

**(1988) 07 RAJ CK 0043**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 386 of 1977 and Civil Second Appeal No. 75 of 1981

Vrihad Krishi Rynadatri Samiti Ltd. and Others

APPELLANT

Vs

Revenue Appellate Authority and Others

RESPONDENT

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**Date of Decision :** 05-07-1988

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1988) 2 WLN 656

**Hon'ble Judges :** S.C. Agrawal, J; Farooq Hasan, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

Farooq Hasan, J.—These two cases (one, Writ Petition No. 386/77 and another Civil Second Appeal No. 75/1981) are concerned with the validity of the allotment of land made in favour of the petitioner, Vrihad Krishi Rynadatri Samiti Ltd. Govindgarh in Alwar district (for brevity, the Society") which is the appellant-defendant in (Civil Second Appeal No. 75/1981) which may be conveniently disposed of by one judgment as they involve a point common to these cases and arises out of a dispute relating to identical piece of land in Khasra Nos. 1395, 1396 and 1399 in the Gram Panchayat Rambas Panchayat Samiti Laxmangarh and, therefore, we propose to dispose of them by a single judgment.

2. Writ Petition No. 386/1977 had been filed in this Court under Article 226 of the Constitution of India for the issuance of an appropriate writ, order or direction in the nature of certiorari quashing the order dated June 26, 1974 (Annexure 2) passed by the Collector, Alwar and the order dated March 14, 1977 (Annexure 3) passed by the Revenue Appellate Authority, Alwar, and further directing the Revenue Appellate Authority, Alwar (non-petitioner No. 1 in writ petition) to hear the revision and/or appeal on merits.

3. These two cases arise out of different proceedings and thus the facts are different to some extent in each case but the differences are immaterial and

these cases pivot upon the point relating to the validity of the allotment of land made in favour of the Society. However, before narrating their history it would be convenient to briefly set out the facts upon which the claim of the parties to the use of the land in dispute is based. The petitioner No. 1, as already stated is a registered Society and other petitioners are its President, Manager, Mantri and Members; and as alleged in the writ petition, the said society consists of small agriculturists and has been constituted for the purposes of welfare and ameliorating the conditions of the poor agriculturists and its object is to grant of loan seeds etc. to the small and village agriculturists.

4. The case of the petitioner-Society which is the appellant defendant in Civil Second Appeal No. 75/1981, is that the land in dispute was allotted to the Society by the Gram Panchayat Rambas on January 21, 1974, and the land in dispute is situated in Khasra No. 1399. It has been averred that the land in dispute was allotted to the petitioner Society on a consideration of Rs. 1000/- which has been received by the Gram Panchayat as donation for the construction of a middle School. On the basis of the aforesaid claim, the Society and petitioners claimed themselves as owner of the land in dispute. The Society further pleaded that the land in dispute allotted to it by the Gram Panchayat was not part of a public highway but it was an agricultural land & unless it formed part of the defendant's land or it is established that the respondent-plaintiff had a right of easement/way or easement of necessity, the respondent-plaintiff had no right to challenge the aforesaid allotment made in favour of the Society petitioners or to file suit in order to restrain the society-petitioners from making any construction on the disputed land.

5. Bholaram, the plaintiff (here in respondent No. 4 in Writ Petition No. 385/77 and respondent No. 1 in Second Appeal No. 75/81) filed a suit against the Society petitioners in the Court of Munsif Magistrate Laxmangarh for removing the encroachment alleged to have been made on a piece of land which has been claimed by the Society-petitioners. The plaintiff-respondent pleaded that he has purchased from Gram Panchayat Rambas a plot measuring 18 ft. X 45 ft. on 6-10-1966 but the defendants Society trespassed upon public highway and they made construction on the public highway after leaving a lane of 3 ft. from the plot purchased by the respondent-plaintiff. The plaintiff-respondent therefore, averred that his right of way was effected and the light & air to his plot was obstructed. The petitioners-Society in the writ petition as well as in their written statement before the learned trial Court also averred that the Gram Panchayat had ample authority to allot a plot in question to them under Rule 266 of the Rajasthan Panchayat & Nyaya Panchayat (General) Rules, 1961 (for short, "General Rules").

6. The plaintiff-respondent in their pleadings contended that the allotment made in favour of the petitioner-Society by the Gram Panchayat was challenged under Rule 272 of the General Rules, and the learned Additional Collector, after bearing the petitioner-Society cancelled the allotment made in favour of the petitioner-

Society. The petitioner-Society, therefore, pleaded that the Additional Collector had no jurisdiction to examine the allotment made in favour of the petitioner-Society.

7. The learned trial court, after taking evidence of the parties, held that allotment made in favour of the petitioner-Society was not legal and the Panchayat have no right to allot the same to the Society according to the procedure adopted by the Gram Panchayat. The learned trial Court further held that the land which was allotted to the Society was the land of Public Works Department and the Gram Panchayat had no authority to allot the same in favour of the Society. The suit of the plaintiff-respondent was therefore decreed by the learned trial Court on August 19, 1978. The Society went in appeal which was heard and dismissed by the Additional District Judge No. 2, Alwar and who upheld the judgment & decree dated August 19, 1978. The Society being aggrieved against the judgment of the first appellate Court preferred the present Second Appeal No. 75/1981.

8. As stated herein before, the plaintiff respondent filed revision petition under Rule 272 of the General Rules before the Additional Collector, Alwar challenging the order of allotment made in favour of the Society. In that revision petition, the Society objected to the maintainability of the revision in face of the provisions for filing appeal according to Rule 270, General Rules, and submitted that the plaintiff-respondent Cannot directly challenge the order (Annexure 1 of the writ petition) without going first before the Panchayat Samiti which is competent authority to hear appeal. The Collector (non-petitioner No. 2 in writ petition) over-ruled this objection by his order dated May 8, 1974 and subsequently allowed revision petition by his order dated June 26, 1974 (Annexure-2) against which, the Society petitioner submitted review petition before the Revenue Appellate Authority who by his order dated March 14, 1977 (Annexure 3) held the petition not maintainable. Hence the present writ petition.

9. We have heard the learned Counsel for the parties and gone through the entire record.

10. The first and foremost contention of Shri R.P. Goyal learned Counsel for the petitioners society is that the revision before the Collector, Alwar was not maintainable because the order of allotment made in favour of the Society petitioner was appealable and the plaintiff-respondent (Bholaram) without availing remedy of appeal, could not have filed revision petition before the Collector, Alwar. In this regard Rule 270 of the General Rules has been referred to by Shri Goyal.

11. We are, after having considered the said contention of Shri Goyal unable to accept it because, under Rule 270 of the General Rules, appeal shall lie from original order of the Panchayat confirming the sale of abadi land under Rule 265 or transfer of abadi land under Rule 266 or allotment of lands under Rule 267 read with Rule 268 to the Panchayat Samiti; and the original order of the

Panchayat Samiti is made appealable to the Collector Under Rule 270(b) of the General Rules. The original order of the Collector is made further appealable to the Revenue Appellate Authority under Rule 270(c) of the General Rules.

12. At this stage it is necessary to notice briefly the relevant provisions of the General Rules relating to the first controversy raised at the very outset of the arguments.

13. Rule 272 of the General Rules reads as under:

272. Revision-(1) The State Government or any officer or authority to whom the powers of the State Government u/s 27-A may have been delegated by notification u/s 70, on its or his own motion or on an application made in this behalf, may for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any order passed by the Panchayat or the Panchayat Samiti or the Collector or the Revenue Appellate Authority under Rule 265 or transfer of abadi land under Rule 266 or allotment of lands under Rule 267 read with Rule 268 Or on appeal under Rule 270 call for the connected records and may, in doing so, direct that, pending the examination of the records, such order shall be held in abeyance:

Provided that the power conferred by this sub-rule shall not be exercised while an order under Rule 265 has been appealed from under Rule 270 and such appeal is pending.

(2) After examining the records, the State Government or such officer or authority, as the case may be, reverse, alter or modify the order of Panchayat, Panchayat Samiti, Collector or Revenue Appellate Authority.

14. Now, from the afore-quoted provisions, it is obvious that the powers conferred under Sub-rule (1) of Rule 272 of the General Rules shall not be exercised while an order under Rule 265 has been appealed from under Rule 270 and such appeal is pending.

15. Rules 255 to 272 of the General Rules lay down the procedure for the sale of abadi land. Under these rules, it has been provided that the Panchayat shall confirm sale under Rule 265. The Panchayat is further authorised to transfer any abadi land by private negotiations under Rule 266 and to allot the land to ex-military personnel. Under Rule 268 of the General Rules, it has been provided that all transfers under Rule 266 and all allotment under Rule 267 shall be subject to confirmation as provided in Rule 265.

16. Thus, the provisions contained in Rule 268 of the General Rules make it precise that all transfers which have been made by the Panchayat under Rules 265, 266, 267 & 267A are to be confirmed under Rule 265. So, according to the Rules, every order made by the Panchayat under Rule 265 is certainly appealable under Rule 270 and the Revision is also maintainable under Rule 272 of the General Rules.

17. Under Rule 272 of the General Rules, the only exception as it provided in proviso clause is that the powers of revision under Sub-rule (1) of Rule 272 shall not be exercised while an order under Rule 265 has been appealed from under Rule 270 and such appeal is pending. So, the revision under Rule 272 shall not be maintainable only when the appeal against order under Rule 265 has been filed and the same is pending.

18. It is not the case of the Society-petitioners that any appeal was pending at the time when the Collector exercised powers under Rule 272, rather the case of the Society-petitioners is that no appeal was filed before the Panchayat Samiti against the order of allotment in favour of the Society under Rule 265 of the General Rules. Thus, in view of the aforesaid provisions of law, we are of the opinion that the Collector was competent to entertain revision filed by the plaintiff-respondent (Bholaram) and decide the same.

19. Now, we propose to refer to the relevant aspect of the law in the matter of ambit and functions of Rules 265, 270 and 272 of the General Rules. In *Udaram v. The Addl. Collector, Ganganagar* and Ors. 1969 WLN 62 this Court observed as under:

The ambit of Sections 26A & 27 of the Rajasthan Panchayat Act, 1953 has to be seen vis-a-vis the provisions of Rule 270 of the Rules. Broadly speaking, disposal of abadi land may lie within the administrative sphere of the Gram Panchayat, but it cannot be over looked that the Rules 265 to 272 lay down the procedure for sale of such abadi lands. The question arises whether these rules really come in conflict with the provisions of Section 26-A and 27 of the Act. In my view they do not so come in conflict. Section 26-A and 27 deal with the administrative functions of the Panchayat generally whereas these rules lay down the procedure to be followed for the sale of abadi land in a Panchayat area. These rules therefore can be regarded as special provisions laying down the manner of selling abadi land. Therefore, when one is concerned with a case where the Panchayat has confirmed a sale according to Rule 265, then the matter will fall to be governed by the provisions of Rule 270

We are also of the view that the Rules regarding transfer of abadi land can be regarded as special provisions laying down the manner of sale of abadi land. Hence, the provisions contained in the said relevant rules do not come in conflict with the provisions of Sections 26-A and 27 of the Panchayat Act. These sections deal with the administrative functions of the Panchayat generally whereas these rules lay down the procedure to be followed for sale of abadi land in a Panchayat area.

20. Next limb of the arguments of Shri R.P. Goyal and Shri D.K. Soral on behalf of the Society-petitioners is that the land in dispute was not a part of public highway, and the Gram Panchayat was fully competent to allot the land to the Society. That requires us to go through the findings arrived at by the learned subordinate courts in different sets of proceedings, carefully in order to resolve

the controversy raised at this stage. Having gone through carefully the record of the case, we are of the opinion that the Munsif Magistrate, Additional District Judge and the Collector have given their consideration to the question whether the land in dispute was a part of public highway or not; and all of the three Authorities have arrived at a finding that the land in question falls within a distance of 45 ft. which is a distance in between the plot of respondent plaintiff (Bholaram) and the Road which has been constructed by the Public Works Department. It is thus clear that the aforesaid question of fact has been decided against the Society and while exercising extra ordinary writ jurisdiction or appellate powers u/s 100, CPC, this Court has got limitations in dealing with second appeals involving questions of fact and in re-appreciating the entire evidence. All the three authorities after discussing the evidence elaborately also observed that the allotment made in favour of the Society was not only illegal but also it was fictitious and based on made up document. The learned trial court as well as the first appellate court have given reasons for arriving at the aforesaid findings. Though it is not necessary for us to reappreciate the evidence in order to concur with the aforesaid findings but, looking to the reasons given and findings arrived at by the learned subordinate courts, and keeping in view the contents of Exhibits 7, 8, 9 & 10 in civil suit, it is clear that the aforesaid findings recorded by the learned trial court and the first appellate court can not be held to be perverse. And, in these circumstances, we are of the opinion that the allotment made in favour of the Society-petitioner was not only illegal but appears to be based on made up document, More over, under the Rules regarding procedure to be followed for the sale of Abadi land in a Panchayat area, the Panchayat is competent to transfer Abadi land only under Rules 265, 266, 267 and 267-A of the General Rules. No other mode is prescribed for transfer of Abadi land.

21. It is the case of the Society-petitioner that the land in dispute was allotted to the Society free of charge. The Panchayat is competent to allot land free of charge under Rule 267 which runs as under:

267. Allotment of lands free of charge;

[1] in relation to a allotment of lands within the Panchayat Circle free of charge for residential houses u/s 31 of Rajasthan Tenancy Act, 1955, the provisions of Rule 8 to 17 of the Rajasthan Tenancy (Government) Rules, 1955 shall apply mutatis mutandis;

[2] The Panchayat may also allot Abadi lands free of charge to members of the Scheduled Castes and Scheduled Tribes and of other backward classes.

22. A look at the aforequoted provisions of Rule 267, itself, makes it precisely clear that the allotment as alleged by the Society-petitioner is not covered by that Rule. Even, the said allotment cannot be held to be made under Rule 266 because, in the allotment order, no circumstances as are provided under Rule 266 of the General Rules are mentioned. Even if for the sake of arguments it is

assumed that the allotment was made in favour of the Society-petitioner then too, the, same can be held illegal in the light of clear and categorical provisions contained in Rule 269(2) of the General Rules which provide as under:

269. Exclusion of certain categories of Abadi land from the power of sale.

[1] x x x

[2] The Panchayat shall neither sell any Abadi land nor allow pucca structure within the following specified limits:

[a] One hundred feet of a railway line;

[b] One hundred and fifty feet from the Central line of National High Way;

[c] Seventy five feet from central line of State High Ways and major District Roads; and

[d] Fifty feet from the central line of other District Roads and village roads.

23. The Panchayat vide resolution (Ex. 7) dated 4-9-1972 ordered that no allotment of Abadi land shall be made within a distance of 45 ft. of the centre of the road. So, in the. light of the over whelming evidence in Ex. 7, we are of the view that the order of allotment made in favour of the Society which has been filed and relied upon by the Society becomes doubtful, and no reliance can be placed on such document.

24. It was next strenuously argued by Shri Goyal that Bholaram (plaintiff-respondent) had no locus standi either to file suit or to file revision petition Under Rule 272, General Rules because no land of the plaintiff-respondent had been encroached upon by the Society-petitioner who was allotted separate piece of land; and the plaintiff cannot have any grievance against the allotment of any land to the Society unless it formed a part of the land allotted to him (plaintiff) or any infringement of the plaintiff is proved.

25. We are unable to agree with the aforesaid argument of the learned Counsel for the petitioner-Society. It has not been disputed that the plot allotted to the plaintiff respondent by the Gram Panchayat abates to the road and is at a distance of about 45 ft. from the centre of the road. It has also not been disputed that the road is a public one and is maintained by the Public Works Department The right of public to pass over a public highway is public right. Under the civil law there are two remedies u/s 91 CPC against person who causes public nuisance by making any encroachments on the public highway. It was the case of the plaintiff-respondent that he had every access on the road and the same has been obstructed by the Society by making construction The fact, therefore, remains that the construction made by the Society came in between the respondent-plaintiff's premises and the road.

26. A perusal of the plans which have been filed by the parties in the civil suit shows that after construction made by the Society, the plaintiff-

respondent(Bbolaram) would have to take longer route to reach the main road or to its opposite side. In these circumstances, the plaintiff respondent was justified in pleading that the obstruction has been created by the Society in making construction on the disputed land and thereby deprived him of the right of access to the house of the full width of the road for the free and full enjoyment of his property. It has come in evidence on record that in between the premises of the Society and the provisions of the plaintiff-respondent there is a lane four of five ft. In width where before the construction was made by the Society, the plaintiff respondent was availing of full access or in respect of possession and access of heavy vehicles bullock carts etc. but after the construction was made by the Society, the plaintiff-respondent is now not in a position to avail of such access. It is thus clear that the plaintiff-respondent has shown that he would suffer direct and substantial damages and he would not be able to enjoy right of access which was being exercised by him before the construction was raised by the Society.

27. In *Pyarelal Satpal v. Santlal* RLW 1972 51 this court observed that by infringement of right of passage on highway, the person effected can file a suit without proof of special damages. The principle is that a person of an immediate community or section of the public who is deprived of the amenity provided for that particular section may be deemed to have suffered loss without proof of such loss. A similar view was taken in *Moolchand and Others Vs. Chhoga and Others*,

28. In *Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj*, there was a metalled road running through a plot of land belonging to the plaintiff and on either side of the metalled road there was open space and on either side of the open space there was a Municipal drain. The public had been using the road for decades and the Municipality had been maintaining the road and the drains. The Municipality was seeking to erect a structure on the vacant site lying between the drains and the road wherein it intended to install a statue of Mahatma Gandhi and also to put up two rooms on either side for piyao and library. The plaintiff brought a suit for a permanent injunction restraining the defendant Municipality from putting up the structure on the suit site and also for delivery of possession of the same to the plaintiff. Their Lordships of the Supreme Court observed and held as under:

[1] that the suit site was a part of the public pathway as in the circumstances it was reasonable to hold that the entire pathway between the two drains was dedicated to the public. The fact that only a part of the pathway is metalled does not necessarily limit the width of the pathway, but it is evidence of the user of the pathway by the public & its maintenance by the Municipality;

[2] that such a public pathway vests in the Municipality by virtue of Section 116(g) U.P. Municipalities Act but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and "so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street". It has also a certain property in the



soil of the street which would enable it as owner to bring a possessory action against trespassers. Subject to the rights of the Municipality and the public to pass and repass on the highway, the owner of the soil in general remains the occupier of it and, therefore, he can maintain an action for trespass against any member of the public who acts in excess of his rights;

[3] that the Municipality could not put up the structures which it intended to erect on the vacant site as it could not be said that were necessary for the maintenance or user of the road as a public highway. The said acts were unauthorised and the plaintiff, who was the owner of the soil, would certainly be entitled to ask for an injunction restraining the Municipality from acting in excess of its rights. But the plaintiff could not ask for possession of any part of the public pathway, as it continued to vest in the Municipality.

29. Let us test the instant suit now in the light of the principles that we have quoted above.

30. While admitting second appeal, this Court formulated the following substantial question of law:

Whether in the absence of pleadings and issue in that regard, the land in dispute which lies between the plots allotted to the plaintiff-respondent and the public road could be held to be the part of the public road so as to entitle the plaintiff-respondent to maintain the suit?

For deciding the aforesaid question, we again perused the judgment of the trial court as well as the first appellate court. We may state that on the basis of the pleadings, the learned trial Court framed as many as 16 issues. For the purposes of deciding the question of law framed at the time of admission, we would like to reproduce Issues Nos. 1,2, 3 & 4 here in under:

1-vk;k oknh nks IyKV ftudh dqy iSek;"k 80^xq.kk 45^ gS xzke iapk;r jkeckl ls fnukad 6&10&1966 dks [kjhn fd;s gS vkSj bl IyKV ij rkjh[k 21&8&1873 dks xzke iapk;r jkeckl ls eUtwjh ysdj ikap nqdkuks ds vklkj [kM+s dj fn;s gS]

2-vk;k oknh us bu IyKVks ds if"Pe ih-Mcyw-Mh- jktLFkku ljdkj dh tehu gS]

3-vk;k izfroknhx.k es ih-Mcyw-Mh- dh mijksDr tehu eqrnkfo;k ij tks vthZ nkos ds lkFk is"kdnkZ uD"ks es yky jax ls fn[kykbZ x;h gS vkSj gjQ ^^, ^^ Mkyk x;k gS ij Qjojh lu~ 1974 esa vukf/kd`r :Ik ls dCtk djds rkehj dj yh ftlls oknh dks dkQh uqdlku gS ftldh {kfriwfrZ ugha gks ldrh]

4- vk;k izfroknhx.k ds bl xSj dkuwuh dk;Z ls oknh ds vkokxeu o jks"kuh oxSjk can gks x;h rFkk edku nc x;k o "kks Hkh [kRe gks x;k o xanxh gks x;h ftlls onh dks fo"ks"k uqdlku gqv k tSlk fd okni= ds ft-ua- 7 es ntZ gS ]

31. The learned trial Court as well as the first appellate Court have decided the aforesaid four issues after appreciating the entire evidence on record, and a look at the aforesaid issues shows that the Society was not justified in pleading that no right had been claimed by the plaintiff-respondent in the suit filed by him. We

have gone through the averments made in the plaint and we are of the opinion that in the aforesaid suit, the plaintiff-respondent certainly raised the plea, with regard of the infringement of his right by the Society which made construction on the disputed land and that was the reason that Issues Nos. 1 to 4 were framed by the trial Court and the same were decided against the Society by both the courts-below.

32. The first appellate Court while deciding the appeal also framed five questions and the same were decided by it by a reasoned judgment. It will be useful to reproduce questions Nos. 2 and 4 for proper adjudication of the controversy raised:

2-D;k fooknxzLr Hkwfe oknh ds IyKVks o lkoZtfud IM+d ds e/; tks 45^ Hkwfe gS mldk Hkkx gS o bles izfroknhx.k }kjk nqdkus cuk;h x;h gS \\

4-D;k izfroknhx.k }kjk fooknxzLr Hkwfe es fuekZ.k dk;Z fd;s tkus ds i'pkr~ oknh dks okn izLrqr djus dksbZ vf/kdkj izkIr gS\\

33. This shows that both the courts below considered the objections with regard to the infringement of the right on the land in dispute which had been allotted to the plaintiff respondent. In view of the aforesaid facts and circumstances, we are of the opinion that in the pleadings of the plaintiff-respondent it was alleged that there was a vacant land in between the road and the plot owned by the plaintiff-respondent and that vacant land was being used by the plaintiff-respondent for the purposes of their free access on the metalled road constructed and maintained by the Public Works Department, and on the basis of these pleadings, necessary issues were framed by the learned trial court and the same were decided by it, it cannot be held that there was absence of pleadings and issue and thus the land in dispute which lies between the plots allotted to the plaintiff-respondent and the public road could be held to be the part of the public road so as to entitle the plaintiff-respondent to retain the suit.

34. Next is the fallacious contention of the learned Counsel for the petitioner Society that the suit & the revision petition Under Rule 272, the General Rules were filed by the plaintiff-respondent long after the disputed construction was made by the Society, and on the ground of laches the plaintiff-respondent is not entitled to get any relief. We are unable to accept this contention because such an objection has not at all been taken by the Society-petitioner either before the learned trial Court or before the first appellate Court or even when the learned Collector was exercising powers u/s 27-A of the Panchayat Act and had cancelled the allotment of abadi land made in favour of the Society. In these circumstances, the Society-petitioner, for the first time before this Court cannot raise such an objection at a belated stage.

35. Confronted with the above situation, last attempt of canvassing before this Court by Shri Goyal and Shri Soral is that other shops have also been constructed within a distance of 45 ft. from the centre of the road and it will be fruitless to demolish shops constructed by the Society unless other shops are

demolished. This attempt is also futile because such a plea is being taken for the first time before this Court and at this stage we are unable to consider it and allow the society to raise it.

36. More so, from a perusal of the judgment of the subordinate courts and the evidence on record, it shows that the proceedings u/s 91 of the Land Revenue Act were initiated against the Society as well as other persons who have constructed shops within the distance of 45" from the centre of the road on either side. Since it is for authorities concerned to have taken legal recourse against such persons who have made unauthorised construction on either side of the road the Society-petitioner cannot get any benefit merely by saying that other shops have been constructed there on either side of the road within the distance of 45 ft. from the centre of the road.

37. In view of the foregoing discussions, we do not find any force in these cases and they must fail. In the result, Writ Petition No. 386/77 along with Civil Second Appeal No. 75/1981 both are dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs.