant room where the electrical generator and other equipments are installed and that he only seeks demolition of the plant building and the shifting of the generator and the other equipments to some other places. It was then pointed out by counsel for respondents 6 and 7 that the said building was constructed strictly in accordance with Ext. P7 order and Ext. P8 permit and that all statutory authorities including the officers of the Kerala State Electricity Board and the Cochin Corporation had after detailed inspection approved the constructions made. The generator had been sound proofed. It was also submitted that there was no other space available in the property to which the plant building and the equipments installed therein could be shifted. The Advocate Commissioner deputed by the court has also found that the generator and the location of the plant room would not cause any appreciable inconvenience or prejudice to the petitioner. Accordingly, we are of the view that no grounds have been made out for demolition of the building either on the ground that the construction is in violation of the Rules or the orders under challenge or on the ground that the same would affect the normal life of the petitioner who is residing in a house situated in the adjacent compound situated on the western side of the disputed building.

23. Section 410 of the Kerala Municipality Act, 1994 confers power on the Government to grant exemption from the provisions of the Act and the Rules. A similar power was conferred under Rule 5 of the Kerala Building Rules. The guidelines laid down in the judgment of this Court in *Raman v. State of Kerala* (1994 (1) KLT 1029) shows that the statutory authority, while safeguarding the public interest should not interfere with the rights of the owners of properties to make constructions of their choice in their lands without jeopardizing public interest. The view taken in this case has now been adopted by the State in

enacting Sec. 410 of the Kerala Municipality Act, 1994. The public rights which require protection are where the construction may interfere with the rights or amenities to which the public are entitled. There is a general codification of the types of those rights as also of the rights of neighbours which require protection in the 3 provisos to Sec. 410. Following Rule 15(3) of the Building Rules, R6 and R7 have provided a set back on the eastern side where the building adjoins the M.G. Road. The set back as per rules is provided on the north and west, on the south, a portion of the new building abuts the "New Woodlands Hotel". This is permissible under Rule 15(3)(c) of the Kerala Building Rules. The average vacant space on the south where the building does not abut the "New Woodlands" is about 3 metres. There is nothing to show that the new building violates the right of privacy or the right to light and air or any easement right of the petitioner or any of the other neighbours or of the public in general. Therefore, there is no material to enter a finding that any of the provisos to Sec. 410 of the Kerala Municipality Act are violated either by the Government orders or by the actual constructions made. We are therefore of the view that there are no valid grounds to differ from or to invalidate the statutory occupancy certificate given by the Corporation of Cochin. Respondents 6 and 7 are therefore entitled to commence commercial occupation of the newly constructed building under the name and style of "Woody's Hotel". The statutory authorities would take expeditious steps to facilitate this, having regard to the fact that the commencement of business has been delayed for an unreasonable time by the pendency of this original petition. C.M.P. No. 36673/93 seeking these reliefs is accordingly allowed.

24. Yet another contention made was that there are some unauthorised constructions on the terrace such as a swimming pool (which according to the 6th respondent, is only a wading pool for guests who may spend evenings in the roof garden). We do not think that the objectionable construction providing facilities to the guests can be characterised as unauthorised construction in violation of the approved plan justifying judicial review. We are inclined to restrict the judicial review within the parameters explained in this judgment and also in the judgment of the Apex Court.

25. Thus, on a totality of the facts and circumstances brought to our notice, we are of the opinion that the petitioner has not been able to establish that the orders passed by the Government or the actual construction made would adversely affect public safety in any manner whatsoever. Nor is it established that any of the personal rights of the petitioner nor any amenities enjoyed by him or by any other neighbour would be adversely affected by the construction which has been completed. Nor could it be said that the original petition has been filed for protecting the public interest or for protecting the personal rights of the petitioner. It appears to us that the petitioner's real grievance is only on account of the proximity of the plant building where the generator and other electrical equipments have been housed. The Electrical Inspectors who had occasion to inspect the premises where the machineries were being installed have not found any grounds justifying the complaint of the petitioner. As a

matter of fact, the generator which may produce some noise has been completely sound proofed with modern equipment. This was pointed out to the Commissioner in the course of his inspection. The commissioner in his report pointed out that on inspection it is noticed that there are no significant deviations in regard to the construction of electrical and A.C. Rooms with Ext. P7 exemption order, Ext. P8 building permit and Exts. A4, B1 and B2 approved plans. It is also stated that no opening is provided in the plant and A.C. room in the western side wall on all the floors which is abutting to the western boundary. Going by the available materials placed before us in the form of various affidavits and counter affidavits, the clearance given by the Electricity Board and the report of the commissioner, we are of the view that the original petition has not been filed for redressing any personal injury or grievance. Viewed in this background this petition is liable to be dismissed. Even if the petition is viewed as a public interest litigation, it has to fail since it is not shown that public interest would be adversely affected by declining the prayer for demolition of the building which, according to the affidavits, has been constructed at a cost of Rs. 5 crores, a good portion of which has been raised as loans from public sector banks. We also take note of the fact that tourism industry being actively encouraged by the country as a part of the economic policy followed by the Government. In fact, Tourism industry has been notified as an "Industry" and considerable investment is made for development of infrastructure like suitable good hotels, roads of high standard, etc. In the absence of threat to public safety a direction to pull down the building would therefore only defeat the public interest. It would not even benefit the petitioner. The litigation appears to be part of a vendetta which the petitioner is carrying on against respondents 6 and 7. The preliminary steps for getting the permission from the Corporation and the required exemptions from the Government dragged on for about 4 years from 1988 to 1991. Ultimately the Government granted exemption under Ext. P2 fixing a set back of more area than as prescribed by the Rules. It was only on a further representation that the Government passed Ext. P3 whereby the set back on north was reduced to 3 meters from 4 meters and the set back on the east from 8 meters to 6 meters. The statutory requirement was only 5.5 meters on the eastern side. The front set back was reduced to 5 from 8 meters only on the basis of certain facts which were pointed out by the 6th respondent viz. (i) the buildings on the western side of M.G. Road between the Jose Junction and Hospital Junction (in between which the new building has been put up) has a vacant space or set back of only 3 meters or less. No useful purpose would be served by insisting as a set back of 8 meters for one building alone; (ii) by providing 8 meters for this building alone, not even a single additional car parking space would be obtained. Similarly, no additional car can be parked on the north by insisting 4 metres vacant area instead of the statutory requirement of 3 meters.

26. A plaint room had been included even in the original plans submitted to the Government and the ground and first floor had been put up. While the construction of the main building was going on, it was realised that more space

would be required to install the laundry equipments and the Non-IBR boiler used for laundry and kitchen purposes. Accordingly, application dated 14-2-1995 was submitted for enlarging the plinth area of the plant room and for an additional floor. The required fee was remitted. The application as recommended by the G.C.D.A. was not approved by the Corporation. The C.T.P. then consulted by the Government favourably recommended the request on 28-7-1995. The Government accordingly granted the required exemption on 2-2-1996. Exemption order Ext. P7 was passed on 16-2-1996. It is clear from the files that Ext. P7 was also passed strictly following the prescribed procedure. The 7th respondent company represented by the 6th respondent has made certain claims against the petitioner in C.M.P. No. 5314/98. However, we do not think that we will be justified in quantifying and adjudicating these claims in this proceedings which would require evidence to be adduced. We accordingly relegate respondents 6 and 7 to a regular civil suit, if so advised, to work out their remedies against the petitioner. To sum up, we are constrained to observe that the original petition is borne out of a long standing family feud and animosity existing between the parties. As a matter of fact, the petitioner would not in any manner be injuriously affected by the construction of the new hotel. There is no threat to public safety. The petition was filed after completion of the structure. A civil suit has been filed by the petitioner which is pending. We are therefore inclined to accept the contention of respondents 6 and 7 that the present writ petition has been filed without bonafides and as a part of a family feud to settle scores.

27. Even so, having regard to the fact that respondents 6 and 7 have completed the construction by violating the approved plans and such violations cannot be saved even under the exemption granted and as a matter of fact some of the constructions are in violation of the exemption order itself as noticed by the commissioner appointed by this Court we are not prepared to give a clean chit to them. Had it been for the highly redeeming fact that the construction in question does not pose any threat to public safety we would have come down heavily on respondents 6 and 7. In a case where the construction is carried out in violation of the exemption order itself the matter has to be viewed seriously. However, on a consideration of the facts and circumstances brought to our notice, viz. the construction is already over and a civil suit is pending coupled with the fact that neither the Government nor the local authority has raised any objection in relation to the construction we are of the opinion that ends of justice will be met if respondents 6 and 7 are directed to pay a sum of Rs. 1 lakh as fine for their gross misfeasance. The aforesaid amount shall be paid by crossed cheque drawn in favour of the Registrar, High Court of Kerala, who will deposit and transfer the same in favour of the Secretary, Kerala High Court Legal Services Committee constituted under the Legal Services Authorities Act, 1987, within ten days from today. We make it clear that any further construction in the property shall be proceeded with only after remitting the fine as aforesaid.

28. Before parting with this case we are constrained to observe that the conduct

of the Government and the local authority are far from satisfactory. The unauthorised construction deviating from the approved plans and exemption order was made right below the nose of the officers of the local authority. Had they been diligent respondents 6 and 7 would not have been in a position to complete the construction deviating from the approved plans and the exemption order. On the contrary, what we find is that respondents 6 and 7 had the blessings of the minions of law which enabled them to proceed with the construction. In such a case we will be justified in imposing a heavy fine on the local authority for their acts of commission and omission. However, by adopting a lenient view we desist from imposing any fine on the local authorities, viz. the Corporation of Cochin and the G.C.D.A. with a stiff warning to them to be very careful in future in regard to monitoring of constructions so as to ensure its completion strictly in accordance with the approved plans and exemptions, if any.

29. Respondents 6 and 7 have paid a sum of Rs. 20,000/- towards commission bata. The commission was issued only at the instance of the petitioner. Since the original petition is dismissed, in the normal course we would have directed the petitioner to pay a sum of Rs. 20,000/- to respondents 6 and 7. But having regard to the exceptional facts and circumstances disclosed as above we are not issuing such a direction in the present case. In the result we dismiss this original petition subject to the above directions (vide paragraph 28).