

(2005) 05 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42858 of 2005

Suraksha Rani Chopra and Yogesh Kumar Chopra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 10, 11, 12, 13, 14

Citation : (2005) 4 AWC 3372

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Rajeev Misra, for the Appellant; A.K. Misra and C.K. Rai, S.C. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the show cause notice dated 27.4.2005 (Annex. 21); earlier similar notice dated 18.10.2003 (Annex. 20); and further FOR direction to decide the applications dated 31.3.2000 and 1.5.2000 (Annex. 3 and 4) of the petitioners, for compounding the construction raised in contravention of the Sanction Plan and for permitting change of user of the property in dispute.

2. The facts and circumstances giving rise to this case are that petitioner had purchased Property No. II/B-1, Nehru Nagar, District Ghaziabad, measuring 572.40 sq. mtrs. vide Registered Sale Deed dated 7.10.1983. Petitioners applied for sanction of the Plan for construction over the said land, and it was sanctioned by the Ghaziabad Development Authority (hereinafter called the Authority) respondent No. 3 vide order dated 11.11.1983 for residential purpose. Petitioners raised constructions to a certain extent in addition to and in contravention of the Plan sanctioned by the Authority. The petitioners thereafter filed applications for change of user, i.e. from residential to commercial, and further to compound the

construction raised by them in contravention of the Sanctioned Plan. The said applications were not dealt with and the Authority has issued impugned notices for demolition of the construction raised in contravention of the Sanctioned Plan. Hence this petition.

3. Shri Rajeev Misra, learned counsel for the petitioners has submitted that the State of Uttar Pradesh approved the Bye-laws framed by the Authority on 29.10.1998 providing for permission to change of user and compounding of unauthorised development under the provisions of U.P. Urban Planning and Development Act, 1973 (hereinafter called the Act). In pursuance thereof, the Authority launched a Scheme known as Self Compounding Scheme 2000. Petitioners have filed two applications under the said Scheme. The Authority did not consider the same, rather issued the show cause notices for demolition. Petitioners have therefore urged that they had no efficacious alternative remedy available except to approach the Writ Court. It has been vehemently submitted by Shri Misra that so long as the representations are pending, there is no competence of the Authority concerned to issue the show cause notices under Sections 26, and 27 of the Act, and no action can be taken u/s 28 of the Act. The petitioners had been asked by the Respondent-Authority to deposit certain amount as the compounding fee which the petitioners deposited to the tune of Rs. 4 lacs, therefore, the Authority should be stopped from taking any further action pursuant to the notice under the said provisions of the Act or pass an order for demolition. The Authority has permitted similarly situated persons for conversion of construction use as well as it has also compounded their illegal constructions, and therefore, the petitioners cannot be given a hostile treatment. Petition deserves to be allowed.

4. On the contrary, Shri C.K. Rai, learned Standing Counsel appearing for the State of Uttar Pradesh and Shri A.K. Misra, learned counsel appearing for respondent Nos. 2 to 5 have vehemently submitted that compounding is not permissible in contravention of the Master Plan. The State of Uttar Pradesh approved the Bye-laws, framed by the Authority, however, the said bye-laws also do not permit the relief sought herein. Section 16 of the Act prohibits any such action and no person can be permitted to raise construction in contravention of the sanctioned Plan. Compounding of an offence is meant only for minor deviations and cannot be used for changing the nature of the property or changing its use. Change of user of the property is not permissible in contravention of the Master Plan. As the Authority has to take into consideration a large number of aspects, including environment, the comfort of life of other residents, this kind of compounding would amount to violation of Article 21 of the Constitution guaranteed to all the residents of that area. Article 14 of the Constitution envisages only a positive and not a negative equality and if certain earlier order has been passed by the Authority, it cannot come to the rescue of the petitioners. The petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the

parties and perused the record.

6. Admittedly, the petitioners with their open eyes sought sanction of the Plan for residential purpose. The Plan was sanctioned in 1983 for residential purpose. Now the question does arise as to whether the petitioners can be permitted to change the user or the construction raised in contravention of the Sanctioned Plan deserve to be compounded.

7. Section 3 of the Act provides for declaration of development areas for this purpose. Section 4 provides for constitution of a development authority for any development area declared u/s 3 of the Act. The present Authority is one such authority and the lands in question in the present case are within the development area declared u/s 3 of the Act. Chapter III (Section 8 to 12) relate to preparation, approval and commencement of master plan and zonal development plan. Chapter IV (Section 13) relates to amendment of the master plan and the zonal development plan. Chapter V relates to development of lands. Section 14 provides that after the declaration of any area as development area u/s 3, no development of land shall be undertaken or carried out or continued in that area by any person or body unless permission for such development has been obtained in writing in accordance with the provisions of the Act. It also provides that no development shall be undertaken or carried out or continued in that area unless the same is also in accordance with such plans. Section 15 deals with the application for permission referred to in Section 14. It contemplates making of the requisite enquiry before making an order refusing or granting such permission. Section 16 prohibits use of any land or building in contravention of the plans. Chapter VI relates to acquisition and disposal of land required for the purpose of development. Section 32 empowers the Authority to compound the offences, i.e. after charging a particular fee to regularise the unauthorised construction, to the extent it is permissible under the rules. The remaining provisions relate to ancillary matters. Section 56 empowers the development authority to make regulations with the previous approval of the State Government for the administration of the affairs of the authority. Section 57 empowers the authority to make bye-laws with the previous approval of the State Government for carrying out the purposes of the said Act.

8. In view of provisions of Section 57 of the Act, the Authority has framed the Bye-laws, with the approval dated 29.10.1998 of the State Government, providing for compounding the construction made in contravention of the Sanction Plan, to the extent permissible therein, and only in cases covered by the same.

9. Ghaziabad is also covered by the provisions of National Capital Region Planning Board Act, 1985 and some of the provisions of the said Act mandatorily provides for constitution of the Planning Board for the preparation of a plan for the development of National Capital Region and for co-ordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land-uses and development of infrastructure in the National Capital

region so as to avoid any haphazard development of that region and for matters connected therewith or incidental thereto.

10. A combined reading of the said provisions makes it crystal clear that there should be a prohibition in respect of development to the extent it contravenes the Master Plan published by the Authority, or the Rules/Bye-laws framed thereunder.

11. The issue involved herein is no more *res integra* as Apex Court as well as the High Courts have considered the same from time to time.

12. In *Friends Colony Development Committee Vs. State of Orissa and Others*, the Hon''ble Supreme Court held that 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 officials who have connived in encouraging and abetting unauthorised or illegal constructions should not be spared. In developing cities, the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the larger public interest to keep a constant and vigilant watch on illegal or unauthorised constructions.

13. In *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, the Hon''ble Supreme Court held that no concession should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. A direction cannot be issued which encourages illegality or perpetuates an illegality. Unauthorised 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.

14. In *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, Hon''ble Apex Court considered a case of compounding the unauthorised construction of a Cinema Hall in a residential colony. The Court held that if sanction is given to build by contravening a bye-law the jurisdiction of the Courts will be invoked on the ground that the approval by an Authority of building plans which contravene the bye-laws made by the Authority is illegal and inoperative. An illegal construction of a cinema building materially affects the right to or environment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the Statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residence in the area are invaded by an

illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality, the Courts will quash orders passed by Municipalities in such cases.

15. In *Ram Awatar Agrawal v. Corporation of Cal* (1999) 532 the Supreme Court directed demolition of a multi-storeyed building, which had been constructed in violation of the building rules. The Supreme Court also granted police protection to carry out the compliance order.

16. In *Bhagwat Prasad v. Chief Judicial Magistrate and Ors* 1993 All.CJ 286, this Court held that the law cannot permit the condonation of a construction, which the law would not permit to be sanctioned. The condonation of such unauthorised constructions cannot be done. What the law prohibits, in the discipline of urbanisation cannot be compounded. These illegalities are incurable.

17. In *Smt. Shanti Rani v. State of U.P. and Anr.*, (1992)2 ALL CJ 1151, this Court held that compounding is condoning by fine. But, compounding, in reference to the context, has been more misunderstood than understood. What is "Compounding" in urban planning? In what circumstances can it be resorted to? Constructions which cannot be sanctioned under the law cannot be compounded. Construction which may be sanctioned if sanction is sought, but are made unauthorised, may be considered for being compounded by fine. Beyond these two criteria the law cannot make a compromise on such violations. Set back violation of open spaces, green belts, parks, streets and highways cannot be encroached or constructed upon, and thus, nothing can be sanctioned on it. Such illegalities are incurable.

18. A Division Bench of this Court while disposing of Writ Petition No. 43362/2001 *S.P. Banerji and Anr. v. State of U.P. and Ors.*, on 18/12/2001 directed the Authority to see that plans are sanctioned strictly according to Master Plan and no construction is made in deviation of the sanctioned plan and also contrary to lay out plan and zonal plan and bye-laws and they shall also take necessary measures to see that no drainage, electricity problem and also pollution hazard is created by any form of construction activity.

19. In another Writ Petition No. 1717/2004, *I.C. Aggarwal and Ors. v. Ghaziabad Development Authority Ghaziabad and Ors.* this Court on 22/1/2004, issued directions to the Authority to take steps to rectify the mistakes forthwith so that no construction is made in contravention of the Master Plan in view of the statutory provisions and not to permit any person to raise multi-storeyed building in the plot earmarked for a single residential house.

20. A Division Bench of this Court in Special Appeal No. 1204 of 2004 *Trans Hindon Builders Association and Anr. v. State of U.P. and Ors.*, decided on 15.9.2004, has taken the view that a land could not be permitted to be used contrary to the stipulated user except by amendment of Master Plan, after due

observance of the provisions of the Act 1973, the Rules and Bye-laws, framed thereunder. The compounding of illegal construction is permissible, provided it does not adversely affects the other residents in the said area, for the reason that it may not provide for infrastructure for the use, sought to be changed. For deciding the same, reliance had been placed on the judgment of the Hon''ble Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, , wherein the Hon''ble Apex Court had held that regularising the unauthorised construction of a person may violate the fundamental right guaranteed under Article 21 of the Constitution.

21. In Shri Munshi Ram and Another Vs. Union of India and Others, the Hon''ble Supreme Court while considering the case under the Rent Control Act, held that wrongful user, if found to be in any breach of the terms of lease, other factors such as possibility of Government permission for change in land user, cannot be a consequence to be taken into consideration by the Court. More so, the Court cannot issue a direction to the Authority to permit continued mis-user, contrary to terms of the lease on any ground, and in such a case, the Court is bound to issue the order directing the cessation of mis-user.

22. In Mahendra Baburao Mahadik and Others Vs. Subhash Krishna Kanitkar and Others, a similar view has been reiterated putting emphasis on the Town Planning and Master Plan etc., observing that no person can claim legal right to use the premises in contravention of the terms and conditions of the lease and ask for change of the user. The Court has placed reliance upon its earlier judgment in The Consumer Action Group and Another Vs. State of Tamil Nadu and Others, wherein it has been held as under:-

"While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz. The public and the individual. So long as it does not materially affect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health etc. the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may n a given case, be justified but in case affecting the public at large. So every time the Government exercises its power it has to examine and balance this before exercising such a power. Even otherwise, every individual right including fundamental right is within reasonable limit but if it makes inroads into public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted affecting public at large. Various development rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, the Government must keep in mind, whether such a grant would recoil on the public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal compared to the hardship of an individual that may be considered for granting."

23. In *Corporation of Calcutta Vs. Mulchand Agarwalla*, the Hon'ble Apex Court held as under:-

"The conduct of the respondent in adopting a hide-and-seek attitude in completing the constructions in deliberate defiance of the law calls for severe action. It would be most unfortunate, and the interests of the public will greatly suffer, if the notion were to be encouraged that a person might with impunity break the building rules and put up a construction and get away with it on payment of fine. All this would be good justification for making an order for demolition."

24. Thus, in view of the above, the legal "principles deducible" can be summarised that the user of land cannot be changed in contravention of the Master Plan/statutory provisions, rules or bye-laws, framed under the Act. More so, the Authority concerned has to take into consideration that the change sought by the applicants, should not adversely affect the other residents of the area, as it would violate their fundamental rights guaranteed under Article 21 of the Constitution, which includes the right of privacy, right of light, air, proper place of parking and all such amenities to which they are entitled to enjoy without hindrance. An application for converting a residential accommodation into a marriage hall/nursing home/school/commercial complex/cinema hall may become a permanent nuisance for the entire locality.

25. The free flowing traffic is obstructed by violators of the law who either/occupy the side walks of the streets or, for that matter, violate the area which is to be left by law as a set back from the line of the street alignment. The petitioners view the change of user or unauthorised construction as a private right. The Court views it as a bad situation but in public law. Thus, the urban habitat is to be regulated strictly. This Court has rightly observed that if everyone were to do what petitioners have done, it will be the beginning of the end of the planned towns and cities. For the very purpose for which a town or a city is laid would be negated if encroachments or constructions on streets and roads were condoned. Roads and streets are the arteries of a city. They have to be left free and as urbanisation increases this discipline has to be met with strictness.

26. If an applicant gets a map sanctioned from the Authority concerned and he gives an application for compounding, but if the disputed construction is commercial, against the land use proposed in the Master Plan, the Authority concerned should not agree to compounding unless permissible in view of the principles laid down in Para 25 of *Friends Colony Development Committee* (supra). If the Authority finds in its wisdom that the construction has been raised for a purpose other than what intended for, which is in violation of Section 16 of the Act and the land user under the Master Plan, and the applicant is continuing the construction even after receiving the prohibitionary notice and he accepts that he has violated the law by making unauthorised construction despite being cautioned not to do so, such construction does not get protected by compounding. If a plot of the applicant is residential and he has been accorded

sanction to make the residential building but if he converts the residential plot into a non-residential use, changing the conforming use of the property and area both, he violates the sanctioned map. If an applicant receives a notice but does not stop the construction which is in violation of the law, the building regulations and the master plan, such an applicant cannot seek protection by praying for condoning illegality. The petitioners by raising illegal constructions in violation of law and by converting a residence into a commercial venture, cannot receive protection from the High Court and a prerogative writ is not meant to protect those who take the law in their hands and violate the rule of equity, justice and good conscience. The Court should not interfere in such a matter. (Vide Smt. Bimla Devi and Ors. v. Allahabad Development Authority, (1997) 29 ALR 98). A mere deposit tendered by the petitioner for consideration of compounding cannot confer any right on the petitioner nor can he legitimately expect any consequential benefit as no orders have been passed by the authority. In the absence of accrual of rights no such claim can be advanced by the petitioners on the strength of the deposit made by them. The Court further observed that in such a case the issue of set-back is also very relevant and requires to be considered. Set backs in planning in urban habitat are provided for many reasons. Set backs control the width of the road. Set backs monitor street alignment. Set backs make for an easier drainage system and civic amenities like providing for essential services like water with underground pipelines, electricity poles and telephone lines. As a city takes in the urban life, strict regulation of planning and invigilation of a habitat is the prescription of law. A set back may not be a public space. But, a set back is a conforming use which the law provides as being kept open at every given time and not to be covered on any occasion. If these basic norms of city planning are violated, the entire discipline which controls a habitat collapses. People like the petitioners contribute to it. This Court placed reliance on observations made by the Supreme Court in G.N. Khajuria v. Delhi Development Authority and Ors., AIR 1986 SC 253, wherein it has been observed as under:-

"The illegal constructions have to be removed even under bane of prosecution of officials who permitted it Conforming uses of land have to be given sanctity and protection. This is the rule of law in urban planning."

27. This Court further relied upon the judgments of the Supreme Court in Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, wherein the Apex Court observed that such petitioners should not be allowed to contend before the Court that they be permitted to keep and retain the fruits of violating the law for the price of money. The offence which the petitioners have committed cannot be purchased by the condonation of compounding as penalty. It is illegality which has to be removed, it cannot be cured. On property, and the violation of law in the planning of it the Supreme Court approvingly adopted a passage that the interests of society are paramount to individual interests and the two must be brought to just harmonious relation. A mere property is not the final destiny of mankind, if progress is to be the law of future as it has been of

the past.

28. The Hon"ble Supreme Court has reiterated a similar view in Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, and Kanta Prasad D. Patel Vs. Municipal Corporation of Greater Bombay and Others, This Court again reiterated the same view in Sardar Mahendra Singh v. Commissioner/Chairmen, Mussoorie Dehradun Development Authority and Ors., (1997) I UPLBEC 481 , and R.K. Mittal and Others Vs. State of U.P. and Others, This Court held that the moment compounding is suggested by a person who has made a construction without permission, then the logical consequence is that the constructions are unauthorised. This aspect of making unauthorised constructions is admitted. Compounding cannot be had for mere asking. Compounding simply means that the permission otherwise, could be granted, but was made without authorization.

29. Article 14 of the Constitution of India does not envisage for legative equality nor does it meant to perpetuate any illegality. Thus, even if some other similarly situated persons have been granted the benefit of certain bye-laws or orders, that does not confer any legal right on the petitioners. (Vide Chandigarh Administration and another Vs. Jagjit Singh and another, Smt. Sneh Prabha etc. Vs. State of U.P. and Another, Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, State of Haryana and Others Vs. Ram Kumar Mann, M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, State of Punjab and Others Vs. Dr. Rajeev Sarwal, Union of India and Others Vs. Rakesh Kumar etc., Union of India and Others Vs. Rakesh Kumar etc., Finance Commissioner (Revenue v. Gulab Chandra and Anr., 2001 AIR SCW 4774;; Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, Union of India (UOI) and Another Vs. International Trading Co. and Another, and Anand Button Ltd. v. State of Haryana and Ors. AIR 2005 SCW 67).

30. In Sushanta Tagore and Others Vs. Union of India (UOI) and Others, the Supreme Court rejected such a contention as sought to be advanced in the present case by observing:-

"Only because some advantages would ensue to the people in general by reason of the proposed development the same would not mean that the ecology of the place, would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality."

31. Similarly, it is not permissible that the Court to issue a direction in contravention of law/the statutory provision for the reason that Court"s are meant to enforce the law and not to issue a direction to any authority to act in contravention of the law. (Vide State of Punjab and others Vs. Renuka Singla and

others, State of U. P. and others Vs. Harish Chandra and others, Union of India and Another Vs. Kirloskar Pneumatic Company Limited, Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others, and Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others,

32. In the present case, the petitioners have constructed a residential house in Nehru Nayar Housing Colony. The petitioners want to change the use to commercial one. The Nehru Nagar Housing Colony is a very large Colony situate in heart of District Ghaziabad.

33. Applying the aforesaid principles, as enunciated herein above, the facts of the present case are to be examined. A perusal of the Bye-laws (Annex. 2) which have been approved by the State Government, clearly incorporate the principles, as referred to herein above in the various decisions of the Apex Court and of our Court. The petitioners allege that they had moved an application for compounding under the provisions of the aforesaid Bye-laws/ upon which the Assistant Engineer issued a notice on 23rd January, 2001, calling upon the petitioners to make certain deposits, and also filed certain documents in order to enable the Authority to consider and process the application of the petitioners. The petitioners thereafter, claim to have complied with the aforesaid demand raised, whereupon an inspection was made by the Development Authority resulting in the notice dated 14.5.2003, which has been appended as Annex. 9 to the writ petition. A perusal of the aforesaid notice indicates that on inspection it was found that the petitioners had made unauthorised construction in the area described as FSB (Front Set Back). The notice further indicated that in case the petitioners wanted compounding of the aforesaid unauthorised construction, they should submit a compounding plan or else proceedings would be initiated under Sections 26 to 28 of the Act. The petitioners appear to have replied to the same on 14.5.2003, reiterating that they have already submitted the compounding plan in the past and have also made deposits in this regard. The Assistant Engineer of the Development Authority again sent a notice on 7.7.2003 giving time of three days to the petitioners to comply with the earlier notices, or else action would be taken and orders passed accordingly. It is apparent from the record that no reply was submitted by the petitioners within the aforesaid period, and consequently, an order was passed u/s 28 (1) of the Act by the Development Authority on 10.7.2003, which is Annex. 13. By the aforesaid order, the petitioners were restrained from further proceeding to make any alterations in the construction, particularly, the attempt of the petitioners to remove the main walls within the premises in order to re-construct a new hall. The reason for preventing such a change made in the said order dated 10th July, 2003 was that the removal of the walls shall permanently endanger the very nature of the existence of the building. It was also stated therein that no Sanction Plan was shown to the officials, who had visited the spot at the time of inspection. A further direction was given to the Junior Engineer to ensure compliance of the aforesaid order. It appears after the aforesaid order was passed, the petitioners in order to set up their claim, framed a reply which is dated 18th July, 2003

(Annex. 12), after the time prescribed in the earlier notice and after the order already passed on 10th July, 2003. The aforesaid reply was nothing else but an attempt to cover up the unauthorised activities attempted by the petitioners as described in order dated 10th July, 2003. Simultaneously, the Development Authority also issued a show cause notice on 10th July, 2003 for demolition and imposition of fine under the provisions of Section 27. After having been preempted by the Development Authority and after having put the petitioners to notice of demolition, another order was passed on 18.10.2003 by the Development Authority calling upon the petitioners and intimating them that in spite of having been put to notice, no reply was submitted, and as such, the petitioners should themselves demolish the building within seven days, or else the Development Authority shall proceed to get it demolished at the expense of the petitioners.

34. The petitioners do not appear to have complied with the aforesaid notices and orders issued from time to time and appear to have continued to perpetuate the aforesaid unauthorised acts, committed by them, which also stand reflected by the admission made by the petitioners in paragraph 11 of the writ petition. This continued violation prompted the Development Authority to issue the notice dated 27.4.2005 (Annex. 21) stating all the aforesaid facts and further calling upon the petitioners to show cause as to why they should not be punished for continuing to perpetuate the offence of unauthorised construction and as to why orders should not be passed for prosecuting the petitioners. It is thus apparent that the petitioners had full and complete knowledge of the orders issued by the Development Authority from time to time, which they did not find it appropriate to challenge in the year 2003 itself. It appears that the petitioners were buying time and they did not make any attempt to either approach the higher Authority or this Court for challenging the order dated 10.7.2003 and 18.10.2003. It is only after the notice dated 27.4.2005 for prosecuting the petitioners was issued, that the present writ petition was fired. The contention, therefore, on behalf of the petitioners that their application for compounding deserves to be considered and a mandamus should be issued to that effect, cannot be accepted in this writ petition as orders had already been passed by the Authority way back in the year 2003. No material has been brought on record before this Court to demonstrate as to how and in what manner the unauthorised construction could be compounded in terms of the Bye-laws, on which reliance has been placed by the petitioners. In the absence of any orders having been passed by the Development Authority permitting change of user, it was not possible for the Development Authority to proceed for compounding. Even the change of user of the land would not be permissible under the Bye-laws relied upon by the petitioners and also in view of the law declared by the Apex Court, reference whereof has already been made herein above to the extent of being detrimental to the rights and comforts of other residents of the locality and being beyond the permissible limits of compounding. However, the aforesaid question even otherwise, cannot be gone into in this writ petition inasmuch as during the

course of argument it was pointed out by the learned counsel for the petitioners that another writ petition filed by the petitioner No. 2, being Writ Petition No. 10716 of 2004, is still pending consideration before this Court. The petitioners however has not made a disclosure of the filing of the aforesaid writ petition in the present proceeding, and as such, consideration of the prayer for compounding in this writ petition does not arise at all. It is further to be noted that the aforesaid writ petition was filed in the year 2004 without challenging the order dated 18.10.2003. The challenge to the order dated 18.10.2003, therefore, in the present writ petition also cannot be permitted by the same petition.

35. Consequently, on the facts of this case and in view of the principles of law enunciated herein above, we do not find any reason to interfere with the impugned order dated 18.10.2003 and the notice dated 27.4.2005, nor do we find any valid reason to issue a mandamus as prayed for by the petitioners.

36. In view of the above, petition is liable to be dismissed and is accordingly dismissed. No costs.