

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.04.2015

Pronounced on 30.04.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.Nos.9999 & 10000 of 2015
and
M.P.Nos.1, 1, 2, 3 & 4 of 2015

K.Anbanathan ... Petitioner in W.P.No.9999/2015

Rani ... Petitioner in W.P.No.10000/2015
both Rep. By his Power Agent,
Mrs.Santha,
No.7, Vallalar Salai,
Venkata Nagar, Puducherry - 11.

V.

1.The Puducherry Planning Authority,
Rep. By his Member Secretary,
Jawahar Nagar,
Boomianpet, Puducherry.

2.The District Collector,
Puducherry.

3.The Chief Town Planner
Town and Country Planning Department,
Puducherry.

4.T.Pusphpagandhi

5.D.Madhavan

6.S.Anitha

... Respondents in both WPs

(R4 to R6 impleaded as per order
dated 13.4.2015 in Mps.2 & 3/2015)

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for records leading to the impugned proceedings of the 1st Respondent dated 01.04.2015 in No.949/PPA/Z(SB-2)/ 2015 and quash the same.

For Petitioners

: Mr.T.V.Ramanujam

Senior Counsel

For Mr.C.Jagadish

For Respondents 1 to 3: Mr.T.Murugesan
Government Pleader
Asst. by Mrs.N.Mala
Addl. Government Pleader
(Puducherry)

For Respondents 4 to 6: Mr.D.Senthil Kumar

COMMON ORDER

M.VENUGOPAL, J.

The Petitioners have preferred the instant Writ Petitions before this Court seeking to call for the records relating to the impugned proceedings of the 1st Respondent dated 01.04.2015 in No.949/PPA/Z(SB-2)/2015 and to quash the same.

2.The Summation of Writ Facts:

(i)The Petitioners had obtained the Planning Permission from the 1st Respondent/Puducherry Planning Authority vide No.PPA/421/949/Z(SB)/2) 2013-14, on 03.04.2015 in regard to the construction of five storied residential flat building at Plot Nos.6, 7 and 8 (Part), Thillaikannu Amma Street, Palani Udayar Nagar Extension, Saram Revenue Village, Oulgaret Municipality, Puducherry. According to them, they had constructed the building in terms of the approved plan and the same is nearing completion.

(ii)On 01.04.2015 at 2.30 p.m. when a lorry unloading the blue metal (Jally) in the site came into contact with one of the Pillars of the building and the plastering in the column was peeled off. However, the column and the steel reinforcement in the column are intact. But only the plastering alone was peeled off. Immediately, an individual occupying the adjacent house working in a Tamil Daily Newspaper 'Dinamalar' appears to have informed to Press and that the 2nd Respondent/District Collector, Puducherry and the Deputy Collector, Puducherry came for inspection of the building and they called upon the workers to stop the work.

(iii)It is the stand of the Petitioners that they are more concerned with the safety of the building and the neighbours and that they immediately called upon the Experts TDBD Engineering Works Private Limited from Pune, who had inspected the building. In fact, the Expert from Pune explained to the 2nd Respondent/District Collector, Puducherry and the Deputy Collector of Puducherry and Superintending Engineer of the 1st Respondent/Puducherry Planning Authority that the building is safe. Further, the authorities had permitted the Experts to take transitory measures by providing 9 dummy columns along with jockeys for the safety of the building and also the neighbours and this was done purely by way of abundant caution. Even otherwise the building is very safe and there is no danger. Also that, the officials of the 1st Respondent/Puducherry Planning Authority were informed that steps were taken to repair the building to make it more safe.

(iv)As a matter of fact, the owners are ready and willing to take any steps to ensure the structural stability of the building. That apart, the Petitioners are ready and willing to indemnify because they are sure that there is no danger to the building. The building is not unsafe and it does not cause any danger to public safety.

3.The Learned Senior Counsel for the Petitioners contends that the impugned order dated 01.04.2015 issued by the 1st Respondent/Puducherry Planning Authority is contrary to law and violative of the Principles of Natural Justice.

4.The Learned Senior Counsel for the Petitioners submits that the impugned order of the 1st Respondent mentions that there is deviation and it does not assign any particulars of so-called deviation.

5.Moreover, the Learned Senior Counsel for the Petitioners takes a plea that the impugned order dated 01.04.2015 was issued under Puducherry Bye-Laws and Zoning Regulations, 2012 and the same has to be read as a whole. Apart from that, the Petitioners have obtained sanction and they had put up the construction as per sanctioned plan. In reality, there is no imminent danger to the building and that the building is safe.

6.The Learned Senior Counsel for the Petitioners projects an argument that before issuing any notice under Regulation 22(3) of the Puducherry Building Bye Laws and Zoning Regulations, 2012 there should have been an inspection and there should have been a finding of structural soundness of the building by the Expert and there ought to have been a finding whether repair alone was sufficient or demolition of the entire building is required and in the instant case, such procedures were not followed.

7.The Learned Senior Counsel for the Petitioners brings it to the notice of this Court that Regulation 22(3) of the Puducherry Building Bye-Laws and Zoning Regulations, 2012 speaks of 'Notice' and there should be a notice and the notice should be in accordance with the well established procedure for legal notice stating the defects thereof. In short, the plea on the side of the Petitioners is that the Regulation 22(3) of the Puducherry Building Bye-Laws and Zoning Regulations, 2012 had not been followed and therefore, the impugned proceedings are liable to be quashed on that ground itself.

8.The Learned Senior Counsel for the Petitioners submits that the incident viz., the lorry came into contact with the column while unloading the building materials and caused damages to the plastering of one of the column had happened at 2.30 p.m. on 01.04.2015 and at 8.30 p.m. on 01.04.2015, the impugned proceeding was served.

9.The Learned Senior Counsel for the Petitioners draws the attention of this Court to the effect that the observation in the impugned order dated 01.04.2015 that the building is likely to collapse and the building poses danger to the adjacent buildings and occupants in the neighbourhood is factually incorrect one. Besides this, the stand of the Petitioners is that the impugned proceeding is nothing but a colourable exercise of power and the same was passed mechanically without adhering to the mandatory requirements as envisaged under Regulation 22 of the Puducherry Building Bye-Laws and Zoning Regulations, 2012.

10.The Learned Government Pleader for Respondents 1 to 3 submits that the Petitioners were issued with the building permit by the 1st Respondent/Puducherry Planning Authority based on their building plan application dated 19.04.2013 in regard to the grant of permission to erect five storied Residential Flat Building situated at R.S.No.137/8, Plot Nos.6, 7 and 8 (part) Thillaikannu Amma Street, Palani Udayar Nagar Extension, Saram Revenue Village, Oulgaret Municipality, Puducherry (vide Permit No.PPA/421/949/ Z (SB/2)/ 2013-14 dated 03.04.2014.

11.The Learned Government Pleader for Respondents 1 to 3 contends that the Chief Town Planner over telephone to Member Secretary of the 1st Respondent/Planning authority on 01.04.2015 at about 3.30 p.m. informed that a message was received from the State Level Emergency Operation Centre, Department of Revenue and Disaster Management, Puducherry that a column in a five storied residential flats building being constructed at R.S.No.137/8, Plot Nos.6, 7 & 8 (part), Thillaikannu Amma Street, as stated supra, was severely damaged and pose danger to the adjacent buildings and also to the public.

12.The Learned Government Pleader for Respondents 1 to 3 brings it to the notice of this Court that the site was inspected by the Member Secretary of the 1st Respondent/Authority together with officials of the Planning Authority on the evening of 01.04.2015 and observed that the five storied residential flats building was nearing completion and the finishing works are in progress and that the two columns on the south-west corner of the said building had developed structural cracks. Moreover, the middle column in the southern side of the building exhibited excessive damage and likely to collapse and pose danger to the adjoining buildings and also to the public. At this stage, it is also represented on behalf of the Respondents 1 to 3 that the 2nd Respondent/District Collector, Chief Engineer, Public Works Department, Puducherry, Chief Town Planner/3rd Respondent and other officials also had inspected the site on the evening of 01.04.2015.

13.The Learned Government Pleader for Respondents 1 to 3 proceeds to submit that one Professor Dr.S.Kothandaraman, Head of the Department of Civil Engineering, Puducherry Engineering College, Puducherry, in the meeting, had informed that the middle

column on the southern side, (parking area) had undergone severe distress and is in a very precarious condition and that the time of failure could not be predicted etc.

14.The case of the Respondents 1 to 3 is that one column is missing on the southern face against the approved plan resulting in increase of span between the columns which is the cause of excessive load on the distressed column of the structure and leads to structural failure. Besides that, the building in question is not safe because of the reason that the middle column (pillar) on the southern side had structurally failed and at present, the entire load of the building is supported by nine giant brick pillars that carry on their top jacks supporting the structural members, which could be considered safe only to carry out the demolition operation in a controlled manner, but the building is not definitely a safe one for occupation.

15.The Learned Government Pleader for Respondents 1 to 3 refers to the opinion of the Experts (M/s.TDBD Engineering Works, Yamuna Nagar), who provided the Jacking System, had expressed, through their letter dated 05.04.2015 as follows:

"... Now we can assure that the building is safe from any further sinking and failing. However, we are not recommending for safety living inside the building."

16.The Learned Government Pleader for Respondents 1 to 3 submits that in the present case, the five storied residential flats building was constructed deviating from the approved plan and structurally the building is unsafe and endangering the neighbouring buildings and human life. Indeed, it is the plea of the Respondents 1 to 3 that in terms of the ingredients of Clause 22(6) of the Puducherry Building Bye-Laws and Zoning Regulations, 2012, a demolition notice was served to the Petitioners with a direction to demolish the building immediately without causing damage to the adjoining structures and to the general public vide No.949/PPA/Z (SB-2)/2015 dated 01.04.2015.

17.The Learned Government Pleader for Respondents 1 to 3 submits that the builder of the flats K.Kandasamy had caused construction to nine temporary brick pillars and supported the structure with hydraulic jacks over the brick pillars and on the forenoon of 04.04.2015 the said building was inspected by the Chief Engineer, Public Works Department, Puducherry and advised the builder to proceed with demolition work. Since the building is safe to carry out the demolition after having completed the construction of brick pillars. But he failed to carry out the demolition of the unsafe building till the evening of 04.04.2015.

18.As such, it is the contention of the Learned Government Pleader for Respondents 1 to 3 that the 1st Respondent/Planning Authority took a decision to demolish the unsafe building on its own invoking the provisions of the clause regarding cases of

emergency in the Puducherry Building Bye-Laws and Zoning Regulations, 2012.

19.The Learned Government Pleader for Respondents 1 to 3 brings it to the notice of this Court that a notice under Clause 22 (5) and 22(6) of the Puducherry Buildings Bye-Laws and Zoning Regulations, 2012 was issued to the Petitioners on 04.04.2015 informing the failure to carry out the demolition work till 04.04.2015 and also the decision of the Authority to demolish the unsafe building by the Puducherry Planning Authority itself on 05.04.2015. Continuing further, it is the stand of the Respondents 1 to 3 that the Petitioners were informed that the cost of demolition shall be recovered from the Petitioners in terms of Clause 22(7) of the Puducherry Building Bye-Laws and Zoning Regulations, 2012.

20.The Learned Government Pleader for Respondents 1 to 3 contends that the 1st Respondent/Puducherry Planning Authority started the demolition of the building at 11.00 a.m. on 05.04.2015 and suspended the activities in the evening at 5.50 p.m. and that the demolition work was resumed on 06.04.2015 till this Court had ordered to "keep off" the hands of the Authority from demolishing the building.

21.The Learned Government Pleader for Respondents 1 to 3 strenuously submits that the Petitioners had constructed the five storied residential flats building by deviating from the approved building plan issued by the Authority through Permit No.PPA/421/949/Z(SB/2)/2013-14 dated 03.04.2014. For better and fuller appreciation of the deviations from the approved plan, the details are mentioned as under:

"(i)Plan of the building as per execution is in variation to the approved building plan.

(ii)The ground floor plinth area of the building as per the construction is 205.34 sq.m as against the approved plinth area of 137.15 sq.m.

(iii)Floor Area Ratio of the building as per construction is 312.15 as against the permissible limit of 180 and approved Floor Area Ratio of 172.88.

(iv)Height of the five storeyed residential flats building as per execution is 16.40m as against the permissible limit/approved height of 15 m.

(v)Fire escape staircase shown in the approved plan has not been provided.

(vi)The size of the ventilation shaft (1.20m x 2.25m) provided is substandard as against the requirement of 1.50m x 2.67m.

(vii)Front setback provided is 2.30m as against the requirement of 3.00m and approved setback of 5.38m.

(viii) Eastern side setback provided is 1.20 m as against the requirement/ approved setback 1.50m.

(ix) Balcony projections have been provided in all the floors which are not provided in the approved plan."

22. The Learned Counsel for the Respondents 4 to 6 submits that the Petitioners had constructed the five storied residential flats building by deviating from the approved plan and violated the provision of the Puducherry Building Bye-Laws and Zoning Regulations, 2012. Further, it is the stand of the Respondents 4 to 6 that some of the columns shown in the structural design have not been constructed and further they observed that two columns on the south west corner had developed cracks also middle column exhibit excessive damage and likely to collapse and the building poses danger to the adjacent buildings and occupants in the neighbourhood. Besides these, the Statutory Authority had declared the building as 'unsafe' for occupants and other neighbours and its building and therefore, it is necessary to demolish the illegal constructions which are a source of danger to the society and public at large.

23. Continuing further, the Learned Counsel for the Respondents 4 to 6 submits that the Respondents 4 to 6 are suffering and facing lot of problems like unable to enter their house since the Petitioners building are in unsafe condition.

24. In this connection, it may not be out of place for this Court to pertinently point out that the Petitioners had addressed a communication dated 10.04.2015 to the 1st Respondent/Planning Authority wherein they had sought permission being granted to them to carry out the necessary demolition and reconstruction work by themselves and the Petitioners were permitted, by means of an order passed by this Court on 13.04.2015, to make demolition within a period of one week and were directed to submit a report. Also, the 1st Respondent, in the meantime, was directed to make an inspection, after demolition, forthwith and was directed to submit a report stating whether demolition is sufficient or not.

25. The Learned Senior Counsel for the Petitioners refers to the Report filed on behalf of the Petitioners dated 22.04.2015 stating that the demolition work had commenced on the southern portion of the building on 14.04.2015 and for the demolition of the five storied building, 40 employees were engaged and they worked from 6.00 a.m. to 9.00 p.m. in shifts and further that the demolition work was carried out on the southern portion of the building in a controlled way with all precautions without affecting or causing any damage to the neighbouring structures. In fact, the demolition work which commenced on 14.04.2015 was completed on 21.04.2015 and the entire southern block of the building was demolished.

26.The Learned Senior Counsel for the Petitioners refers to paragraph 4 of the Report dated 22.04.2015 (filed on behalf of the Petitioners) which, among other things, runs as follows:

"4. ... southern portion and northern portion of the building is connected by stair case corridor and lift passage and the load bearing on the southern side is nothing to do with the load bearing on the northern side. The northern portion of the building is intact and stable and on the northern side admittedly all the columns have been constructed as per the plan."

27.Conversely, the Learned Government Pleader for Respondents 1 to 3 submits that the Petitioners out of five floors, only 4 floors i.e. 4th, 3rd, 2nd and 1st floors had demolished partially on the southern side and the photographs taken on 21.04.2015 which is appended to the report of the 1st Respondent/Authority depicts that ground floor roof beams and columns on the southern side are yet to be demolished and that northern side portion of five storied building was left untouched by the Petitioners upto 21.04.2015 and only clearing of debris was done on 22.04.2015.

28.The Learned Government Pleader for Respondents 1 to 3 refers to the Committee of Experts, constituted to assess the structural strength stability of the aforesaid construction and with reference to the building permit issued by the 1st Respondent/Authority in the presence of the Petitioners, in their Report in paragraph 3.0 under the head 'Concluding Remarks', had stated as follows:

"Following are the salient concluding remarks of the committee, based on the field visit, tests and other inferences drawn in the proceeding sections of this report:

- (i)The structural deficiency due to the removal of a column (in the parking area) of the said building, repositioning of columns and increasing the column spacing, abrupt reduction in column sizes from the first floor level, not supporting floor slab/roof slab by beams there by changing the behaviour of structure from that of the intended one of a framed structure, not designing the structural elements of the said building conforming to the statutory loadings and procedure prescribed in Indian Codal provision, not adopting any design based on scientific/engineering principles, not providing type and adequate size of foundation, have contributed singly and/or cumulatively to the 'gradual failure' of the column (B1).

- (ii) But for providing the temporary supports to the columns in the parking area of the ground floor, the entire building would have become 'unstable' due to 'progressive failure', leading to the collapse of the entire said building, thus endangering the life and property of not only the said building, but also to the building/s in the near vicinity of the said building.
- (iii) Based on overall assessment, the said building may be treated as 'unsafe', and posing a potential threat to human life."

29. The core contention put forward on the side of the Respondents 1 to 3 is that on the basis of conclusions of the Expert Committee, there are inadequacies in the structural design and construction of the whole building which requires the whole building to be safely pulled down/demolished and not a portion of the building. Furthermore, the demolition carried out by the Petitioners so far, is not sufficient and still poses potential threat to human life.

30. It comes to be known that pursuant to the 1st Respondent's demolition notice dated 01.04.2015 addressed to the Petitioners, on their failure to demolish the unsafe building in question till date, the 1st Respondent on 04.04.2015 issued a notice to the Petitioners, among other things, mentioning that '... considering public safety, it has decided to demolish the above unsafe building on 05.04.2015 at 8.00 a.m. as per Clause 22(5) and 22(6) of Puducherry Building Bye-Laws and Zoning Regulations, 2012 and Puducherry Town and Country Planning Act, 1960 etc.'

31. It transpires that Regulation 22 of the Puducherry Building Bye-Laws and Zoning Regulations, 2012 speaks of 'Unsafe Buildings' and the same enjoins as follows:

"22.Unsafe buildings.- (1) All unsafe buildings shall be considered to constitute danger to public safety and shall be restored by repairs or demolished or dealt with as directed by the Planning Authority in consultation with a qualified structural engineer of a Recognised Institution/ Department.

(2) The Planning Authority shall examine or cause to be examined every building reported to be unsafe or damaged, and shall make a written record of such examination in consultation with qualified structural engineer of a Recognised Institution/Department.

(3) Note to owners, occupier: Whenever the Planning Authority finds any building or portion thereof to be unsafe, it shall in

accordance with established procedure for legal notice, give to the owner and occupier of such building written notice stating the defects thereof. This notice shall require the owner or the occupier within a stipulated time either to complete specified repairs or improvements or to demolish and remove the building or portion thereof.

(4) (a) The Planning Authority may direct in writing that the building, which in his opinion is dangerous, or has no provision for exit, if it caught fire, shall be vacated immediately or within the period specified for the purpose; provided that the Authority concerned shall keep a record of the reasons for such action with him.

(b) If any person does not comply with the orders of vacating a building, the Planning Authority may direct the police to remove the person from the building and the police shall comply with the orders.

(5) Disregard of notice: In case owner or occupier fails, neglects or refuses to comply with the notice to repair or to demolish the said building or portion thereof, the Planning Authority shall cause the danger to be removed whether by demolition or repair of the building or portion thereof or otherwise.

(6) Cases of emergency.- In case of emergency, which, in the opinion of the Planning Authority involves imminent danger to human life or health, the decision of the Planning Authority shall forthwith or with such notice as may be possible promptly, cause such building or portion thereof to be rendered safe or removed. For this purpose, the Planning Authority may at once enter such structure with such assistance and at such cost as may be deemed necessary. The Planning Authority may also get the adjacent structures vacated and protect the public by an appropriate fence or such other means as may be necessary."

32. Besides this, Regulation 23 under the caption 'Demolition of Buildings' speaks as follows:

"23. Before a building is demolished the owner shall notify all utilities having service connections, within the buildings, such as water, electric, gas, sewer and other connections. A permit to demolish a building

shall not be issued until a release is obtained from the utilities stating that their respective service connections and appurtenant equipment, such as meters and regulators have been removed or sealed and plugged in a safe manner."

33. At this stage, this Court very relevantly points out that on 07.04.2015 in M.P.Nos.1 & 1 of 2015 in W.P.Nos.9999 & 10000 of 2015, an order was passed granting two days time to the Respondents 1 to 3 to have an inspection of the building in question by a team of Experts, Engineers and others in the presence of the Petitioners and submit a report before this Court. Pursuant to the orders of this Court dated 07.04.2015 as stated supra, the Government of Puducherry, Chief Secretariat (Housing) in Proceedings No.1555/CS (Hg)/A1/2014, dated 08.04.2015 had constituted a five Member Committee consisting of structural experts to examine the structural strength of construction of five storied residential flats building situated at R.S.No.137/8, Plot Nos.6, 7 & 8 pt, Thillaikannu Amma Street, Palani Raja Udayar Nagar Extension, Saram Revenue Village, Oulgaret Municipality, Puducherry. In fact, the Committee was directed to make site inspection to assess the structural strength/stability of the construction with reference to the building permit issued by the 1st Respondent/Puducherry Planning Authority in the presence of the Petitioners and to submit a detailed report.

34. In effect, the stand of the Respondents 1 to 3 is that the building in question is unsafe and posing danger to the neighbouring structures and as such, the act of the 1st Respondent/Puducherry to demolish the five storied flats building is just and in accordance with law. However, the contention of the Respondents 1 to 3 to the effect that the five storied residential flats building in question is unsafe and posing danger to the neighbouring structures and to the public etc. is strongly repudiated by the Petitioners side. In fact, on the side of the Petitioners, a heavy reliance is placed on the letter dated 05.04.2015 addressed to the Member Secretary of the 1st Respondent/Planning Authority whereby and wherein, it is, among other things, stated as follows:

"We started constructing the temporary pillars to support the structure from 3rd April 2015. Till on 5th April we have constructed 9 temporary pillars and on top of each pillar we have provided the Jacky supporty. Now the load of the entire building is distributed on the existing Concrete columns and these 9 temporary brick pillars. So in effect we have provided 9 more temporary additional pillars to support the load.

After constructing these additional pillars we observed that there is no sinking of the building due to the load of the existing building. Now we can assure that the building

is safe from any further sinking and falling. However, we are not recommending for safety living inside the building now. Now we can further strengthen the building by constructing additional concrete columns without demolishing the structure and make the building strong enough for safe living of people inside the building. This is our expertise in the field. For this work to be carried out we need the permission from Mr.Kandaswamy through the Government of Pondicherry."

35.It is to be borne in mind that Section 44 of the Puducherry Town and Country Planning Act, 1969 speaks of 'Power of the Planning Authority to require removal of unauthorised development' and the same is extracted as under:

"44. (1) Where any development of the land has been carried out as described in Section 43, the Planning Authority may, within three years of such development, serve on the owner a notice requiring him within such period, being not less than one month, as may be specified therein after the service of the notice, to take such steps as may be specified in the notice -

(i) in cases specified in clauses (a), (c) or (e) of sub-section (1) of Section 43 to restore the land to its condition before the said development took place;

(ii) in cases specified in clauses (b) of sub-section (1) of section 43 to restore the land to its condition before the said development, took place or to pay the development charge and such penalty if any, as may be prescribed by the rules;

(iii) in cases specified in clause (d) or (f) of sub-section (1) of section 43 to secure compliance with the conditions or with the permission as modified.

and in particular any such notice may for the purpose aforesaid require-

(a) the demolition or alteration of any building or works;

(b) the carrying out on land, of any building or other operations; or

(c) the discontinuance of any use of land:

Provided that in the case the notice requires the discontinuance of any use of land, the Planning Authority shall serve as notice on the occupier also.

(2) Any person aggrieved by such notice may, within the period and in the manner prescribed-

(a) apply for permission under section 37 for the retention of the land or any building, work or for the continuance of any use of the land, to which the notice relates, or

(b) appeal to the Board,

(3) (i) The notice shall be of no effect pending the final determination or withdrawal of the application or the appeal.

(ii) If such permission as aforesaid is granted on the application, the notice shall not take effect, or if such permission is granted for the retention only of some buildings or works or for the continuance of use of only a part of the land, the notice shall not take effect regarding such buildings or works or such part of the land but shall have full effect regarding other buildings or works or other parts of the land.

(4) On an appeal made to the Board under sub-section (2) the Senior Town Planner or any other person appointed by him in this behalf after obtaining the remarks of the Planning Authority concerned and making such enquiries as may be deemed necessary submit a report to the Board.

(5) After considering the aforesaid report and hearing the appellant, the Board may dismiss the appeal or accept the appeal by quashing or varying the notice as it may think fit.

(6) If within the period specified in the notice or within such period as may be prescribed after the disposal or withdrawal of the application for permission or the appeal under the sub-section (2), the notice or so much of it as continues to have effect, or the notice with variation made in appeal, is not complied with, the Planning Authority may

(a) prosecute the owner for not complying with the notice and in the case where the notice required the discontinuance of any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice, and

(b) (i) in the case of a notice requiring the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure the compliance with the conditions of the permission or with the permission as modified, by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any

building or works or carrying out of any building or other operations.

(ii) the Planning Authority may recover the cost of any expense incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under sub-section (6) (a) shall be punishable with a fine which may extend to ten thousand rupees, and in the case of a continuing offence with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence."

36. As a matter of fact, Section 45 of the Said Act refers to 'Power to stop unauthorised development' by the Planning Authority. Moreover, Section 46 of the Act enjoins 'Power of the Planning Authority to require removal of unauthorised development or use' and the same runs as follows:

"46. (1) If it appears to a Planning Authority that it is expedient in the interest of the proper planning of its areas (including the interest of amenities) having regard to the development plan prepared, or under preparation, or to be prepared, and to any other material considerations-

(a) that any use of land should be discontinued; or

(b) that any conditions should be imposed on the continuance thereof; or

(c) that any building or work should be altered or removed;

the planning Authority may, by notice served on the owner

(i) require the discontinuance of that use, or

(ii) impose such conditions, as may be specified in the notice on the continuance thereof, or

(iii) require such steps, as may be specified in the notice to be taken for the alteration or removal of any buildings or work, as the case may be, within such period, being not less than one month, as may be specified therein, after the service of the notice.

(2) Any person aggrieved by such notice may, within the said period and in the manner prescribed, appeal to the Board.

(3) If an appeal is filed under the last foregoing sub-section, the provisions of clause

(i) of sub-section (3) and sub-section (4) and (5) of section 44 shall apply with such

modifications as may be necessary.

(4) If any person-

(i) who has suffered damage in consequence of the compliance with the notice, by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, or

(ii) who has carried out any work in compliance with the notice.

claims from the Planning Authority within the time and in the manner prescribed, compensation in respect of that damage or of any expense reasonably incurred by him for complying with the notice the provisions of sub-sections (3) to (5) of section 41 shall apply with such modifications as may be necessary.

(5)(a) If any person interested in the land in respect of which a notice is issued under this section claims that, by the reason of the compliance with the notice, the land will become incapable of reasonably beneficial use, he may within the period specified in the notice or within such period after the disposal of the appeal, if any, filed under sub-section (2) and in the manner prescribed, serve on the Government an acquisition notice requiring it to acquire his interests of the land.

(b) when a notice is served under the last foregoing sub-section, the provisions of sub-sections (2) to (4) of section 40 shall apply with such modifications as may be necessary."

Also that, Section 43 of the Act enjoins 'Penalty for unauthorised Development or for use otherwise than in conformity with the Development Plan'. The ingredients of Section 42(1) of the Act refers to 'Power to revocation and modification of permission to develop'.

37. At this stage, this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, cites the following decisions:

(a) In the decision of the Hon'ble Supreme Court in V.M.Kurian V. State of Kerala and others, AIR 2001 Supreme Court 1409 at special page 1413, in paragraph 11, it is observed and held as follows:

"11. Under the Rules, there is restriction with regard to the maximum height of the building. The building should not be constructed exceeding 1.5 times width of the street abutting plus 1.5 times the front yard. Before the High Court, the 5th respondent gave an affidavit that he would convert the ground floor of the building for purposes of car parking. The said affidavit could not have been entertained as the ground floor had already been constructed and let out. Most

surprising is that the requirement of having provision towards protection from fire hazards was also dispensed with. The minimum width of the staircase as required under Rule 21(11)(b), also got dispensed with. This shows that the Rules, which are mandatory in nature and are required to be complied with for construction of a high rise building, were allowed to be dispensed with. Observance and compliance of Rules is for public safety and convenience. There cannot be relaxation of Rules, which are mandatory in nature and cannot be dispensed with especially in the case of high rise building. The position may be different in the case of one or two storied building where there are minor deviations from the Rules, which do not effect the public safety and convenience. In the present case, we find that the deviations are of high magnitude, which are contrary to the public safety and convenience. We are, therefore, of the view that the order passed by the State Government exempting the provisions of the Rules for constructing an eight storied building was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law."

(b) In the decision of the Hon'ble Supreme Court in M.I.Builders Pvt Limited V. Radhey Shyam Sahu and others, AIR 1999 Supreme Court 2468 at special page 2470, whereby and whereunder, it is held as follows:

"Judicial discretion in moulding the relief cannot be exercised 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. Court are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.

In the instant case a commercial shopping complex was allowed by Mahapalika to be built upon a public part in clear defiance of law. Court while ordering demolition of the shopping complex (unauthorised construction) considering

the obligatory duties of the Mahapalika to construct and maintain parking lots allowed one of the blocks meant for parking to stand."

(c) In the decision P.T.Prabhakar and another V. The Member Secretary, CMDA, 2006 (5) CTC 449 at page 460, in paragraph 19, it is observed as follows:

"19. On the above backdrop the facts in issue are to be considered. The construction of basement of 2nd floor and 3rd floors made by the 3rd respondent were unauthorised. The 3rd respondent did not even file an Application to CMDA for planing permission prior to such constructions. Such constructions cannot be considered to be one of any deviation, as such the constructions are totally illegal and in contravention of the Development Control Rules. The illegal constructions cannot be regularised compared to construction with minor deviation."

Also, in the aforesaid decision, at page 464, in paragraphs 26 & 27, it is, observed and laid down as follows:

"26. AIR 1991 SCC 1453, while considering the unauthorised construction, the Supreme Court had observed in Para 6 as follows:

"We are of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety occupiers and residents..... Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and by-laws are made by the Corporations or Development Authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits"

27. The above judgments would show that only such deviation deserve to be condoned as are bonafide or are attributable to some understanding or are such deviations as where the benefit gained by demolition would be far less than the advantage suffered. That apart, if the deviations are grave and serious breach of the licencing provisions or building regulations, such deviations cannot be condoned and the buildings should be demolished."

(d) In the decision of this Court in *Salahudeen Babu V. P.T.Prabhakar and others*, (2006) 4 MLJ 22 (DB), it is observed as follows:

"The fact remains that as on today the 3rd respondent has put up the construction in violation of the sanctioned plan as noted by the inspection team of the enforcement officials.

It is indeed lamentable that in our country, building rules and regulations are being flouted left and right by persons who think that they are above the law because they have money or some high post. Time has come that a clear message must be given that the building rules do not exist merely on paper but will be strictly enforced to forthwith demolish any construction made in violation of the rules. Unless that is done, a wrong impression will be created and a wrong message sent that the building rules exist only on paper and are not to be taken seriously."

(e) In the decision *Chairman, Madras Metropolitan Development Authority, Egmore, Madras V. S.Radhakrishnan and others*, (2006) 1 MLJ 181, it is held as follows:

"The appropriate planning authority de hors the powers under Sec. 56 of the Act has also got powers to order demolition of unauthorised development under Sec.85(1)(c) of the Act."

(f) In the decision *Madras Metropolitan Development Authority*, represented by its Member Secretary *V. P.Muthukrishnan and others*, (2005) 1 MLJ 666, it is held that 'Unauthorised building can be demolished even without notice.'

38. There can be two opinion of a well established fact that the High Court in exercise of its summary jurisdiction under Article 226 of the Constitution should not indulge in an exercise of disputed questions of facts. In fact, the disputed questions of fact or rival claims of the parties in the present subject matter of issue are to be looked into and decided by the concerned/competent authority on the basis of materials produced, rather than by a Court exercising prerogative of issuing writs. Moreover, a Writ Court is not a Court of Appeal over the decision of the administrative authorities. Also that, the power under Article 226 of the Constitution of India to be exercised by a Court of Law is a discretionary one. No wonder, 'Judicial Review' is not an Appeal from the decision of the public authority or Tribunal to examine its correctness on merits but a review of the manner in which a decision has been arrived at.

39. Coming to the aspect of 'Natural Justice', it is to be pertinently pointed out that it is a form of justice in its abstract moral sense as distinct from a legislation or a statute or a decision by a Court of Law. Admittedly, Natural Justice being a

concept, its principles is not the edicts of a statute. At this stage, this Court aptly points out the decision in Ridge V. Baldwin, (1964) AC 40 wherein it is held as follows:

"Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: It need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in exercise of such power."

40.As far as the present case is concerned, according to the Petitioners, they had carried out the demolition work as directed by this Court and that the demolition of entire southern portion of the building from ground floor to fifth floor was completed on 21.04.2015. Further, it is their stand that the southern portion and northern portion of the building is connected by stair case corridor and lift passage and the load bearing on the southern side is nothing to do with the load bearing on the northern side. Apart from that, the northern portion of the building is intact and stable and on the northern side admittedly all the columns were constructed as per the plan. But the Respondents 1 to 3, in their common counter to the Writ Petitions, had averred that the structural failure in the instant case had took place on 01.04.2015 at about 2.30 p.m. which was known to the public from the cracking sound caused due to spall of concrete from the distressed column of the building, which continued intermittently for few hours and as such, the contention of the Petitioners that the damage of the building that had occurred due to lorry contact is hereby denied and in fact, the same had occurred due to structural failure.

41.Although a plea is taken on behalf of the Petitioners that no notice was given to the Petitioners before issuing the impugned order dated 01.04.2015, it is to be pointed out that as per Regulation 22 of the Puducherry Building Bye-Laws and Zoning Regulations, 2012, in case of emergency, the Planning Authority has requisite power to issue notice forthwith where it involves imminent danger to human life or health etc. and as such, the contra plea taken on the side of the Petitioners is rejected by this Court.

42.Be that as it may, on a careful and meticulous consideration of respective contentions, in the upshot of qualitative and quantitative discussions mentioned supra and in view of the divergent stand taken by the respective parties in regard to the aspect of demolition of the five storied residential flats building in question and also this Court, bearing in mind the entire conspectus and attendant facts and circumstances of the instant case in an encircling and integrated manner, at this stage, without expressing any opinion on the merits of the matter and also not delving deep, simpliciter, opines that the disputed questions of fact are not to be gone into in summary proceedings of Writ Jurisdiction under Article 226 of the Constitution of India. However, this Court is of the considered view that the disputed

questions of fact in the present case are to be canvassed/agitated before the Competent Authority/ Board and in this regard, the Petitioners are to necessarily avail their effective, efficacious, viable and an alternative remedy of preferring an Appeal against the impugned Proceedings dated 01.04.2015 passed by the 1st Respondent and other connected proceedings/orders thereto in the manner known to Law/in accordance with Law and as per prevailing Regulations and to seek appropriate remedy thereto.

43. In view of the foregoing, this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, directs the Petitioners to prefer an Appeal before the Competent Authority assailing the impugned Proceeding dated 01.04.2015 and other connected proceedings together with an Application for interim relief, within a period of two weeks from today. Till such time, the Status quo as on today shall be maintained by both parties. If such an Appeal and Stay Petition are filed by the Petitioners, within the time determined by this Court, the concerned authority is directed to dispose of the same within a period of four weeks, of course after adhering to the Principles of Natural Justice by providing reasonable opportunities to the Petitioners and also granting personal hearing to them if they so desire. It is needless for this Court to make a significant mention that the concerned authority is expected to pass a speaking order in a Just, Fair, Objective and dispassionate manner by outlining a process of reasoning in a quantitative and qualitative manner.

44. Before parting with the case, this Court makes it abundantly clear that it is open to the Expert Committee to make another inspection of the building in question and to submit a Report before the appropriate/concerned Authority (with a copy being marked to the Petitioners) to satisfy itself as to whether the demolition carried out by the Petitioners so far is not sufficient and still poses a potential threat to human life.

45. With the above observations and directions, the Writ Petitions are disposed of, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Member Secretary,
The Puducherry Planning Authority,
Jawahar Nagar,
Boomianpet, Puducherry.

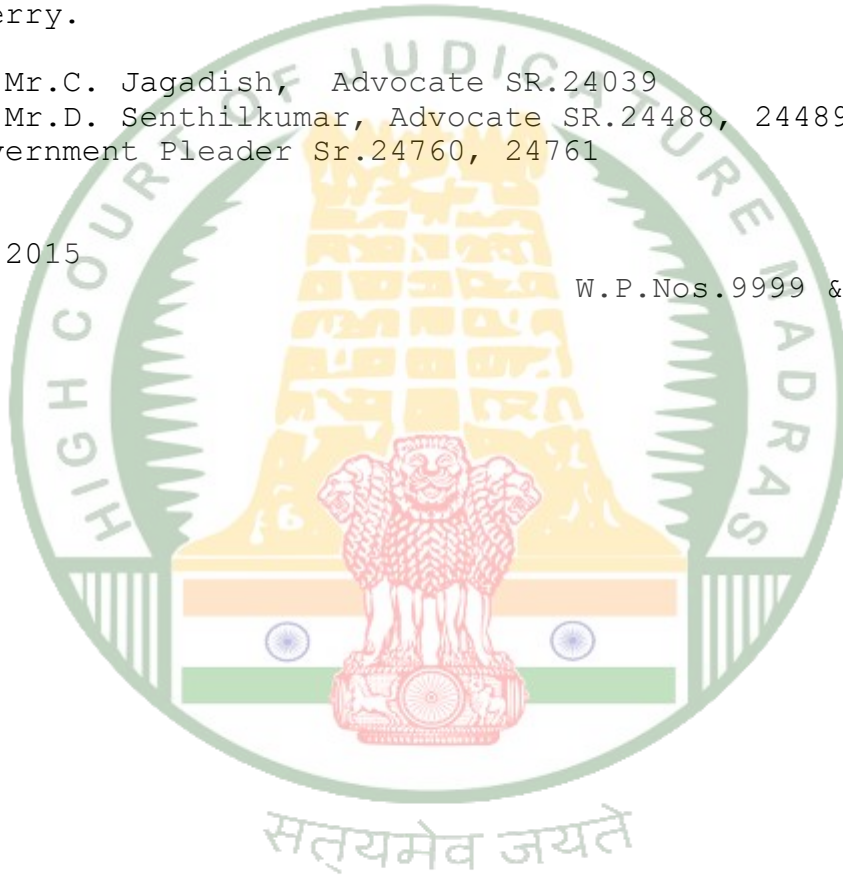
2.The District Collector,
Puducherry.

3.The Chief Town Planner
Town and Country Planning Department,
Puducherry.

+ 1 cc to Mr.C. Jagadish, Advocate SR.24039
+ 2 cc to Mr.D. Senthilkumar, Advocate SR.24488, 24489
+ 2 cc Government Pleader Sr.24760, 24761

PUR(CO)
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W.P.Nos.9999 & 10000 of 2015



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