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**(2016) 12 MP CK 0050**  
**In the Madhya Pradesh High Court**  
**Case No : W.P. No. 1166, 1229 of 2015**

Suresh Jain

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 19-12-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipal Corporation Act, 1956 — Section 294, Section 297

**Citation :** (2017) 1 MPWN 136

**Hon'ble Judges :** S.C. Sharma, J.

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.C. Sharma, J.—Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.1229/2015 are narrated hereunder.

2. Petitioner before this Court has filed the present petition against the order dated 12.2.2015 (Annexure P/1) issued by Building Officer informing the petitioner that the building which has been constructed is contrary to the sanctioned lay-out. A penthouse has been constructed which does not find place in the sanctioned lay-out and, therefore, why it should not be demolished. In fact, the show-cause notice was issued to the builder and the petitioner who is a bona fide purchaser has filed the present petition. He has also filed a reply to the respondent Corporation.

3. The respondents have filed their reply and they have stated therein that they have taken care of the petitioner's reply and as one floor has been illegally constructed by the builder which is undisputedly contrary to the sanctioned lay-out and no compounding can take place, they are proceeding ahead in accordance with law.

4. This Court has carefully gone through the show cause notice dated 12.2.2015. Petitioner has also filed the reply in the matter and has stated that he has purchased the property vide registered sale-deed dated 10.2.2013 (Annexure P/3) and he is owner of the property in question. The lay-out is also on record and it is an undisputed fact that penthouse has been constructed without there being sanction for the same. The respondents have already stated that no compounding can take place. In the considered opinion of this Court, the penthouse/one floor has been constructed contrary to the sanctioned lay-out and the Municipal Authorities are certainly required to take appropriate action in accordance under the provisions of M.P. Municipal Corporation Act, 1956.

5. Learned counsel for the petitioner has argued before this Court that as the petitioner is a bona fide purchaser of the property and the sale-deed has been registered by the State Government, therefore, no action can be taken against the petitioner. The argument canvassed by learned counsel for the petitioner is of no help to the petitioner. If such a prayer is allowed, the builders will construct the properties without any sanctioned plan or contrary to the sanctioned plan and they will sell it and will cheat the purchasers and the Municipal Authorities will not be able to take any action in such cases. The petitioner has a remedy of filing a civil suit for damages against the builder. So far as action of the respondent, Municipal Corporation is concerned, it is in consonance with the statutory provisions.

6. Resultantly, the respondents shall be free to take appropriate action in accordance with law.

7. The Apex Court in the case of Priyanka Estates International Pvt. Ltd. v. State of Assam (2010) 2 SCC 27 has held as under :-

"57. The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder/coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders.

58. In the case in hand, it is noted that a number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles it cannot be disputed that ultimately the flat owners are going to be the greater sufferers rather than the builder who has already pocketed the price of the flat.

59. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interests of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly.

60. In the case in hand, admittedly, at no point of time was Appellant 1, Priyanka Estates International (P) Ltd. able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned. The same could not even be shown to us and without it, Appellant 1 could not have embarked into sale of flats as it was mandatorily required.

61. The instate case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances.

62. Even though at the first instance, we thought of invoking this Court's jurisdiction conferred under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, but, with a heavy heart, we have restrained ourselves from doing so, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, we grant liberty to those, whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law."

8. In the light of aforesaid, the petitioner shall be free to exhaust the remedy available under the law against the builder, who has constructed and sold the flats contrary to the sanctioned map.

9. With the aforesaid observation, the writ petitions stand dismissed.