

(2014) 03 GUJ CK 0111
In the Gujarat High Court
Case No : Writ Petition No. 347 of 2013

Sarvesh Atulbhai Gohil

APPELLANT

Vs

Jamnagar Urban Development Authority

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Gujarat Town Planning and Urban Development Act, 1976 — Section 27, 36, 36(5)(b)

Citation : (2014) 2 GLH 26

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Yatin Oza, Sr. Counsel and Vidita D. Jayswal, A.R. Thacker, Jayant P. Bhatt, Kishor M. Paul and Vijay H. Nangesh, Advocate for the Appellant

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—By this writ-application in the nature of a public interest litigation, the petitioner, a resident of Jamnagar and a Chartered Accountant by profession, has brought to our notice that the respondent No. 4, in collusion with the respondent No. 3, has constructed 26 shops on the common plot of the respondent No. 3 Society, without any permission from the Jamnagar Urban Development Authority as well as the Jamnagar Municipal Corporation. In such circumstances referred to above, the petitioner has prayed for the following reliefs:--

(a). Admit and allow this petition.

(b). Issue a Writ of Mandamus and/or any other appropriate writ, order or direction, to the respondents No. 1 and 2 to act in accordance with the law and as per law declared by the Honourable Supreme Court Annexure "B" to this petition.

(c). Pending the admission and final hearing of the present petition be pleased to direct the respondents No. 1 and 2 to produce on record of the case:

development/construction permission granted in favour of Respondents No. 3 and 4.

(d). Pending the admission and final hearing of the present petition be pleased to restrain respondents No. 3 and 4 from making any construction on common plot of the Society except in accordance with law and be further pleased to direct the respondents to maintain status quo in relation to subject land and property.

The case made out by the petitioner in this petition may be summarized as under:-- 1.1. According to the petitioner, the respondent is a Co-operative Housing Society, registered under the Gujarat Co-operative Societies Act. The respondent No. 4 is a builder and developer of the land.

1.2. The respondent No. 3 Society entered into a development agreement with the respondent No. 4 for construction of around 26 shops on the common plot of the Society, which is even otherwise not permissible in law.

1.3. According to the petitioner, after execution of such agreement dated 28th September, 2011 referred to above, the respondent No. 4, without getting any plans sanctioned from the competent Authority or without seeking any appropriate permission in that regard, proceeded ahead to construct 26 shops on the common plot of the respondent No. 3 Society.

1.4. It is also the case of the petitioner that the officers of the Jamnagar Urban Development Authority and the officers of the Jamnagar Municipal Corporation connived with the respondent Nos. 3 and 4 and failed to take appropriate action in that regard at appropriate time. According to the petitioner, if the respondent Nos. 1 and 2 would have restrained the respondent No. 4 in the first instance, then in such circumstances, the respondent No. 4 could not have proceeded to construct 26 shops on the common plot of the respondent No. 3 Society.

1.5. According to the petitioner, no common plot which is earmarked at the time of granting N.A. permission can be converted for any use other than for the purpose earmarked. Even the General Development Control Regulations framed by the Authority prohibits construction on a common plot.

1.6. According to the petitioner, a common plot in any residential society is meant for common use and common purposes of all the members of the society, and the society, in no circumstances could have entered into such an agreement with the respondent No. 4 for construction of shops.

2. This Court, vide order dated 23rd January, 2014, directed the respondent Nos. 1 to 4 to file affidavit indicating whether the area in dispute is the common plot of the society in question, and secondly, whether any permission had been granted by the respondent Nos. 1 and 2 for making the construction on the said common plot.

3. Pursuant to our order referred to above, the respective respondents have filed their affidavits.

4. Stance of the respondent No. 1. Jamnagar Area Development Authority:--

4.1. On behalf of the respondent No. 1, an affidavit has been affirmed duly sworn by the Chief Executive, inter-alia stating as under:--

4. I say that after taking over the charge as Chief Executive Authority of the respondent No. 1 on 11.09.2012, when it has come to my knowledge that respondent No. 3 society is doing construction in common plot of the society without permission, I issued a notice dated 11.10.2012 to the respondent No. 3 Tarmamad Cooperative Housing Society Ltd., under Rule 11 of the Gujarat Town Planning and Urban Development Rules, 1979 calling upon respondent No. 3 to stop construction in the common plot and demolish the same as the construction is in violation of Section 27 of the Gujarat Town Planning and Urban Development Act, 1976 and restore the original position of the common plot. I say that before my appointment as C.E.A. of Respondent No. 1, my predecessor also issued notices on 1.6.2012 & 25.06.2012, under Rule 11 the Gujarat Town Planning and Urban Development Rules, 1979 to respondent No. 3 Society for removal of the unauthorized construction. I say that I have not received any reply from the respondent No. 3 of my notice (No. 3) and therefore I had taken decision and passed order on 6.3.2013 for removal of the unauthorized construction made by the respondent No. 3 society on common plot of dated 6.03.2013 sewed upon the respondent No. 3 society is annexed hereto and marked as "Annexure-R" to this reply.

5. I say that respondent No. 3 society challenged the order dated 6.03.2013 passed by me u/s 36(5)(b) by way of filing the Regular Civil Suit No. 62 of 2013 in the Court of Learned 13th Addl. Senior Civil Judge, Jamnagar and also filed application Ex. 5 for injunction in the said suit. In the said suit, notices was issued by the Civil Court upon the respondent No. 1, JADA which was served upon the JADA on 16.3.2013 and on behalf of the JADA reply to the application EX. 5 as well written statement already is filed before the Civil Court, Jamnagar. I say that as per the advice that pending the application for injunction under Order 39 Rule 1 & 2 w/r S. 151 of the Civil Procedure Code, I cannot take action for demolishing unauthorized construction made by the respondent No. 3 Society. Due that reason I have not implemented the order dated 6.3.2013. I say I have not implemented the order due to pendency of application for injunction application filed by the respondent No. 3 society as advised. I say that now the suit is posted for hearing on 7th February, 2014.

I say that I am ready to implement the order dated 6.3.2013 if the Hon''ble Court permits by issuing an order.

5. Stance of the respondent No. 2, Jamnagar Municipal Corporation:--

5.1. An affidavit-in-reply has been filed on behalf of the Jamnagar Municipal Corporation, duly sworn by the Town Planning Officer, inter-alia stating as under:--

1. I say that I am working as Town Planning Officer with the respondent No. 2 Jamnagar Municipal Corporation. I have been duly authorized to file pleading on behalf of the Municipal Corporation. I say that I have read contention and averment made in the memo of the petition filed by the petitioner and perused the document attached therewith. The Hon''ble Court has directed the Respondent No. 1 to 4 indicating whether the JMC i.e. Respondent No. 2 has given any permission for making any construction to the Respondent No. 4 Tannohmmad Cooperative Housing Society on the plot in question.

2. I say that the recent Notification No. KV/188 of 2013/JMN/902012/355342/P dated 06.11.2013, the areas of Tarmohommad Society of Jamnagar has been included or merged within the limits of Jamnagar Municipal Corporation. Before 06.11.2013 the said Respondent No. 3 Society was falling within the area of Jamnagar Area Development Authority i.e. Respondent No. 1. I further say and submit that after the Notification issued by the State Government dated 06.11.2013, the present respondent No. 2 has not granted any, development permission to the respondent No. 3 under the provision of Gujarat Provincial Municipal Corporation Act and or Gujarat Town Planning and Urban Development Act.

3. I further say and submit that the Jamnagar Area Development Authority has not yet transferred the relevant documents pertaining to the newly area included within the limits of JMC. Therefore I am not in position to answer whether the area in dispute is the common plot of the society or not.

4. The present affidavit is filed by the respondent No. 2 in compliance of the order passed by this Hon''ble Court on dated 23.01.2014.

6. Stance of the respondent No. 3:--

6.1. On behalf of the respondent No. 3 Society, an affidavit-in-reply has been filed by it's Secretary, inter-alia stating as under:--

4. I say that it appears that from a perusal of the writ petition that the petitioner is guilty of the suppression of the vital facts that goes to the root of the issue and also guilty of making false allegation in the petition, and petitioner try to mislead Hon''ble Court and petitioner has not cared to file the present PIL in the prescribed format as per the High Court of Gujarat (Practice and Procedure for Public Interest Litigation) Rules, 2010 and as the subject matter of the present Writ Petition PIL is sub judice and pending before Ld. Principal Senior Judge, Civil Court, Jamnagar being Regular Civil Suit No. 62 of 2013 filed by the present answering deponent against the present respondent No. 1. A copy of Regular Civil Suit is annexed hereby as Annexure as R-1 to this reply.

5. I say and submit that the prayer made by the petitioner in the above PIL is not worth and of no use as the respondent No. 1 has already issued notice for demolition of alleged illegal construction Notice dated, 06.03.2012. A copy of notice dated 3.3.2012 is annexed herewith as Annexure-R-2 to this reply.

6. I say and submit that deponent-society also made application under the Gujarat Regularization of Unauthorized Development Act, 2011, on 16.10.2012 for regularization which is pending before competent Authority. A copy of the application is here Annexure-R-3.

7. I say and submit that the allegation and averments made in the Para-6 of the petition against the answering deponent is hereby denied and as such just to create sympathy the said allegation is made without substance and if it is so then whether petitioner has approached to the concerned police Authority regarding the said alleged threat to the petitioner and or to their family members. This type of attitude and practice is to be depreciated and as such no cause of action arises for the petitioner to move the present PIL.

8. I say and submit that the petitioner has made false statement in the present petition that illegal construction is going on. The Photographs produced by the petitioner himself on Page-22 to 24 as such construction has already completed and as per the say of the petitioner no construction work is going on and petitioner has made contrary statement to the evidence produced on record.

9. I say and submit that the petitioner is not entitled for any relief or interim orders by way of present PIL as the cause narrated by the petitioner is already subject matter of the Ld. Civil Court, Jamnagar and also before the Authority concerned for regularization and in this type of circumstance if Hon"ble High Court will pass any orders against the answering deponent in that event Civil Court will be influenced and it will lead to serious prejudice and to get remedy through appropriate forum will also be affected, hence the petition deserves to be dismissed with cost and further deponent would like to declare that the present petitioner has filed the present petition (PIL) with ulterior motive and as such members of society are not having any complaint regarding, and on the contrary the shops are constructed with a view to get essential amenities to the society at large.

10. I say and submit that in the facts of the case there does not appear to be any substantial public interest involved in the matter and hence on this ground also the writ petition is required to be dismissed.

11. At the outset I deny all the statements, averments and the contentions made in the above writ petition.

12. In the aforesaid circumstances I state that the petitioner has in fact acted in the malafide manner by suppressing vital facts/making false statements in the petition, which itself is sufficient to disentitle him for grant of any reliefs. I deny that the petitioner has made out strong prima facie case for grant of any relief. I deny that the petitioner has a made out a prima facie case for grant of any relief as claimed, much less a case for any relief. I say that as no public interest has been evinced in the petition, the question of considering any test of alternative efficacious remedy does not arise in any case.

7. Stance of the respondent No. 4:--

7.1. On behalf of the respondent No. 4, the developer, an affidavit-in-reply has been filed by one Mohmmadsafi Gulara Bera, inter-alia stating as under:--

2. I say and submit that at outset I am not accepting any of the allegation, contentions and averments mention in the present petition and the same are hereby denied.

3. I say and submit that that answering deponent is filing present affidavit in reply with a limited view to oppose the admission of the present writ petition (PIL) and grant of any interim order in favour of the petitioner and the answering deponent reserves the right to file a detail affidavit in future in the case if it requires and the answering deponent is not dealing with the present petition parawise and non-dealing with the petition parawise may not be construed as admission on the part of present respondent No. 4.

4. The answering deponent would like to raise preliminary objection against the present petition (PIL) on the issue of maintainability and further the present writ petition (PIL) is not filed as per the prescribed Rules of Hon''ble High Court of Gujarat specially framed for the purpose of PIL.

5. The answering deponent would like to draw kind attention of Hon''ble High Court towards the attitude, approach and conduct of the petitioner as the petition is filed on 24.12.2013 and it was registered on 26.12.2013 and thereafter petitioner has prepared notice on back dated of 26.12.2013 and submitted on 30.12.2013 to the concern Authorities that is respondents No. 1 and 2 a view to fill up lacuna and that notices are cleverly produced with the draft amendment on. 09.01.2014 on the first day of hearing and further I would like to draw the kind attention of Hon''ble High Court that in the said notice there is no whisper of filing of present PIL before the Hon''ble High Court on 24.12.2013 and sorry for repetition with a view to came out from the Para-6 of the prescribed format and the reason canvassed is contrary and very lose statement and baseless wild allegations are made by the petitioner and this type of practice is to be deprecated.

6. Further the answering deponent would like to draw the kind attention of Hon''ble High Court that the petitioner has filed two affidavits in support of present PIL i.e. 23.12.2013 and 24.12.2013 and it is a matter of inquiry that for what purpose two affidavits are prepared for on petition on different dates and it is to be looked into the seriously and it requires detailed investigation/inquiry.

7. The present petition of the petition is deserved to be dismissed on the ground of suppression of material facts that the same subject matter is pending before the Ld. Trial Court of Jamnagar as initiated by the respondent No. 3. It is settled position of law that if the same subject matter is pending before the one appropriate Authority in that event for the same cause PIL is not maintainable and further the judgment relied by the petitioner in the present petition are on

different facts of circumstances.

8. I say and submit that there is no cause of action for the petitioner to file present PIL and this is filed with some oblique motive and it is unnecessarily dragged on respondents in the present petition as the base of the petition itself is on false statements that construction work is going but the photographs are produced by the petitioner in that as such it shows that the construction work is already over and appropriate Authority has already incited effective steps what prayed in the present petition.

9. Further it would like to submit that the said construction is done with a view to help the society and further public at large and as such there is no hazards as mention by the petitioner in the petition.

10. Looking to the sets of circumstance of the petition is frivolous and not generated the real cause of PIL and it requires to be dismissed with heavy cost that the said PIL is filed without verifying actual, factual and correct position and loose allegations are made which is unwarranted and just to create sympathy the said are mention in the present PIL and as such there is no evidence regarding the same.

8. Submissions on behalf of the petitioner:--

8.1. Mr. Y.N. Oza, the learned Senior Counsel appearing with Ms. Vidita Jaiswal, the learned Advocate for the petitioner, submitted that it is not in dispute that the land on which the shops have been constructed is a common plot of the society, and further it is also not in dispute that no permission has been obtained either by the respondent No. 3 or the respondent No. 4 before putting up construction of 26 shops.

8.2. Mr. Oza submitted that in the first place the society itself is at fault because it could not have entered into an agreement with the respondent No. 4 for construction of shops on the common plot of the society. According to Mr. Oza, a common plot cannot be used for any purpose other than the one for which it is reserved. Mr. Oza levelled serious allegations as regards the highhandedness and brazen attitude of the respondent No. 4 in making such construction on the common plot of the society. Mr. Oza submitted that the Authorities were quite alive to the fact that such construction was being made on the common plot, yet the Authorities kept quiet and permitted the respondent No. 4 to complete the construction.

8.3. According to Mr. Oza, the 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. Mr. Oza would submit that this is a fit case in which the Authorities should be directed to immediately demolish the unauthorized construction and restore the common plot of the Society to its original position.

8.4. Mr. Oza placed strong reliance on the following decisions of the Supreme Court:--

(i) Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and ors. Civil Appeal No. 7356 of 2012, decided on 8th Oct 2012;

(ii) Friends Colony Development Committee Vs. State of Orissa and Others, ;

(iii) Shanti Sports Club and Another Vs. Union of India (UOI) and Others, ;

(iv) Sharifbhai Hasambhai Sakaryani v. Rajendra Kumar, District Collector, Civil Appn. No. 8455 of 2012, reported in 2013 (0) GLHEL-HC-229211;

(v) Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society Ltd., Civil Appeal No. 2545 of 2010 and cognate matter, decided on 31st August, 2010;

(vi) Esha Ekta Apartments Cooperative Housing Society Ltd. v. Municipal Corporation of Mumbai and ors., Civil Appeal No. 7935 of 2012, (Arising out of SLP (C) No. 33471 of 2011), decided on 27th February, 2013;

9. Submissions on behalf of the respondent No. 1, Jamnagar Area Development Authority:--

9.1. Mr. A.R. Thacker, the learned Advocate appearing for the respondent No. 1 submitted that no sooner had his client learnt about the unauthorized construction made by the respondent No. 4 in the common plot of the respondent No. 3 Society, than a notice dated 11th October, 2012 was issued to the respondent No. 3 Society under the provisions of Rule 11 of the Gujarat Town Planning and Urban Development Rules, 1979, asking the respondent No. 3 to stop the construction in the common plot and demolish the same, as the same was in violation of the provisions of Section 27 of the Act, 1976.

9.2. Mr. Thacker submitted that the respondent No. 3 Society carried the matter before the Civil Court, challenging the notices issued for demolition, by filing a Regular Civil Suit No. 62 of 2013 in the Court of the Civil Judge, Jamnagar. Although no order has been passed till date on the Exh. 5 application for injunction, yet the Authorities thought fit not to proceed ahead with the demolition of the construction, as the matter was sub-judice before the Civil Court.

9.3. Mr. Thacker conceded that the construction has been made on the common plot and without getting any plans sanctioned or seeking appropriate permission in that regard.

9.4. Mr. Thacker also submitted that no construction can be made on the common plot of the Society and the agreement of the respondent No. 3 Society with the respondent No. 4 builder by itself is illegal.

10. Submissions on behalf of the respondent No. 2, Jamnagar Municipal Corporation:--

10.1 Mr. Jayant Bhatt, the learned Advocate appearing for the Corporation submitted that prior to 6th November, 2013, the Society was falling within the area of the Jamnagar Area Development Authority, but after the notification referred to in the affidavit-in-reply, the Society is now within the limits of the Jamnagar Municipal Corporation. Mr. Bhatt submitted that no development permission has been granted by his client in favour of the respondent No. 3 Society, and the construction could be said to be absolutely unauthorized.

11. Submissions on behalf of the respondent No. 3 Society:--

11.1 Mr. Vijay Nangesh, the learned Advocate appearing for the Society submitted that this Court should not entertain this public interest litigation, since a Civil Suit is already pending before the Civil Court with regard to the same subject matter. Mr. Nangesh submitted that his client has also filed an application for regularization of the construction under the provisions of the Gujarat Regularization of Unauthorised Development Act, 2011 and such application is pending for consideration before the competent Authority. Mr. Nangesh conceded to the fact that his client entered into an agreement with the respondent No. 4 to construct 26 shops on the common plot of the Society without getting any permission from the competent Authority.

12. Submissions of behalf of the respondent No. 4:--

13.1 Mr. Kishore M. Paul, the learned Advocate appearing for the builder submitted that this Court should not entertain this public interest litigation at the behest of a third party, since the issue is at large before the Civil Court and at the best, the Civil Court could be directed to expedite the hearing of the Suit, but in no circumstances, any relief could be granted in favour of the petitioner as prayed in this petition. Mr. Paul also conceded that no permission has been obtained for construction of the shops from any Authority and no plans were also submitted for approval before any Authority. Mr. Paul placed strong reliance on the decision of the Supreme Court in the case of Santosh Sood Vs. Gajendra Singh and Others, , in support of his submission that this Court should not entertain this public interest litigation during the pendency of the Civil Suit.

13. Having heard the learned Counsel appearing for the parties and having gone through the materials on record, the only question that falls for our determination in this petition is, whether we should direct the Authorities concerned to demolish the construction of the 26 shops made on the common plot of the Society.

14. The following facts are not in dispute:--

(a) The respondent No. 3 Society has entered into a development agreement with the respondent No. 4 builder, dated 28th September, 2011, by which it has been agreed that the respondent No. 4 shall construct 26 shops of around 125 to 150 square feet on the common plot of the Society, facing the main road.

(b) Neither the respondent No. 3 has obtained any permission to enter into such

an agreement, which is dehors the provisions of the Gujarat Co-operative Societies Act, from any competent Authority under the Act, nor the respondent No. 4 has obtained any permission for putting up construction of 26 shops on the common plot of the Society.

(c) Without placing for approval any building plans for such construction and seeking appropriate permission from the Authority, the construction of 26 shops has been completed on the common plot of the Society.

(d) The Jamnagar Urban Development Authority initiated the proceedings in the year 2012, for demolition of the shops by issuing a notice under the provisions of the Act, 1976, but thereafter, failed to act in accordance with law.

(e) The notice which was issued by the Authority for demolition was challenged by the Society, by filing a Civil Suit in the Civil Court at Jamnagar, however, till this date, the Exh. 5 application praying for injunction has not been pursued.

15. Keeping the aforesaid undisputed facts in mind, we now proceed to deal with the main issue involved in the matter.

16. This petition portrays an extremely sorry state of affairs at the end of the Authorities, namely, the Jamnagar Urban Development Authority as well as the Jamnagar Municipal Corporation. We are reminded of the observations made by the Supreme Court in the case of Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, , in connection with the menace of illegal and unauthorized construction of buildings and other structures. The observations are worth noting.

37.....We feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which means the rich and the influential class of the society) have made the "property career" the sole aim of their life. The means have become irrelevant in a land where is greatest son born in this century said "means are more important than the ends". A sense of bravado prevails; everything can be managed; every Authority and every institution can be managed. All it takes it to "tackle" or "manage" it in an appropriate manner. They have developed an utter disregard for law nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The Courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the Courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, "what have we made of our country in less than fifty years"? Where has the respect and regard for law gone? And who is responsible for it?

17. It appears that the questions which were posed by the Supreme Court remains unanswered even after almost two decades of making such observations.

18. According to the definition of "common plot" as contained in the General Development Control Regulations of JADA, a common plot shall mean a common open space exclusive of margins and approaches, at a height not more than ground level of the building unit. The owner shall have to give an undertaking that the common plot shall be for the common use of all the residents and occupants of the building unit, free of cost. On sanction of the development permission, the common plot shall be deemed to have been vested in the Society/ Association of the residents/occupants. In case such Society or the Association is to be formed, the possession/custody of common plot shall remain with the competent Authority until such Association/Society is formed. The common plot shall not be sold to any other person and it shall not be put to any other use, except for the common use of the residents/occupants.

The general requirements so far as the common plot is concerned, according to the General Development Control Regulations, are as under:--

1. The common plot area shall be exclusive of approaches, margins No projection shall be permitted in common plot.

2. Minimum size of the common plot shall be 200 sq. mts. With no side less than 10.50 Mts.

3. No construction shall be permitted in the common plot. Only electric sub station overhead water tank, under ground water tank, watchman's room, community hall for the occupier of respective sub plots or tenements or flats, tube well and rain water recharge well shall be permitted subject to margin as per this regulations and maximum 15% of respective common plot area.

4. The area of the common plot may be permitted to be sub-divided provided that the common plot has a minimum area of 250 sq. mts. With no sides less than 10.50 mts. Provided for a group housing, (building with Ground floor plus two upper floors without hollow plinth), further sub-divisions of the common plot may be allowed by the Competent Authority.

5. The area of this common plot shall be deducted for the consideration of Floor Space Index of a building unit.

6. (a) In the case of "all uses except residential" total common plot may be allowed to be used as parking space including drive-way and the aisles.

(b) In the case of residential use 50% of the total common plot may be allowed to be used as parking space including drive way and aisles.

7. In case, where in layout or sub division of building unit is sanctioned with provision of required common plot, common plots shall not be insisted in case of sub division of such sub divided new building and/or amalgamation of such sub plots and/or further development of such sub divided new budding unit

irrespective of it's area.

Provided for the building unit to be developed for other than residential use, parking place shall be provided at rate of 5% of respective building unit in addition to require parking, at the ground level.

19. Thus, from the above, it is very clear that under no circumstances, any construction can be made on a common plot. It is not the case of the Society that there was alteration in the N.A plan, which was approved by the competent Authority under the Bombay Land Revenue Code, read with the Rules and the common plot had ceased to be a common plot. It appears from the agreement entered into between the Society and the builder, which is on record, that the common plot has continued as the common plot and the entire area of common plot is resolved to be handed over to the respondent No. 4 for construction of 26 shops, which is not permissible in law. The respondent No. 4, in brazen defiance of the provisions of law, proceeded ahead with the construction of the 26 shops without any valid permission from the Authority concerned.

20. We are not at all impressed by the submission canvassed on behalf of the Society as well as the builder that this public interest litigation should not be entertained as a Civil Suit in connection with the same subject matter is pending before the Civil Court for adjudication. Mr. Paul, the learned Counsel appearing for the respondent No. 4 builder as well as Mr. Nangesh, the learned Counsel appearing for the respondent No. 3 Society have placed strong reliance on the decision of the Supreme Court in the case of Santosh Sood (supra), however, in our opinion, the said decision will have no application to the case at hand. In the said case, a public interest litigation (PIL) was filed by the first respondent before the High Court praying inter-alia for the following reliefs:--

(i) That the concerned Authorities may kindly be directed to take immediate possession of the property in question from respondent No. 7 and cancel the order of transfer in the records of Municipal Council, Sheopur.

(ii) That the Authorities may kindly be directed to take strict disciplinary and criminal action against the officers who have indulged in the illegal act causing loss to the Government as well as Municipal Council, Sheopur.

(iii) That the loss which has been caused may kindly be ordered to be recovered from the officers and other persons who are liable for the same.

21. In the said case, the appellant had obtained a loan from one of the respondents, namely the State Bank of Indore, for construction of the building, which was to be let out to the Bank upon completion of the construction. The respondent-Bank verified the title of the appellant and had also obtained legal opinion as regards the title. The property was ready and was thereafter let out on rent by the appellant to the Bank for its use. As it involved a substantial expenditure and also public money, the Bank had serious apprehensions of being dispossessed when the writ-petition (PIL) was entered by the High Court. Before

the High Court, it was submitted by the Bank that it was ready to pay the rent either to the respondent No. 7 or to the appellant, but in any event, not to both the parties. It was apprehended by the Bank that if an order would be passed by the High Court with regard to dispossession, it would involve a huge loss pertaining to the furnishing and shifting of the premises, besides loss of business due to shifting. In such circumstances, permission was sought by the Bank to deposit the rent with the appellant till the liquidation of the loan amount due to the Bank. It appears that the High Court directed the respondents for taking steps for dispossessing the appellant from the disputed land. It appears that a Civil Suit was also filed before the Civil Judge with regard to the selfsame property and in the said Suit, the petitioners had obtained an injunction in their favour and the same was in operation till the pendency of the Suit. It was during the pendency of such Civil Suit that a public interest litigation was filed by the first respondent before the High Court. The first respondent contended that despite unsuccessful attempts on the part of the appellant to establish ownership qua the land, which in fact was vested in the respondent No. 6 Nagar Palika, the appellant, in collusion with its officers, managed to see that it did not take steps for eviction. In the said PIL, the appellant was also arrayed as one of the respondents. Before the Supreme Court, it was argued that when a complicated question of title by and between the appellant and the Nagar Palika was pending before a Civil Court for its adjudication, then in such circumstances, a public interest litigation involving a question of title to the property could not have been entertained. In such circumstances, the Supreme Court took the view that the public interest litigation should not have been entertained and at the best, the High Court should have directed the Civil Judge to take up the hearing of the Civil Suit at the earliest.

22. First, we are of the opinion that the Supreme Court has not laid down as an absolute proposition of law that if a Civil Suit is pending, then in any circumstances a public interest litigation cannot be entertained with respect to the same subject matter and secondly, the facts in the said case were altogether different. What appealed the most to the Supreme Court was that in the Civil Suit, an injunction was also operating, which had been confirmed till the final disposal of the Suit, and further it involved a complicated question of title by and between the appellant and the Nagar Palika.

23. Such is not the position so far as the case at hand is concerned. There is no question of any dispute as regards the title to the property. What has been challenged by the respondent No. 3 Society in the Civil Suit is the action of the JADA in issuing notice for demolition of the unauthorized construction. It may not be out of place to state that the Suit was filed only with a view to stall the proceedings. If the Society as a plaintiff was so serious in pursuing the same, then they would not have kept Exh. 5 application for injunction pending for consideration till this date. The Society has never bothered to pursue the Exh. 5 application. The Authorities also are trying to shirk from their liability by submitting that since a Civil Suit was pending, they thought fit not to go ahead

with the implementation of the notice. Mere pendency of the Civil Suit without any order of injunction should not have precluded the Authorities to go ahead with the implementation of the notice for demolition, which was made the subject matter of challenge in the Civil Suit.

24. On the other hand, we confronted Mr. Nangesh and Mr. Paul, the learned Advocates appearing for the respondent Nos. 3 and 4, with a recent pronouncement of a three Judge bench decision of the Supreme Court in the case of Meghwal Samaj Shiksha Samiti Vs. Lakh Singh and Others, , wherein the Supreme Court in paragraph 6 made the following observations:--

6. The appellants contended that a civil suit filed by the villagers for a similar relief is pending and in view of it, the public interest litigation ought not to have been entertained. Mere pendency of a suit by others, will not affect the maintainability of the writ petition in public interest.

25. Mr. Oza, the learned Senior Advocate appearing for the petitioner is justified in submitting that the Authorities wanted some excuse here or there to protect the respondent No. 3 as well as the respondent No. 4, and therefore, have come forward with a very feeble excuse that since the Civil Suit is pending, they have restrained themselves from proceeding ahead.

26. We are also not impressed by the submission of Mr. Nangesh, the learned Advocate appearing for the respondent No. 3 Society that his client has filed an application for regularization of the construction under the provisions of the Gujarat Regularization of Unauthorised Development Act, 2011. This again is one more dubious tactic adopted by the respondent No. 3 to salvage the situation. The respondent No. 3 Society may have filed such an application, but in our opinion, by merely filing such an application the construction which is otherwise per se illegal cannot be saved. The provisions of the Gujarat Regularisation of Unauthorized Development Act, 2011 has no application to the case at hand. Section 5 of the Act, 2011 makes it very clear that it is only if a notice is issued to an owner or an occupier or any order issued or decision taken under the relevant law at any time prior to the 28th March, 2011, requiring such owner or occupier to remove or pull down or alter unauthorized development carried out, shall be deemed to have stood suspended unless and until such notice, order or decision stands revived under Sub-section (2) of Section 6. In the present case, the notice is of 2012 and it is only after the notice of 2012 that the Civil Suit was also filed. In such circumstances, in our opinion, the provisions of the Act, 2011 are in no manner helpful to the respondent No. 3. In this context, we may also refer to Section 8(4) of the Act, 2011, which reads as under:--

8.(1) An unauthorized development shall not be regularized in a case where unauthorised development is carried out on any of the following lands, : namely:--

(a) to (g).....

(2) An unauthorised development shall not be regularised if it is inconsistent with (a) to (b)....

(3) Notwithstanding anything contained in clause (a) of Sub-section (2), the designated Authority may for the purpose of regularisation of unauthorised development, direct the applicant for making of provisions in the unauthorised development as follows, namely:--

(a) to (b)....

(4) Any unauthorized development carried out or an order issued or decision taken for the matters specified in Sub-Section(2) of Section 5, on or after the 28th March, 2011 shall not be regularized.

27. In short, by hook or crook, the respondents No. 3 and 4 want to stall the proceedings and save the construction at any cost.

28. We may take note of the observations made by the Supreme Court in *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and others* (Civil Appeal No. 7356 of 2012 decided on 8th October 2012), His Lordship G.S. Singhvi, J. observed that in last four decades the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country had acquired monstrous proportion. His Lordship held that the Supreme Court had repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave direction for demolition of illegal constructions.

29. In *K. Ramadas Sheony v. Chief; Officers, Town Municipal Council*, reported in (1974)2 SCC 06, the Supreme Court held that the municipal Authorities owed a duty and obligation under the statute to see that the residential area was not spoilt by unauthorized construction. The Court observed that the scheme was for the benefit of the residents of the locality and the municipality acted in aid of the scheme. The rights of the residents in the area were invaded by an illegal construction. The Court proceeded further to observe that it had to be remembered that a scheme in a residential area meant planned orderliness in accordance with the requirements of the residents. If the scheme was nullified by arbitrary acts in excess and derogation of the powers of the municipality, the Courts would quash orders passed by the municipalities in such cases. The Court also proceeded further to observe that the Court enforces the performance of statutory duty by public bodies as obligation to rate payers who had a legal right to demand compliance by a local Authority with its duty to observe statutory rights alone.

30. In *Friends Colony Development Committee Vs. State of Orissa and Others*, , the Supreme Court noted that large number of illegal and unauthorized 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

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 or 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 constructions and non-compoundable deviations. The unwary purchasers who shall be the suffers 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 laws 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 are ecological considerations, though an unnecessary or unreasonable intermeddling 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 of 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 authorise 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 large 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)

31. In *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, , the Supreme 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 realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan of 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 of 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 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 engaged 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 an issued directions for demolition of the illegal/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.

(emphasis supplied)

32. In Esha Ektqa Apartments Cooperative Housing Society Limited (supra), the Supreme Court while dealing with a matter of unauthorized construction, and the dubious roles played by the builders in duping innocent buyers, made the following observations, which are worth noting:--

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

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 laws 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 and unnecessary or unreasonable intermeddling 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, good 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 or 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 authorise 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 conveniences being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of building.

Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some

misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and one with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Government should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

33. The observations made by the Supreme Court in *Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others*, with regard to infringement of law, are worth noting.

26....Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-aiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-population laws, namely the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.

34. In *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, , the Supreme Court made the following observations, which are worth

noting.

10.....The same is that a feeling is gathering ground that where unauthorized constructions are demolished on the force of the order of Courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorized construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorized construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite.

35. In the aforesaid context, many questions remain unanswered in the present case. What were the Authorities doing when the construction was in progress? It appears from the photographs annexed with the petition that the common plot is abutting the main road. Why did the Authorities maintained complete silence all through out and issued notice only in 2012 when all 26 shops had already been constructed? The answers to these questions are obvious. We have also been informed that a criminal prosecution has also been instituted against the respondent No. 4 by one of the buyers of the shop for cheating and the same has been taken cognizance of by the Criminal Court.

36. The observations made by the Supreme Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, are also worth noting. They are as under:--

54. It is a similar perception in England which has led to the constitution of a Committee by Lord Nolan on "Standards in Public Life". In Volume 1 of Lord Nolan's Report (1995), the general recommendations made are:--

General recommendations

4. Some of our conclusions have general application across the entire service:--

Principles of public life

5. The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out in full on P. 14.

Codes of Conduct

6. All public bodies should draw up codes of conduct incorporating these principles.

Independent Scrutiny

7. Internal systems for maintaining standards should be supported by independent scrutiny.

Education

8. More needs to be one to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including training. The seven Principles of Public Life are stated in the Report by

Lord Nolan thus:--

THE SEVEN PRINCIPLES OF PUBLIC LIFE

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by

leadership and example.

55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

37. The Supreme Court in numerous decisions has held that no consideration should be shown to the builder or any other person where the construction is unauthorized. This dicta is now almost bordering the rule of law. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , the Supreme Court while dealing with the submission as regards exercise of: judicial discretion in moulding the relief in favour of the prospective allottees of the shops which were unauthorized constructed, observed that such a discretion could not be exercised which encouraged illegality or perpetuated an illegality. The Supreme Court observed that 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. The Supreme Court observed that the Courts were not free from statutory fetters. Justice is to be rendered in accordance with law. It also observed that judges were not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions.

38. Before parting with this case, we deem it necessary to observe that a number of cases come to this Court pointing to unauthorized constructions taking place at many places in the State by the builders in connivance with the Corporations/Municipal officials. In a series of cases, this Court has directed demolition of unauthorized constructions. However, it appears that it has no salutary effect in cases of unauthorized constructions coming to this Court. 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 bylaws 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 have made for their own benefits.

39. In view of the aforesaid discussion, we are of the opinion that this public interest litigation merits consideration and deserves to be allowed.

We, accordingly, allow the writ-petition. The respondent No. 1, Jamnagar Area Development Authority is directed to proceed ahead immediately with the implementation and execution of the notice dated 6th March, 2013, issued under the provisions of Section 36 of the Gujarat Town Planning and Urban Development Act, 1976, for demolition of the unauthorized construction, that is to say, the 26 shops built on the common plot of the Society, and failure on the part of the Authorities of the Jamnagar Area Development Authority will amount to dereliction of duty and contempt of this Court's order, for which stern action shall be taken against the responsible officers.

40. While directing implementation and execution of the notice dated 6th March, 2013 referred to above for demolition, we were inclined to direct an enquiry as to how the unauthorized construction came about, and to bring the offenders to book. However, we refrain ourselves from going into such question. In the facts and circumstances of the case, there shall be no order as to costs.