

(2014) 11 KAR CK 0322

In the Karnataka High Court

Case No : Writ Petition No. 31942 of 2014 (LB-BMP)

Prakash Chandra

APPELLANT

Vs

The Commissioner, Bruhat Bangalore Mahanagara Palike and
Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Municipal Corporations Act, 1976 — Section 299, 300, 308, 320, 321
Penal Code, 1860 (IPC) — Section 191, 192, 193

Citation : (2015) 3 AKR 689 : (2015) 2 KarLJ 329

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : S.V. Giridhar, Advocates for the Appellant; B.V. Shankara Narayana Rao and N. Nagarajappa, Advocates for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner-owner of the immovable property No. 287, 5th "C" Cross, II Stage, Nagarabhavi, Bangalore, made a representation dated 4-11-2014 to the respondent-Bruhat Bengaluru Mahanagara Palike (for short, "BBMP") over his neighbor the 4th respondent erecting construction of a building on site No. 288 in violation of the building plan sanctioned for residential purpose and the Bangalore Mahanagara Palike Building Bye-laws, 2003 (for short, "Bye-laws"), impinging upon petitioner's easementary rights. The 4th respondent continued to carry on the illegal construction while the respondents-Commissioner of BBMP; Assistant Executive Engineer of Lager Sub-division; and Rajarajeshwarinagar Sub-division; did not prevent the illegal construction. Oral enquiries of the petitioner with the 3rd respondent was responded to stating that it was for the 2nd respondent to consider the complaint. Petitioner's applications dated 18-1-2014 and 28-1-2014, Annexures-F and G, to the 3rd respondent under the Right to Information Act, 2005, to furnish certified copies of the building plan sanction was responded to by reply dated 4-2-2014 Annexure-H, informing the petitioner that property No. 288 fell within the territorial

jurisdiction of the 2nd respondent-Assistant Executive Engineer, Lager Sub-division, who was directed to furnish the plan. The 2nd respondent in his correspondences directed payment of a certain sum of money for issue of the certified copy of the plan, asserting that the schedule property fell within his jurisdiction, while letter two days thereafter, i.e., on 26-2-2014 Annexure-K, of the Assistant Revenue Officer, stated that the property bearing No. 288 did not fall within its jurisdiction. The 2nd respondent, there after wards, is said to have furnished a copy of the building plan sanction permitting the 4th respondent to put up a structure consisting of ground, first and second floors, for residential purpose, bearing LP No. 1356, which was not certified by the 2nd respondent on the premise that the original was issued by the 3rd respondent. Petitioner's further request to certify the plan, was responded to by reply dated 6-3-2014 Annexure-M, stating that the 3rd respondent did not issue any such plan. It is the allegation of the petitioner that 4th respondent without obtaining a sanction of a building plan has put up construction of six floors (actually five floors according to learned Counsel for the petitioner), consisting of stilt, ground, first, second and third floors. It is further alleged that though the sanction was for construction of a residential building and a shop, nevertheless, 4th respondent put up a Commercial Complex, as indicated in the positive photographs Annexure-N series. According to the petitioner, respondents 1 to 3 colluded with the 4th respondent, and did not prevent construction of the illegal building, but assisted the 4th respondent in the erection of the building contrary to the sanction accorded, and when objections were filed did not consider the same. Hence this petition, invoking Article 226 of the Constitution of India, for the following reliefs:

"a. Call for the records in respect of the Schedule Property from the file of the respondents 1 to 3;

b. Issue a writ of mandamus, similar writ, order or direction and direct the respondents 1 to 3 to consider the representation dated 4-1-2014 and 17-1-2014 as at Annexures-D and E to the present writ petition in accordance with law and expeditiously;

c. Issue a writ of mandamus, similar writ, order or direction and direct the respondents 1 to 3 to demolish the construction put up illegally over the Schedule Property;

d. Issue such other order/s as this Hon"ble Court deems fit to grant in the facts and circumstances of the case including an order as to the costs of the present writ petition".

2. Petition, when heard on 15-10-2014, BBMP was directed to furnish copies of the building plan, the purpose for which site was earmarked in the CDP, date of issue of commencement certificate, date on which Engineer personally visited the site when the construction had taken place and the extent of deviation and whether the Engineer had not visited the spot.

3. Petition, at the first instance, was opposed by filing statement of objections dated 16-10-2014 of respondents 1 to 3, inter alia, admitting that a building plan bearing LP No. 1356, dated 19-4-2012, was duly sanctioned in favour of the 4th respondent to put up a commercial/residential building consisting of stilt, ground, first, second and portion of third floors, on Site No. 288, 8th Block, II Stage, Nagarabhavi, Bangalore, with a total built up area of 112.20 sq. meters Annexure-R1, by the Assistant Director, Town Planning, Rajarajeshwarinagar Zone, BBMP. It is asserted that on the petitioner's complaint, action was initiated for removal of the unauthorized construction by issuing a notice Annexure-R2, provisional order dated 10-1-2014 Annexure-R3, a notice Annexure-R4 and a confirmation order dated 28-1-2014, enclosing a sketch showing deviations Annexure-R5. In addition to office proceeding dated 16-9-2014 Annexure-R6, it is specifically denied that the Engineers colluded with respondent 4. The 4th respondent, aggrieved by the said orders, preferred Appeal No. III of 2014 on 1-2-2014 along with an application for interim stay, which application was dismissed by the Karnataka Appellate Tribunal, by order dated 23-4-2014, following which the 4th respondent filed W.P. No. 28862 of 2014 and in which there is no interim order. It is further asserted that the Assistant Executive Engineer sought permission of the Executive Engineer, Rajarajeshwarinagar Division, to extend permission for demolition of the offensive portions of the building by invoking Section 462 of the Karnataka Municipal Corporations Act, 1976 (for short, "KMC Act").

4. On 21-10-2014, the following order was passed:

"RMRJ

21-10-2014

The discussion that took place yesterday in the form of submission led the learned Counsel for the petitioner in W.P. No. 28862 of 2014 to state that his client would file an affidavit inter alia undertaking to pull down that portion of the building which was offensive and contrary to the building plan and secondly, would not induct any person into the property until disposal of the petition. That is not found in the affidavit. The affidavit taken on record is rejected.

Learned Counsel for the petitioner submits that he will take ten days time to demolish the building.

The Commissioner, BBMP is directed to be present at 2.30 p.m., today.

Respondent 4 files an affidavit dated 21-10-2014 undertaking to remove the third floor portion and would put to use the stilt floor for parking purpose. Affidavit is taken on record.

Respondent 4 to comply with the undertaking and to report.

Engineer concerned of the BBMP to inspect the building and file a report over compliance and also the extent of unauthorized construction in addition to the

third floor.

The Commissioner Sri M. Lakshmi Narayana is personally present and promises the Court to take necessary corrective measure over the duties to be discharged by the Engineers in the matter of constructions of buildings in Bangalore.

Compliance by 29-10-2014.

Relist on 30-10-2014 for report".

5. Respondents 1 to 3 filed report dated 29-10-2014 in compliance with the directions dated 21-10-2014 stating that the removal of the offensive portion of the building was carried out between 25-10-2014 and 29-10-2014 which was inspected by periodical visits. At paragraph 4, it is stated thus:

"4. The respondent 4 has carried out the removal and alterations in terms of the affidavit dated 21-10-2014 and there is not unauthorized construction found during the visit, except set back deviations as detailed in the confirmation order dated 10-1-2014".

6. On 30-10-2014 the following order was passed:

"RMRJ:

30-10-2014

Although the report submitted by the BBMP is said to be in compliance with the order dated 21-10-2014, sadly it is not a compliance. The property in question is a corner plot governed by Bye-law 17 and the height of the building is said to be 11.5 mtrs. and therefore, Note 3(c) of Table 6 of the BMP Building Bye-laws, 2003 applies. If according to the learned Counsel for the BBMP, there is deviation in the set back area and that deviation of all the ground and second floor amounts to 237.6 sq. ft. in the front side. It is not known as to what are all the set backs on hind and sides. Since the sanction plan contains the signature of one S. Chandrashekhar, Register No. BCC/BL/3/08-1194/08-09, respondent 4 to file a certificate from the said Civil Engineer over the extent of deviation in the building having regard to the Building Bye-laws.

BBMP Engineers also to submit a report by 3-11-2014.

List along with W.P. No. 2993 of 2008 on 31-10-2014".

7. The following is the order passed on 31-10-2014:

"RMRJ

31-10-2014

Sri B.V. Shankara Narayana, learned Counsel for respondent-BBMP, on instructions of the Engineer present before Court submits that he has no instructions over whether there was verification of the width of the 2nd Main Road facing South of the property in question and that of the 1st Cross Road

facing East of the said property, so also, whether the measurement of the site was recorded by the Engineer prior to sanction of building plan. It is submitted that building plans were sanctioned by Assistant Director of Town Planning, Rajarajeshwarinagar range of BBMP and that he has no instructions from that officer. Learned Counsel submits that there is a resolution passed by the Corporation i.e., Council adopting the Zonal Regulations Bangalore 2007 issued by the State Government under the Revised Master Plan, 2015 in terms of the Karnataka Town and Country Planning Act, 1961 and that it would govern the issue of license as well as sanction of building plan, insofar as the bye-laws are not inconsistent with the regulations. Learned Counsel further submits that identical question as to whether bye-laws or zonal regulations would prevail when considered by this Court it is held that it is the zonal regulations that prevail and not bye-laws.

Annexure-M, dated 6-3-2014 is an endorsement issued by the Assistant Director, Town Planning Department, informing petitioner on R.T.I. application that a building plan bearing No. 1356/2012-2013 in respect of Site No. 288, 5th "C" Cross, Income Tax Layout, Nagarabhavi 8th Division, II Stage, Bengaluru-560 057 is not sanctioned, though, in the statement of objections, at paragraph 4, it is specifically adverted that there is sanction of building plan bearing No. 1356/2012-2013. Learned Counsel for BBMP submits that he has no instructions over why statement of objections does not advert to Annexure-M or whether the said endorsement was issued by a Public Information Officer appointed under the R.T.I.

In the first place, in the absence of a resolution passed by the Corporation, it is unable to accept the plea that zonal regulations prevail over building bye-laws. Mere issue of a circular by an officer without a resolution of the Corporation, it is not possible to accept, *ex facie*, that bye-laws have no applicability in the sanction of building plan. Secondly, the Town Planning Department of the Corporation has done nothing to establish any exertion by all their Officers either physically or mentally in the matter of sanction and issue of license for construction of the building.

It must be observed that respondent-Corporation suppressed material information in the statement of objections, since there is no reference to many relevant and material points for consideration in the matter of sanction of building plan as also, Annexure-M, endorsement. It is not known as to what is the floor area ratio applicable to the site in question measuring 7.3 metres facing the 2nd Main Road, measuring 40 feet; and 8.5 metres facing 1st Cross Road on the East said to measure 30 feet. The very basis and foundation for fixing the FAR, set back area, as also, applicability of Bye-law 17 to a corner site are matters not forthcoming from the statement of objections. If according to the learned Counsel for Corporation the bye-laws insofar as they are not inconsistent with the Zonal Regulations are applicable, then Bye-law 17 applies to the corner site and if so, the statement of objections must advert to it and having not done

so, there is suppression of material fact.

At this stage, Sri B.V. Shankara Narayana, learned Counsel seeks some more time to file additional statement of objections. Relist on 3-11-2014".

8. An additional statement of objections dated 3-11-2014 of respondents 1 to 3 was filed, inter alia, stating that the report filed on 30-10-2014 be read as part and parcel of the additional statement of objections. At paragraph 3, it is stated that one H. Ravikumar, the then Assistant Director of Town Planning, and another A. Mohan Kumar, Assistant Engineer, while the supervision certificate in accordance with Schedule III to the "Bye-laws" was issued by S. Chandrasekhar, Civil Engineer. At paragraph 4, it is stated that the endorsement dated 6-3-2014 Annexure-M, was issued by Akram Pasha, the then Assistant Director of Town Planning while building plan was sanctioned by the 3rd respondent. At paragraph 5, it is stated that the supervisory jurisdiction of the 2nd respondent is over the property bearing No. 288 and is entrusted with the responsibility of ensuring implementation of the building plan as sanctioned, the "Bye-laws" and zonal regulations. The confirmation order under Section 321(3) of KMC Act dated 28-1-2014, it is said was passed by one K.N. Krishna Naik, Assistant Executive Engineer, BBMP, who is no more and further that one Channaveeraiah was the Assistant Engineer as on 7-11-2013, while R. Gangadhar, Assistant Engineer took charge on 21-7-2014 and Assistant Engineer is K.B. Narasimha Murthy, took charge on 7-11-2013.

9. At paragraph 6, it is stated that the property in question is a corner plot measuring 60.22 square meters, located in a residential (main) zone, Ring-II, with permissible Floor Area Ratio (FAR) of 1.75 (115.80 square meters), while height of the building, is upto 11.5 meters and the maximum permissible coverage area is 75% of 60.22 square meters which works out to 46.16 square meters. The road width it is stated is 9.14 meters towards eastern side of the plot and 12.19 meters towards the southern side of the plot while plot size being less than 360 square meters, the FAR and ground coverage are computed in terms of Regulation 4.1.2 (Table 10) of the Revised Master Plan, 2015 and Bangalore Zoning of Land Use and Regulations, 2007 (for short "Zoning Regulations"). Regulation 4.1.2 of the "Zoning Regulations", permitting ancillary use (C2, I-2 and U-3) allows upto 20% of the total built up area or 50 square meters, whichever is higher for residential/commercial use. According to the BBMP, set back requirements are computed as per Table 8 of the "Zoning Regulations", while SI. No. 8 of Table 23 provides for parking.

10. At paragraph 7, it is stated that the norms/requirements prescribed in Regulation 17 of the "Bye-Laws" provides for minimum distance of 10% of the frontage of the plot at the point of intersection of the roads and that the property in question at the frontage measures 8.5 meters and thereby the applicable minimum distance being 10% is 0.85 meters, and the distance at the point of intersection of the roads is 1.5 meters as per sanctioned plan.

11. It is further stated that "Zoning Regulations" are applicable in the light of the Circular dated 31-8-2007 issued by the Commissioner, BBMP, making reference to the resolution in Subject No. 175/2007-2008.

12. At paragraph 10, it is stated that the endorsement dated 6-3-2014 Annexure-M was issued by the 3rd respondent "under the circumstances wherein the applicant had not furnished the proper and accurate particulars with regard to the year of sanction of plan". In the application dated 28-1-2014 mentioned 2013-2014 as the year of sanction to the building plan, though the building plan bearing LP No. 1356 was sanctioned for the year 2011-2012 and a computer check by the 3rd respondent with reference to year 2013-2014 found that LP No. 1356 for that year pertains to some other property, while for the year 2012-2013, there was no plan sanctioned with LP No. 1356. It is said in the aforesaid circumstances, Annexure-M endorsement came to be issued, therefore a lenient view be taken in the matter in the interest of justice and equity.

13. At paragraph 12, it is stated that pursuant to the affidavit dated 21-10-2014, the 4th respondent has removed the unauthorized third floor and the partition in the basement floor (sanctioned stilt floor) so as to put to use the stilt floor for parking purposes, while the other deviations noticed in the Confirmation Order dated 10-1-2014 are yet to be removed.

14. On 3-11-2014 the following order was passed:

"RMRJ:

3-11-2014

This is yet another day in the process of ascertaining compliance of rule of law by the City Corporation. Although the learned Counsel for the Corporation submits that Annexure-M was issued under a bona fide mistake, since the relevant year in which the plan sanctioned was not correctly informed, I am afraid, is unacceptable. The application under the RTI makes it abundantly clear that what is sought for is the plan sanctioned for premises No. 288 and therefore, the submission that the computer did not answer the query is of no consequence. RTI applications are to be answered not based upon what computer says, but based upon the information the Corporation has. The submission in the additional statement of objections that it is the bona fide mistake on the part of one Akram Pasha, Assistant Director of Town Planning is unacceptable. Ex facie the information furnished in Annexure-M calls for necessary legal action, if so advised, at the hands of the petitioner under the provisions of the Right to Information Act.

Although Zoning Regulations are said to be applicable, nevertheless there is nothing to state that the Bye-laws have no application in the matter of sanction of Building Plans. In respect of properties at intersection (corner site), the corners are required to be cut off or rounded off so as to ensure a line of sight for motorists, as can be gathered from Bye-law 17 of the Bye-laws. The plan, duly

sanctioned, does not provide for such cutting off or rounding of the corners. There is no explanation forthcoming in the additional statement of objections except to state that "Regulation 17 has also complied with".

Bye-law 3.2.11 provides for furnishing of supervision certificate in terms of Schedule III by a competent registered architect, while Bye-law 3.6 provides for registration of architect, as stipulated in Schedule IV. Schedule III is a declaration in the form of supervision, while Schedule IV deals with duties and responsibilities of the registered architect, who has submitted a form of supervision in Schedule III. Apparently, there is no material forthcoming as to what action is taken against the so-called declarant, by name S. Chandrashekhar, Civil Engineer, who has been registered with the respondent-BBMP.

Learned Counsel for the respondent-BBMP seeks a day's accommodation to furnish certified extract of the resolution passed by the Administrator, in the matter of applicability of the Zoning Regulations and as to whether any action has been taken, in the recent past, against any of the Architects/Engineers/Supervisors, in matters of deviation in the building of which the said person has not intimated to the Corporation.

A bare perusal of Section 321-B when read with Bye-law 5.2 and 5.3, there can be no more doubt in my mind that issue of orders under Section 321(1), 321(2) and 321(3) of the Act by the Engineer is sufficient evidence of the Engineer's failure to discharge his duties and failure to prevent construction of unauthorized buildings.

Learned Counsel is permitted to file Second Additional statement of objections by 5-11-2014".

15. On 5-11-2014, respondents 1 to 3 filed a Second Additional statement of objections, furnishing copy of the resolution in Subject No. 175/2007-2008, dated 22-8-2007 and stating that action against the registered Engineer who issued the supervision certificate at the time of sanction of building plan requires verification of documents maintained in the Town Planning section at the Head Office level and Zonal Office level and necessary information would be furnished in due course.

16. On 5-11-2014 the following order was passed:

"RMRJ:

5-11-2014

Learned Counsel for BBMP submits that after the offensive portions of building, in part, were removed by the builder himself, the Engineer has not recorded measurements and would do so and file a report if extended time.

Report to be filed on 12-11-2014 which should take into consideration all the provisions of Zoning Regulations, as well as such of those provisions of Building

Bye-laws which are not part of the Regulations.

Second Additional statement of objections filed by respondents 1 to 3 is taken on record.

Relist on 12-11-2014".

17. Respondents 1 to 3 filed yet another report dated 12-11-2014 stating that in compliance with the order dated 5-11-2014, the building came to be measured by the Assistant Executive Engineer, Laggere, on 10-11-2014 enclosing two detailed drawings (marked as Drawing No. 1 and Drawing No. 2) depicting the factual position in relation to existing deviations from the sanctioned building plan (highlighted in colour).

18. On 12-11-2014 the following order was passed:

"RMRJ:

12-11-2014

Learned Counsel for BBMP files a report dated 12-11-2014 enclosing two sketches said to indicate the deviations in the construction of the building by the contesting respondent. At the threshold Sri S.V. Giridhar, learned Counsel for petitioner points out to two glaring infirmities, one with regard to staircase abutting the adjacent property and not at the place as per the sanction of the building plan; and secondly, that the second floor is not permitted to be fully covered by building, but only partially. These two deviations are not brought out in the report according to the learned Counsel.

The person who signed the report is one Mr. R. Gangadhar, S/o. Rudrappa, aged 40 years, working as Assistant Executive Engineer, residing at No. 43, 12th Main Road, 4th Block, Nandini Layout, Bangalore, who claims to have carried out the inspection of the building and prepared the report. Ex facie, the Assistant Executive Engineer has tendered false evidence, an offence under Sections 191, 192 and 193 of the Indian Penal Code, 1860 calling forth criminal prosecution.

At this stage, learned Counsel for BBMP submits that the reporter is very innocent and did not mean to tender false evidence and that confidence be reposed in that Engineer who will submit a better report, if granted 48 hours. It is but natural that the report being in black and white, filed pursuant to the order of this Court, nothing more is necessary, on the face of it to establish the falsity of the statement made therein. Keeping open further order over initiation of criminal prosecution, at the request of learned Counsel, 48 hours time is granted to file a better report.

Relist on 14-11-2014".

19. On 14-11-2014, one more report was filed by respondents 1 to 3 in compliance with the order dated 12-11-2014 stating that a comprehensive inspection of the building was carried out with reference to the sanctioned plan

and that a sketch was prepared indicating the deviations, enclosed to the memo.

20. In the said report, it is stated that the sketch incorporates all the deviations noticed in the inspection including the deviations which did not form part of the Confirmation Order dated 28-1-2014 issued by the then Assistant Executive Engineer, K.N. Krishna Naik, who is no more and that the deviations between the Confirmation Order and the sketch enclosed is being examined thoroughly and necessary action would be taken in accordance with law.

21. The 4th respondent filed two affidavits of even date dated 21-10-2014 stating at paragraph 5 that under Section 321-A of the KMC Act, respondent-BBMP has jurisdiction to condone the contravention of Section 321 of KMC Act, by regularizing construction on payment of amount specified under the KMC Act apart from "Akrama-Sakrama Scheme", which is pending before the Government and that he be permitted to make necessary application under Section 321-A of the KMC Act. In the next affidavit, it is stated that he undertook before this Court that he would use the stilt floor only for the purpose of parking and the small portion of third floor would be removed at his cost and sought disposal of the writ petition.

22. Respondents 1 to 3 filed application dated 14-11-2014 invoking Article 226 of the Constitution of India, to recall the order dated 12-11-2014. The affidavit accompanying the application sworn to by one R. Gangadhar, Assistant Executive Engineer of Laggere Sub-Division, states that he has bona fide discharged duties and did not intentionally withhold any information or documents and omissions, if any, is purely unintentional and for reasons beyond his control and further has a clean and unblemished record and great responsibility for the Court. According to him, the observations in the order dated 12-11-2014 would adversely affect his career causing irreparable loss and injury and as he took charge on 21-7-2014, by then, the 4th respondent completed the construction work though the confirmation order dated 28-1-2014 was in operation.

23. Having regard to the nature of his brought before Court, the orders, supra, were necessitated to ensure that the respondent-BBMP would place before Court all relevant material particulars since the same was not forthcoming.

24. Heard learned Counsel for the parties and perused the pleadings. At the outset it is submitted that certain provisions of "Bye-laws" are not in conformity with "Zoning Regulations" and therefore during the year 2007, on coming into force of said "Zoning Regulations", the then Administrator of the BBMP resolved to adopt the "Zoning Regulations" together with Building Bye-laws wherever it is possible to be followed in the matter of according building plan sanction. The building plan issued to the 4th respondent is said to be duly sanctioned and compliant with both "Zoning Regulations" as well as "Building Bye-laws 2003". The KMC Act provides for issue of a building license under Section 299, while application for issue of license is governed by Bye-law 3 in Part II of Bye-laws and the grant of license under Bye-law 4. Bye-law 3.2.7 provides for submission

of an indemnity bond by the applicant.

25. However, it must be noticed that the site in question being a corner site the building to be erected thereon requires compliance with Bye-law 17 of the Bye-laws relating to buildings at intersection of streets and reads thus:

Bye-law 17 provides for buildings at intersection of streets and reads thus:

"17.0. Buildings at intersection of streets.--At the intersection of streets, the corners of the boundary of the plot shall be rounded off or cut-off after leaving a minimum distance of 10% of the frontage of the plot or 3 mtrs. whichever is less from the point of intersection. The Authority may further require the corner of the building to be rounded off or cut-off parallel to the rounded off or cut-off boundary upto the height of the ground floor. In such cases the FAR is to be allowed for the total area of the plot. Entry or exit for the buildings shall be provided away from the point of intersection".

Apparently there is non-compliance with the said Bye-law while according sanction to the building plan in question.

26. There is no dispute that the 4th respondent not a law abiding citizen, in violation of rule of law contrary to the provisions of the KMC Act, the "Bye-laws" and the building plan sanction, put up construction of a building consisting of five floors, without, providing setbacks with a staircase in the setback area while the two upper floors did not have permission.

27. It cannot also be denied that the Civil Engineer by name S. Chandrashekar (for short, "Engineer"), who issued the certificate of supervision in terms of Bye-law 3.2.11 read with Schedule III of the Bye-laws undertaking to be responsible for the supervision of the construction of the building did not bring to the notice of respondents 1 to 3 over the construction of unauthorized portions (deviations) of the building by the 4th respondent. That supervision certificate is required to be issued by a Competent Registered Architect/Engineer/Supervisor, registered with the respondent-BBMP under Bye-law 3.6 as stipulated in Schedule IV. That Engineer though required by Bye-law 3.6 of the Bye-laws read with Schedule IV therein, more particularly, Clause IV-8(g) did not report to respondents 1 to 3 of any work executed in the site in contravention of the provisions of the KMC Act, Karnataka Town and Country Planning Act, 1961, bye-laws and regulations as well as the building plan sanction. The Engineer admittedly did not comply with Clause IV-8(h) by regularly filing progress reports but proceeded with the next stage of work without getting the previous stage inspected and examined by the authorized Corporation staff or fully comply with the instructions issued after examination of the work. In view of sub-clause (i) of Clause IV-8 it was the duty of the Engineer to ensure that there are no material and structural deviations from the building plan sanction without the previous approval of the authority and is bound to explain to the owners about the risk involved, as well as the Standing Orders and Policy Orders of the Corporation. Sub-clause (j) of Clause IV-8 though required the Engineer to submit a completion certificate and execute

the plan in case of deviation immediately when the work is completed, in connection with obtaining of completion certificate within the stipulated time, did not do so. It is not the case of the 4th respondent that his Supervising Engineer had not continued the supervision or had given a letter in writing to the Corporation of ceasing to be his employee and hence not responsible for the work executed. In short, the Engineer who issued the supervision certificate failed to comply with his undertaking. Bye-law 5.1 imposes a responsibility on the owner who shall not in any way relieve himself of a building from full responsibility to carry out work in accordance with the requirement of the building plan sanction along with such condition as have been imposed while issuing the license. Bye-law 5.2(i) requires the owner to give intimation to the Authority on completion of the foundation, while Bye-law 5.3 provides for inspection of construction for which license is issued by the Authority and certain types of constructions involving unusual hazard or requiring continuous inspection by the Authorities. The owner, it is said, is required to commence the work after the grant of commencement certificate in the form prescribed in Schedule VII. Bye-law 5.6 provides for issue of occupancy certificate, if the builder within one month after completion of erection of the building intimates to the Commissioner in writing of such completion accompanied by a certificate in the form under Schedule VIII certified by a Registered Architect/Engineer/Supervisor, with a request for permission to occupy the building. It is thereafter that the Authority is required to comply with other terms of Bye-law 5.6 before issue of occupancy certificate in the form prescribed in Schedule IX provided the building is in accordance with the building plan sanction. Bye-law 5.6.1(b) reads thus:

"5.6.1(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building bye-laws, and includes inspections by the Fire Service Department wherever necessary".

Bye-law 5.6.1(c) reads thus:

"5.6.1(c) If the construction or reconstruction of a building is not completed within five years from the date of issue of license for such a construction, the owner shall intimate the Authority, the stage of work at the expiry of the years. The work shall not be continued after the expiry of five years without obtaining prior permission from the Authority. Such continuation shall be permitted, if the construction or reconstruction is carried out according to the licensed plan and if the Authority is satisfied that at least 75 per cent of the permitted floor area of the building is completed before the expiry of five years. If not, the work shall be continued according to a fresh license to be obtained from the Authority".

28. Petitioner, being a neighbor having suffered the wrath of unauthorized construction erected by his neighbor, the 4th respondent, a nuisance, justifiably informed respondents 1 to 3 over such illegal construction, although respondents 1 to 3 are statutorily invested with the jurisdiction to prevent construction of a

building contrary to the building plan sanction, the building bye-laws, Karnataka Town and Country Planning Act, 1961 and the KMC Act. Thus respondents 1 to 3 permitted the 4th respondent to put up construction, hence guilty of non-performance of duties statutorily imposed upon them under the KMC Act.

29. Section 321 of KMC Act provides for demolition or alteration of building:

"321. Demolition or alteration of buildings or well work unlawfully commenced, carried on or completed.--(1) If the Commissioner is satisfied.--

(i) that the construction or reconstruction of any building or hut or well.--

(a) has been commenced without obtaining his permission or where an appeal or reference has been made to the Standing Committee, in contravention of any order passed by the Standing Committee; or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws; or

(ii) that any alterations required by any notice issued under Section 308, have not been duly made; or

(iii) that any alteration of or addition to any building or hut or any other work made or done for any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of Section 320,

he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the Commissioner, has been unlawfully executed, or make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, bye-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or orders was based and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well or hut.

(2) The Commissioner shall serve a copy of the provisional order made under sub-section (1) on the owner or builder of the building or hut or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner".

30. In the facts and circumstances noticed supra, although a concerted effort was put forth by respondents 1 to 3, to point out that it was 4th respondent who

committed the illegality with a view to suppress the deficiencies in discharge of statutory duties, nevertheless only after orders of this Court that report after report was placed before Court. The suppression of relevant material is well demonstrated in the two reports filed by the BBMP. In the first report, Engineers admit to have overlooked certain deviations not in accordance with the building plan sanction. It is only when the Court pointed out to the deficiencies on the basis of the submissions put forth by learned Counsel for the petitioner, that learned Counsel for BBMP submitted that an inspection of the property in question would be made and report filed. The report admittedly discloses more violations in the construction of the building by the 4th respondent than what was observed in the first report and in the sketch appended to the notice under Section 321(2) of the KMC Act, Annexure-R4 to the statement of objections. This is a clear pointer to the lackadaisical attitude of the Engineering Department of the respondent-BBMP and in the discharge of duties of the concerned officers. Though it is said that one K.N. Krishna Naik, Assistant Executive Engineer, who signed Annexure-R4 is no more, nevertheless, another "Assistant Engineer" by name K.B. Narasimha Murthy subscribed to Annexures-R3, R4 and R5 and failed to prevent the construction of the building with deviations by the 4th respondent.

31. Another argument advanced by learned Counsel for BBMP is that Gangadhar, Assistant Executive Engineer, had taken charge on 21-7-2014. In other words, it was the Officers who held the position prior to his taking charge had taken action over the unauthorized construction. In the light of the second report filed indicating further deviations in the building not noticed in the earlier report as well as the notice Annexures-R3, R4 and R5, it is too far-fetched to contend that the incumbent officer did not have knowledge of the construction.

32. It is in this context, it is necessary to identify and take appropriate action against the officers responsible for failure to prevent unauthorized construction. Such blatant violation of law by the 4th respondent cannot but take place without the connivance of the officers concerned. It cannot be gainsaid that there was no consideration. It is needless to point out that the 4th respondent who owns the property has implied responsibility not to cause hardship, inconvenience and sufferings to the residents of the locality and injury to third parties. It is therefore necessary not only to stop misuse but also make the owner, at default, accountable for the injuries caused to others. While similar would be the accountability of the officers of the BBMP, since prima facie, the misuse in violation of laws cannot take place without their active connivance. The 1st respondent being the Commissioner of BBMP failed to show what steps are taken in that regard but for issue of notices Annexures-R1 to R5.

33. Bye-law 6 provides for deviation of construction and reads thus:

"6.0. Deviations during construction.--(i) Wherever any construction is in violation/deviation of the sanctioned plan, the Commissioner may, if he considers that the violations/deviations are within 5% of (1) the setback to be provided around the building; (2) plot coverage; (3) floor area ratio; and (4) height of the

building and that the demolition under Chapter XV of the Act is not feasible without affecting structural stability, he may regularize such violations/deviations after recording detailed reasons for the same.

(ii) Violation/deviation as at 6.0(i) above may be regularized only after sanctioning the modified plan recording thereon the violations/deviations and after the levy of fee prescribed by the Corporation from time to time.

(iii) Regularization of violations/deviations under this provision are not applicable to the buildings which are constructed without obtaining any sanctioned plan whatsoever and also the violations/deviations which are made inspite of the same being specifically deleted or rejected in the sanctioned plan".

Section 321-A of the KMC Act reads thus:

"321-A. Regularization of certain unlawful buildings.--(1) Notwithstanding anything contained in this Act, when construction of any building is completed in contravention of the Sections 300 and 321 and building bye-laws made under Section 423, the Commissioner may regularize building constructed prior to the 3rd day of December, 2009 subject to the following restrictions and such rules as may be prescribed and on payment of the amount specified in sub-section (2), namely.--

(a) Where the building is built abutting the neighboring property or where the set back provided is less than the limit prescribed in bye-laws, violation upto twenty-five per cent in case of non-residential buildings and fifty per cent in case of residential buildings shall be regularized;

(b) No development made in the basement or usage in contravention of bye-law shall be regularized;

(c) The construction of building shall not be regularized if it violates the building line specified on any given road unless the owners of such building furnish an undertaking that the space between the building line and the road or foot path or margin will be given up free of cost at any time when required for the purpose of widening the road in question;

(d) The provisions of sub-sections (2) to (14) of Section 76-FF of the Karnataka Town and Country Planning Act, 1961, shall apply mutatis mutandis for regularization of building under this section and application for regularization being made to the Commissioner.

(2) Regularization of any construction under this section shall be subject to payment of the prescribed amount which may be different for different types of contravention of building bye-laws:

Provided that the amount so prescribed shall not be less than.--

(i) six per cent of the market value, determined in accordance with the Karnataka Stamp Act, 1957 and rules made thereunder, of the portion of the

building built in violation of the provisions referred to above, if such violation of set back norms and permissible floor area ratio does not exceed twenty-five per cent;

(ii) eight per cent of the market value, determined in accordance with the Karnataka Stamp Act, 1957 and the rules made thereunder, of the portion of the building built in violation of the provisions referred to above, if such violation of set back norms and permissible floor area ratio exceeds twenty-five per cent but does not exceed fifty per cent:

Provided further that where the portion of the building is built in violation of the provisions referred to above is being used or meant for non-residential purpose and amount payable for regularization of such portion shall be.--

(a) twenty per cent of the market value, determined in accordance with Karnataka Stamp Act, 1957 and the rules made thereunder, of the portion of the building built in violation of the provisions referred to above, if such violation of set back norms and permissible floor area ratio does not exceed twelve and a half per cent;

(b) thirty-five per cent of the market value, determined in accordance with the Karnataka Stamp Act, 1957 and the rules made thereunder, of the portion of the building built in violation of the provisions referred to above, if such violation of set back norms and permissible floor area ratio exceeds twelve and a half per cent but does not exceed twenty-five per cent.

(3) No person shall be liable to pay fine or fee for regularization under any other law if he has paid regularization fee under this Act for the same violations.

(4) All payments made under sub-section (1) shall be credited to a separate fund kept in the concerned local/planning authority called the urban areas infrastructure development fund which shall be utilized in such manner, for the development of infrastructure, civic amenities, lighting, parks, drinking water, drainage system and for any other infrastructure, as may be prescribed".

34. Although learned Counsel for 4th respondent submits that Section 321-A comes to aid the regularization of construction contrary to the building plan sanction and "Zoning Regulations", is unacceptable. Respondent 4 can take no benefit of either Section 321-A or Bye-law 6 of the "Bye-laws" since the disputed construction is in clear violation of the building plan sanction and notices issued by the BBMP under Section 321(1), 321(2) and 321(3) of the KMC Act and also because such a plea is raised after completion of the building construction. Even otherwise, if such constructions are permitted to be regularized, then it would take away the efficacy of the very essence of planned development of Bengaluru.

35. In the light of the observations of the Apex Court in *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others*, , petitioner being the immediate neighbor of the 4th respondent and a "rate payer", has a legal right to demand compliance by respondents 1 to 3 of their statutory duties. The Apex Court

extracting its earlier decision in *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, observed thus:

"The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction".

36. The provisions of the KMC Act invests jurisdiction in respondents 1 to 3 to perform duties to ensure planned development of the City of Bangalore, more appropriately in the construction of buildings to adhere to the laws in force. The Apex Court in *The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd. and Others*, observed thus:

"12. It is clear, therefore, on a consideration of the provisions of the Bombay Town Planning Act, 1954 and especially the sections of that Act referred to above, that the Corporation is exclusively entrusted with the duty of framing and implementation of the Planning Scheme and, to that end, has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act. It has, been long held that, where a statute imposes a duty the performance or non-performance of which is not a matter of discretion, a mandamus may be granted ordering that to be done which the statute requires to be done (See Halsbury's Laws of England, Third Edition, Volume II, page 90)".

37. A Division Bench of this Court in *Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another*, , observed thus:

"7. It must be emphasized that the Development Plan prepared under the Planning Act, 1961 would be for the benefit of the public. The Corporation authorities who are the trustees of the public interest, must strictly observe the norms and conditions of the Development Plan. The authorities owe a duty to rate payers to protect the interest of the public while administering the planning law. They cannot afford to ignore the social responsibilities underlining the planning law. They shall not favour an individual at the cost of the general public and to the detriment of their interest. They shall never issue license to construct buildings contrary to the Zoning Regulations. If they give license to construct a building contrary to the permitted land use or contrary to the prevailing zoning regulations, they should be held responsible for their lapses. Indeed, they are accountable to the public when they act against the interest of the public. In such cases, when the ratepayers approach the Court complaining about the misuse or abuse of powers by public authorities, the Court cannot drive them away on technical grounds. It would be the duty of Courts to enforce the rule of

law enacted for the benefit of the public. It would be the duty of Courts to protect the ratepayers interests preserved under the planning law.

.....

10. In the light of these principles, it would be futile to contend that the appellants should be denied relief under Article 226 of the Constitution. Respondent 2 has no right to construct the building contrary to the planning law. Nor the Planning Authority could permit him to construct a building to the prejudice of the public and impairing their civic rights".

38. If regard is had to the aforesaid observations of the Apex Court and that of the Division Bench, it is needless to state in the facts and circumstances, respondents 1 to 3 invested with the jurisdiction to ensure construction of buildings in the City of Bangalore, in conformity with the Bye-laws, Rules and Regulations as well as "Zoning Regulations", with impunity, allowed by not preventing 4th respondent from erecting construction in gross violation of rule of law. It is in this context, respondents 1 to 3 failed to discharge statutory duties under the KMC Act.

39. In Dipak Kumar Mukherjee's case, the Apex Court extracted its earlier observations in Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others, , which on facts, related to the Bombay Municipal Corporation's order for demolition of illegal constructed portions of the building, observing thus:

"Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorized constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits".

40. Having regard to the large number of illegal and unauthorized construction in Cuttak as observed in Friends Colony Development Committee Vs. State of Orissa and Others, , extracted the relevant portion of the opinion which reads thus:

"5. In Friends Colony Development Committee Vs. State of Orissa and Others, , this Court noted that large number of illegal and unauthorised constructions were being raised in the city of Cuttack and made the following significant observations:

"..... Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear.

Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of Engineers and Inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders.....

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

The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing

of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

Structural and lot area regulations authorize the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, Courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public-welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

(emphasis supplied)

41. In the very same judgment, the Apex Court further extracted its earlier opinion in *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, , which reads thus:

"6. In *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, , this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed:

"In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc., in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury

of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the Town Planning Scheme, etc., on the ground that he has spent substantial amount on construction of the buildings, etc. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions".

42. Yet again, the Apex Court extracted its earlier observations in *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*, , in the matter of refusal to order regularization of illegal construction raised by the appellant therein, which runs thus:

"7. In *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*, , this Court refused to order regularization of the illegal construction raised by the appellant and observed:

"It is a matter of common knowledge that illegal and unauthorized constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonizers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-

storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder".

43. In the light of the aforesaid observations, the Apex Court in Dipak Kumar Mukherjee's case held thus:

"8. What needs to be emphasized is that illegal and unauthorized constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors".

44. A Division Bench in Leena Fernandes Vs. Planning Authority, ,while dealing with protection of self-interest and treated it as protection of special right and special interest of citizens, particularly, in matters of complaints regarding unauthorized construction of buildings observed thus:

"If eternal vigilance is the price for liberty, equally it is so, to attain orderliness and planned developments. We are of the view that in the absence of a clear and manifestly vicious attitude on the part of the petitioners being established, as the motivation for filing the writ petitions, Court should not non-suit them, as otherwise, the much needed public action in this field of public litigation may get discouraged. A mere suspicion that the action initiated by the petitioners may be due to some ulterior motive is not sufficient to throw out their action. There is every need to prevent the public bodies from overstepping their limitations; there is also a need to see that the inaction on the part of the Governmental Authority and the local bodies does not contribute to the contraventions of the statutory schemes like ODP, which are evolved for the public good. The valuable right of the tax payers and the special interest of the residents should normally be accepted as sufficient to recognize their locus standi to invoke the jurisdiction, to safeguard this right or the special interest".

45. The Apex Court in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, observed thus:

"73. The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions

has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in molding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in molding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots".

46. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , observed thus:

"61. Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementation of the orders are utterly lacking. If the laws are not enforced and the orders of the Courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, *prima facie*, such large scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser".

47. Having noticed the aforesaid statutory provisions and the observations of the Apex Court in its reported opinions, unauthorized construction if illegal cannot be regularized, but must be demolished. Exercise of discretion as argued by learned Counsel for the 4th respondent will encourage perpetuation of illegalities. Even otherwise there is nothing to show that the deviations cannot be removed without structurally affecting the building so as to bring it within the requirements of the building plan sanction. It must be noticed judicial discretion cannot be guided by expediency, but justice must be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders solely on their personal predilections and protect

illegalities. It is needless to state that "judicial discretion" wherever is required to be exercised has to be in accordance with law and set legal principles.

48. Although 4th respondent filed an affidavit over removal of some offensive portions of the building constructed contrary to the building plan, nevertheless, all the deviations are not removed since admittedly the stilt floor covers the entire site area jutting into the area meant for setbacks, while the staircase is constructed in the setback area on the hind side. Hence 4th respondent is disentitled to seek regularization of such deviations.

49. It is further stated that the 4th respondent has not occupied the premises and if that is so, respondents 1 to 3 have a duty to demolish the structure to the extent it is in violation of the building plan sanction at the cost of the 4th respondent, who is directed to pay Rs. 4,00,000/- for the said brazen violation by continuing the illegal construction despite "stop work" notice. The said costs shall be made over to respondents 1 to 3 to be set off against the cost incurred for demolition. Respondents 1 to 3 to submit an action taken report in the matter of action against the concerned officials, as well as demolition and the recovery of costs within 15-1-2015.

Petition is ordered accordingly.