

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NOs.9687 AND 11460 OF 2015

DATED:25-04-2016

W.P. No.9687 of 2015

Between:

K.M. Pratap

... Petitioner

And

State of Telangana

Represented by its Principal Secretary

Municipal Administration

and Urban Development Department

Secretariat, Hyderabad

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. Srinivas Bodduluri

COUNSEL FOR RESPONDENT NO.1: G.P. for Municipal Administration
(TS)

COUNSEL FOR RESPONDENT NOs.2 to 8: Mr. Chatla Madhu, Standing
Counsel for GHMC

COUNSEL FOR RESPONDENT NOs.9 to 11: Mr. O. Manohar Reddy, for
Mr. A. Bhuvana Sundar Reddy

W.P. No.11460 of 2015

Between:

Narayana Educational Society

A Society registered under the

Societies Registration Act, 1860,

Having registered office at 14/72,

Haranadhapuram, Nellore, Andhra Pradesh

Rep. by the Authorized Signatory

Sri R. Koteswara Rao

... Petitioner

And

The Greater Hyderabad Municipal Corporation

Tank Bund, Hyderabad

Represented by its Commissioner

and others

... Respondents

COUNSEL FOR THE PETITIONER: Mr. B. Nalin Kumar

COUNSEL FOR RESPONDENT NOs.1 and 2: Mr. Chatla Madhu, Standing
Counsel

for GHMC

COUNSEL FOR RESPONDENT NOs.3 to 6:

COUNSEL FOR RESPONDENT NO.7 : Mr. Srinivas Bodduluri

THE COURT MADE THE FOLLOWING:

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COMMON JUDGMENT:

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This case presents a paradigm of a law-maker himself breaking law, not by accident but by design. Though not acceptable, common man may plead the excuse of violating the law due to ignorance. Can a Legislator behave like a common man, violate the law with impunity and get away with it by virtue of the position he occupies, are the questions which are troubling this Court.

2. The above prelude is necessitated for disposal of these two writ petitions wherein the subject matter is common, by a common judgment.

For convenience, the parties shall be referred to as they are arrayed in W.P. No.9687 of 2015, which is the lead case. The brief facts of this case are narrated hereunder.

3. The simmering differences between the petitioner and his nephew - respondent No.9 brought to the fore the brazen violation of building laws by respondent No.9, his wife - respondent No.10 and his mother - respondent No.11. To know what these violations are, a few facts need to be noted. Respondent No.9 is a Member of the Legislative Assembly of Quthbullapur Constituency. In the year 2012, before the erstwhile State of Andhra Pradesh was formally divided, he along with respondent Nos.10 and 11 approached respondent No.2 for grant of building permissions for construction of ground + first floor for residential purpose. Separate plans for individual buildings, two each in the names of respondent Nos.9 to 11, were submitted; with each total plot area of 232.22 sq yards or 194.13 sq. mts, each by proposing ground floor area of 123 sq. mts., first floor area of 123.00 sq. mts., and total floor area of 246. Sq. mts. Each plot's open area was shown as 71.13 sq. mts, surrounded by separate compound walls of 58.00 running meters each.

The petitioner, who fell out with respondent No.9, obviously over sharing family properties, noticed the latter constructing buildings in utter deviation of the sanctioned plans and collected ammunition in the form of the documents obtained under the Right to Information Act, 2005 to wage a legal battle against respondent No.9. He has accordingly filed the present writ petition wherein he has alleged that having obtained sanction for construction of two buildings each by respondent No.9 to 11 for residential use with ground + first floor, they have raised a huge commercial complex with ground + 3 floors and a pent house in two blocks leaving a small place between the two blocks for installation of a generator. He has further alleged that condition No.32 of each of the six permits stipulated various structural and fire safety requirements which inter alia requires provision for one entry and one exit to the premises with a minimum width of 4.5 mts., and height clearance of 5 mts., provision for fire resistant swing door for the collapsible lifts in all floors, provision for generator as alternate source of electric supply and set backs of 1 mtr. on north, south and east and 3 mts. on western side. He has filed photographs which show that in place of six independent units sanctioned by respondent No.2 and its functionaries, with ground + first floor, respondent Nos.9 to 11 have constructed two huge blocks with ground + three floors and some partial construction on the terrace. The photographs, the authenticity of which has not been disputed by any of the respondents, further show that a small gap, may be of 5 to 6 feet, is left between the two building blocks. These photographs prima facie show not only that two huge buildings were constructed in the place of six independent units, without leaving the required set backs for each building, but no all-round space is left as per the Building Regulations and the permit conditions.

4. The above-mentioned constructions were undertaken under the nose of respondent No.2 and its functionaries, who were in no mood to prevent the ex facie illegal construction. When one Mr. Nakka Prakash sought information under the Right to Information Act, respondent No.4

gave a reply on 11.12.2013 wherein while giving details of four permits in favour of respondent Nos.9 and 10 informed the applicant in reply to the query “permission details of house constructed in Plot Nos.79, 80 and 81, if the said construction is unauthorized, inform the action taken” that “the said construction is not unauthorized and the permission details are given above and that if any deviation is made against the sanctioned plan further action will be taken under the provisions of the Greater Hyderabad Municipal Corporation Act,1955 (for short, ‘the Act’) by following due process of law.” Obviously realizing that the officials of respondent No.2 are indifferent to the illegal constructions, the said Nakka Prakash made another representation on 25.2.2014 wherein he has informed that respondent Nos.9 and 10 have raised G + 4 and G + 3 buildings without leaving any space for parking and even an inch of set back for running a Junior College and an E-Techno School by one Narayana Educational Institutions. However, as no action was forthcoming from the functionaries of respondent No.2 Corporation, the petitioner himself appeared to have swung into action by addressing letter dt.27.8.2014 to respondent No.4 wherein he has pointed out the following deviations.

<i>Sl. No.</i>	<i>As per the permission</i>	<i>Deviations in the construction</i>
1.	<i>Permission accorded by your Office for residential purpose in four separate permits</i>	<i>Whereas the construction raised for the commercial purpose only and the owners constructed by merging all the permissions without any set backs.</i>
2.	<i>Permission accorded for Ground + first floor</i>	<i>But the owner raised construction Ground + 4 floors and penthouse</i>
3.	<i>Set backs front side 3.0 mtrs. in all the permissions</i>	<i>No such set backs given (not even an inch)</i>
4.	<i>Set backs rear side 1 mtrs. in all the permissions</i>	<i>No such set backs given</i>
5.	<i>Set backs for side I, 1 mtrs. in all the permissions</i>	<i>No such set backs given</i>
6.	<i>Set backs for side II 1 mtrs. in all the permissions</i>	<i>No such set backs given</i>

The petitioner wanted to know from respondent No.4 whether his office inspected the buildings during the construction works or after completion of the construction works and whether the deviations were

noticed and, if so, what steps were taken against the illegal constructions. As no response was received in reply to this letter, the petitioner has sent a reminder on 31.10.2014. In reply to the petitioner's letter addressed to the District Fire Officer, the latter has informed vide his letter dt.28.12.2014 that no 'No Objection Certificate' from the Fire Service Department was issued for running Narayana Junior College, that so far the District Fire Officer has not inspected the College and that if it is found that the fire safety measures were not taken, necessary action by issuing notices/show cause notices as per form Nos.9, 12 and 14 prescribed under the Andhra Pradesh Fire and Emergency Operations and Levy of Fee Rules, 2006, will be taken.

5. The perseverance of the petitioner appeared to have left respondent No.4 with no option other than issuing separate notices to respondent Nos.9 and 10 under Sections 452(1) and 461(1) of the Act, on 06.1.2015. It was alleged therein that as against the permission granted for ground + first floors, respondent Nos.9 and 10 have raised three upper floors unauthorizedly by clubbing two permissions, converted the usage of the building from residential to institutional and also failed to observe all-round set backs, contrary to the Rules in force. It appears that a similar notice was also issued to respondent No.11, and none of the said respondents have submitted their explanations. Along with the reply affidavit, the petitioner has filed a copy of notice dt.06.4.2015 issued under Section 636 of the Act to respondent No.9, a perusal of which shows that respondent No.9 has not submitted any reply to notice dt.2.3.2015 and he was directed to remove the two additional floors constructed unauthorizedly by clubbing two plots, within 24 hours from the date of receipt of the notice, failing which the same will be removed by the Greater Hyderabad Municipal Corporation and the expenses thereof will be recovered. The petitioner has also filed proceedings styled as notice No.G/1629/TPS/Cir-15/GHMC/2015, dt.29.5.2015, of respondent No.4, addressed to respondent Nos.9 to 11, wherein it is informed that their application dt.18.4.2015 for

regularization of the unauthorized constructions was rejected, as no space for parking was left as against 30% of the built up area to be provided for parking, and the building was constructed with serious set back violations with shortfall of, -2.09 mts., -2.09 mts., -2.24 mts., and - 0.29 mts., on front, rear, side-1 and side-2 portions respectively. Interestingly, on the day on which the petitioner has filed W.P. No.9687 of 2015, respondent No.4 has issued notice dt.29.5.2015 rejecting the application of respondent Nos.9 to 11 for regularization of the unauthorized constructions. The counter affidavit filed by respondent No.4 in October, 2015 is completely silent as to why action for removal of the unauthorized constructions was not initiated for as many as four months which have elapsed between the issue of the notice under Section 636 of the Act and filing of the counter affidavit. Indeed, another four months have elapsed when the writ petition was finally heard and orders reserved. Even during this period, nothing was done to enforce the final notice issued under Section 636 of the Act.

6. It is this kind of cold approach in taking action against the brazen violation of laws by haves, that is creating a feeling in the minds of the have nots, that law is meant to be enforced only against the latter and not against the former. The entire counter affidavit of respondent No.4 creates a strong feeling in the mind of this Court that she was going through the ritual of giving replies to the applications filed under the Right to Information Act and rest content with the completion of formality of issuing notice under Sections 452(1) and 636 of the Act. What is conspicuous is that respondent No.4 does not feel the responsibility of placing before the Court the future plan of action to enforce the notice issued under Section 636 of the Act, which strengthens the submission of the learned counsel for the petitioner that since respondent No.9 happens to be a Member of Legislative Assembly, respondent Nos.2 to 6 have neither commitment, nor courage to bring the action initiated by them for removal of the unauthorized construction, to its logical end.

7. As far as respondent Nos.9 to 11 are concerned, respondent

No.10, the wife of respondent No.9, has shouldered the responsibility of filing the counter affidavit with her husband maintaining stoic silence. She has blamed the petitioner for not disclosing the relationship between himself and respondent No.9, apart from pleading that the writ petition was filed after two years of completion of the construction and that the same is not filed bona fide. She has also pleaded that with the issue of notice under Section 452(1) and 461(1) of the Act the writ petition has become infructuous. She has further pleaded that four separate suits were filed in the Court of the Junior Civil Judge, Medchal, for permanent injunction against the Corporation from interfering with the peaceful possession of respondent Nos.9 to 11, that the petitioner has filed I.As for his impleadment in the said suits, and that the said I.As were dismissed against which the petitioner has filed civil revision petitions and the same are pending. Respondent No.1 has therefore alleged that as the matter is sub judice before the Civil Court, the writ petition is liable to be dismissed. She has also stated that against the notice issued by respondent No.2 for shifting the educational institutions, Narayana Junior College has filed W.P. No.11460 of 2015 and that this Court has granted an interim order. She has further pleaded that they made an application under the Telangana Regularization of Unauthorizedly Constructed Buildings and Buildings constructed in deviation of the Sanctioned Plan Rules, 2015 (hereinafter referred to as 'the Rules'), and in view of the pendency of the said application, no reply to the allegations made in paragraphs 3, 5 and 9 of the writ petition, pertaining to the violations with which the buildings were constructed, was needed and that she reserves the right to traverse the said allegations at an appropriate time, if so warranted.

8. W.P. No.11460 of 2015 is filed for declaring the notice bearing No.588/TSP/C15/NZ/2015/243, dt.9.4.2015 of respondent No.1, issued under Section 441 of the Act, directing the Principal & Correspondent of the petitioner's Junior College to shift its educational institution to another building.

The petitioner therein claims that it is a registered society under the Societies Registration Act, 1860 and its aim and object *inter alia* is running various educational institutions. That it has entered into a lease agreement with respondent Nos.3 to 6 in the writ petition (father of respondent No.9, and respondent Nos.11, 9 and 10 respectively in W.P. No.9687 of 2015) vide Doc. No.7002 of 2012, dt.21.6.2012, in respect of the buildings in question wherein it is running a primary school and a Junior College, after obtaining necessary permissions and that the lease period is from 1.6.2012 to 31.5.2022. That the impugned notice was issued stating that the owners of the leased premises were issued a notice to remove the unauthorized constructions made in deviation of the sanctioned plan, and directing the petitioner to vacate the leased premises and shift the educational institutions to another place.

It is the pleaded case of the petitioner that no show cause notice was issued to it before issuing the notice under Section 441 of the Act, and the same is violative of principles of natural justice. That respondent Nos.3 to 5 have also filed O.S. Nos.77, 78, 79 and 80 of 2015 respectively before the Court of Junior Civil Judge, Medchal, challenging the said notices issued for removal of unauthorized construction and the same are pending. That hundreds of students and a number of teaching and non-teaching staff will be affected, if any adverse action is taken. That EAMCET coaching classes are being conducted in the leased premises till 15.5.2015 and the premises is also selected for holding supplementary examinations from 20th May, 2015 to 1st June, 2015 and at short notice it is not possible for the petitioner to find an alternative accommodation to shift the Primary School and the Junior College and to obtain necessary permissions from the statutory authorities. That it has also submitted a representation dt.13.4.2015 to respondent No.1 to grant at least six months time to vacate the leased premises.

On 22.4.2015 while issuing notice before admission, this Court has granted interim suspension and thereafter the writ petition was

tagged to W.P. No.9687 of 2015.

On behalf of respondent Nos.1 and 2, one Mr. P. Raghunandan Raju, Assistant City Planner, Quthbullapur, Circle-15, GHMC, filed a counter affidavit *inter alia* justifying their action in issuing the notice to the petitioner, since respondent Nos.3 to 6 herein have constructed two blocks with ground + 3 floors in deviation to the sanctioned plan and let out the same to the petitioner's society for running educational institutions. The factum of filing of the writ petition No.9687 of 2015 is also stated in the said counter affidavit.

Be it noted that the petitioner in W.P. No.9687 of 2015 has filed W.P.M.P. No.17514 of 2015 in W.P. No.11450 of 2015, for his impleadment as a party respondent in the said writ petition. It is his pleaded case that due to the attitude of the writ petitioner and respondent Nos.3 to 6, the lives of the children are in jeopardy as respondent Nos.4 to 6 have constructed huge commercial structures in deviation of the sanctioned plan and without taking safety measures. That suppressing all these facts, the petitioner has filed this case at the behest of respondent Nos.3 and 6, and obtained interim orders. While reiterating the facts stated in W.P. No.9687 of 2015, the petitioner further stated that after the notices were issued by this Court in the said writ petition, the GHMC hurriedly issued notices to respondent Nos.4 to 6 for demolition and they filed civil suits before the Court of Principal Junior Civil Judge, Medchal. That the lease deed entered into by the petitioner with respondent Nos.3 to 6 is imbued with false recitals. That he is a proper and necessary party in the writ petition as in view of his persuasion, action was initiated by the GHMC against the petitioner. The proposed respondent has also filed W.V.M.P. (SR) No.72512 of 2015 seeking vacation of the interim order dt.22.4.2015.

The petitioner also filed W.P.M.P. No.48130 of 2015 on 12.11.2015 for permitting it to file an additional affidavit. It is pleaded in the additional affidavit that it has submitted a representation on 13.4.2015 to the Commissioner of the Greater Hyderabad Municipal

Corporation requesting for six months' time to secure alternative suitable accommodation in the same locality and to vacate the premises and that the petitioner has intensified its attempts to secure an alternative building and is confident that before the end of the current academic year it will be able to identify the alternative building and shift the school and college.

9. From the pleadings and the material referred to above, the undeniable and undisputed facts that emerge are that respondent Nos.9 to 11 have indulged in blatant violation of law in constructing buildings with two unauthorized floors besides making unauthorized constructions on the terrace, without leaving the required set backs and without leaving any mandatory space for parking. Six permits were unauthorizedly clubbed together and two buildings were constructed in place of six independent units, with a small space left between the two buildings. The application for regularization was rejected by respondent No.4 on 29.5.2015. This rejection order has attained finality. Almost six months after the rejection of their applications, respondent Nos.9 to 11 have again seen a ray of light at the end of the tunnel in the form of G.O. Ms. No.152, dt.2.11.2015 issued by respondent No.1 providing for regularization of the buildings constructed from 01.01.1985 to 28.10.2015. They have lost no time in applying for regularization once again on 07.11.2015. This new turn of event obviously facilitated the functionaries of respondent No.2, who had no excuse whatsoever for not removing the unauthorized constructions from 21.4.2015, when the notice under Section 636 of the Act was issued, to sleep under the shelter of the regularization application which created a ruse for them to justify their inaction. This Court was informed that the *vires* of the Regularization Scheme, which *prima facie* appears to be a boon for the violators of law and bane for the society at large, are under challenge before a Division Bench of this Court. What this Court is seriously concerned with is the abject apathy of respondent No.2 and its functionaries. As noted hereinbefore, till two huge buildings were

constructed in serious violation of the permits, not even one officer has issued a notice until the petitioner albeit for his personal reasons, went on hot pursuit with the officials for initiating action. Even then, respondent No.4 has washed off her hands by issuing notices under Sections 452(1) and 636 of the Act. From these facts, the inevitable conclusion that could be drawn is that respondent No.4 and other officials who are responsible to take action, have colluded with respondent No.9 and failed to carry out their statutory duties. In this connection, relevant provisions of the Act and the Rules need to be noticed.

10. The Municipal Corporation Building Bye-Laws, 1981, were framed by the Government in exercise of its powers under Section 589 of the Act. Byelaw No.9.1 mandates that during the course of construction of building if any deviation from the sanctioned plan is intended to be made, permission of the Authority shall be obtained before the proposed deviation is executed. It further envisaged that it shall be incumbent on every person, whose plans have been approved, to submit amended plans for any deviation, he proposes to make. Under byelaw No.10.1, the Authority is charged with the responsibility of inspection of the construction work for which a building permit is required, periodically as per the following stages.

- (a) on receipt of notice of commencement of work;
- (b) on completion of footings or foundation base and before constructing foundation walls;
- (c) any other intermediary stages of construction;
- (d) on completion of work after the receipt of completion certificate.

Byelaw No.11.1 ordains that if at any time, construction was done not according to sanctioned plan, the Authority may by written notice as specified in Appendix-F direct the permit holder (owner) to stop further construction and cause anything done contrary to the sanctioned plan to be amended so as to be in conformity with the said plan. Under Byelaw No.11.3, if any person contravenes any of the provisions of the Byelaws,

he shall be guilty of an offence and upon conviction, shall be punished by a fine as fixed by the Authority and the Authority shall take suitable actions including demolition of unauthorized work as decided by it and also take suitable action against the licensed technical personnel, which may include cancellation of the licence and debarring him from practice for a period of one year.

11. The Andhra Pradesh Building Rules, 2012 were framed by the erstwhile Government of Andhra Pradesh in exercise of its rule making power conferred under the provisions of the Greater Hyderabad Municipal Corporation Act, 1955, the Andhra Pradesh Urban Areas (Development) Act, 1975 and the Andhra Pradesh Municipal Corporations Act, 1994, the Andhra Pradesh Municipalities Act, 1965 and the Andhra Pradesh Town Planning Act, 1920. These Rules are a self-contained Code prescribing various norms and requirements, and imposing restrictions. Table-III of Rule 5 prescribed minimum set backs and permissible height depending upon the size of the plot. Table-V of Rule 13 prescribes parking requirements in GHMC, other Corporations and municipal areas. Sl. No.4 thereof *inter alia* pertains to residential apartment complexes, schools, colleges, other educational buildings etc.

12. Section 452 of the Act makes it obligatory for the Commissioner to issue a written notice requiring a person who is erecting or re-erecting the building or executing such work contrary to the provisions of the Act or Byelaws made thereunder to show sufficient cause why such building or work shall not be removed, altered or pulled down, or he shall require the said person to attend personally or by his agent on such day and at such time and place as specified by him to show sufficient cause as to why the building cannot be altered or pulled down. Under sub-section (2) thereof, if such person has failed to show sufficient cause to the satisfaction of the Commissioner, the latter may remove, alter or pull down the building or work and the expenses thereof shall be paid by such person. Under Section 636 of the Act, if any work which requires

written permission of the Commissioner under the Act or any Rule, Regulation or Byelaw is done by any person without obtaining any written permission, or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorized and the Commissioner may by written notice require the same shall be removed, pulled down or undone as the case may be, by the person so carrying out such work, and that if within the period specified in the said notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner as the case may be.

13. There is no dispute about the fact that building permissions were granted to respondent Nos.9 to 11 by stipulating set backs and parking requirements as per the Building Byelaws and Building Rules as discussed hereinbefore. It is also not in dispute that the said respondents have blatantly violated the permit conditions relating to parking as well as set backs besides raising two additional floors and pent house, by clubbing six independent units into two blocks. No material is placed before this Court by respondent No.4 to show that at any point of time either herself or any of her subordinate officers have inspected the buildings as required under Byelaw No.10 or any stop-work notice as envisaged under Byelaw No.11.1 was issued, either before or after notices were issued under Sections 452 and 636 of the Act. Far from taking such action, in letter dt.11.12.2013 respondent No.4 has replied to the query that the constructions being undertaken by respondent Nos.9 to 11 were not unauthorized. There is nothing on record to show that at least at that stage, respondent No.4 or her subordinate officials have carried out the inspection as prescribed under Bye-law No.10 and stopped further construction and removed the constructions made in deviation of the sanctioned plans. Thus, respondent No.4 and her subordinates are guilty of serious dereliction of

their duties as a result of which two huge constructions in the form of multi-storied blocks without any parking with minimal or no set backs and unauthorized constructions over rooftops, were allowed to come up.

14. The acts of corruption, negligence, indolence and complicity with the builders by the officials of the Municipal bodies are destroying the concept of planned development and converting the urban areas into concrete jungles. The mushrooming of illegal and unauthorized constructions by the unscrupulous developers in collusion with the municipal corporations/municipalities is not only causing severe hardship to the inhabitants of the urban areas, but also severely affecting the ecology and environment. The lackadaisical approach of the official apparatus is emboldening the unscrupulous elements to construct buildings either unauthorizedly or in violent deviations of the sanctioned plan making the life of a common man miserable. The policy of the Government of the day to come out with schemes such as Regularization or Penalization of the plots/buildings with unfailing regularity is bolstering the activities of the perpetrators of illegal constructions and creating confidence in them that illegal constructions will pass muster, albeit at some price. It is indeed sad that the State is not considering the plight of the victims of illegal constructions while coming out with regularization/penalization schemes. Indubitably, in a welfare State, the welfare of a common man is of paramount importance and he cannot be let down. After all, laws are the foundation on which a fulfilling life is built for a community. Breaking of laws by design breaks the backbone of the community and makes it completely paralyzed.

15. G.S. Shinghvi, J, sitting with B.N. Agrawal, J, in *Shanti Sports Club v. Union of India*^[1] contrasted developed countries with developing countries in the matter of strict adherence to the concept of planned development. The Court held that people of the developed countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the

master plan etc., that they respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc., in the construction of buildings, residential, institutional or commercial and that in contrast, scenario in the developing countries like ours is substantially different. That though the competent legislatures have from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity. The Supreme Court further held at paragraphs 74 and 75 as under:

“74. In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court

has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc....

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

16. In *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation*^[2] taking judicial notice of the fact that during the last four decades the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportions, the Supreme Court referred to a slew of the judgments in *K. Ramadas Shenoy v. Town Municipal Council, Udipi*^[3], *Virender Gaur v. State of Haryana*^[4], *Pleasant Stay Hotel v. Palani Hills Conservation Council*^[5], *Cantonment Board, Jabalpur v. S.N. Awasthi*^[6], *Pratibha Co-op. Housing Society Ltd. v. State of Maharashtra*^[7], *G.N. Khajuria v. DDA*^[8], *Manju Bhatia v. NDMC*^[9], *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*^[10], *Friends Colony Development Committee v. State of Orissa*^[11], *Shanti Sports Club* (1 supra) and *Priyanka Estates*

International (P) Ltd. v. State of Assam^[12].

17. Contemporaneous to the judgment in *Dipak Kumar Mukherjee* (2 supra), the Bench comprising the same learned Judges, in *Esha Ekta Apartments Co-operative Housing Society Ltd. v. Municipal Corporation of Mumbai*^[13] echoed the views of the earlier judgments.

18. The serious concern shown by the highest court of the land in the afore-mentioned judgments did not appear to have any impact whatsoever either on the violators of the building laws or on the executive governments. Undeterred by the strong indictment of regularisation schemes, the successive governments have been coming out with regularisation schemes every now and then. The schemes have been proved as havens for the violators and a curse for the society. As held by the Supreme Court in *Dipak Kumar Mukherjee* (2 supra), the common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan and that the failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. This Court wonders as to in what other language the regulatory bodies, such as GHMC, must be told to curb the menace of illegal constructions, free the innocent victims from sufferance and ensure planned development?

19. In the light of the above elucidated legal position and the admitted fact that respondent Nos.9 to 11 have consciously, deliberately and with impunity violated the sanctioned plans in every conceivable way, can this Court remain a mute spectator only for the reason that during the pendency of the writ petition the State has come out with yet another scheme to protect the violators of law? Answer to this question is an

emphatic 'No'. Dealing with a similar situation, in *Royal Paradise Hotel (P) Ltd. v. State of Haryana*^[14] the Supreme Court declined to interfere with the High Court judgment setting aside the decision of the municipality concerned to regularize the illegal constructions. The Supreme Court took note of the fact that the predecessor of the appellant has put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction. The Supreme Court held that such violations cannot be compounded and the prayer of the appellant was rightly rejected by the municipal authorities, that the High Court was correct in dismissing the writ petition filed by the appellant and that it is time that the message goes aboard that those who defy the law would not be permitted to reap the benefit of their defiance of law and it is the duty of the High Courts to ensure that such defiers of law are not rewarded. The Court further held that the High Court was therefore fully justified in refusing to interfere in the matter and that the High Court was rightly conscious of its duty to ensue that violators of law do not get away with.

20. The only difference between this case and that in *Royal Paradise Hotel (P) Ltd.* (14 supra) is that in the latter case the application for regularization was rejected, whereas in the present case, after rejection of their application for regularization of unauthorized construction on 29.5.2015, respondent Nos.9 to 11 took advantage of the commencement of the 2015 Rules, which were brought into force during the pendency of these writ petitions and filed a fresh application for regularization.

It is noteworthy that the Act was amended by Act No.9 of 2008 by incorporating Section 455-AA providing for Regulation and Penalization of construction of buildings in deviation of sanctioned plans. The obvious object behind this amendment is to lend statutory flavour to the regularization schemes. Be that as it may, the application of respondent Nos.9 to 11 traceable to this statutory provision was already rejected. This rejection order was not assailed by respondent Nos.9 to 11 and it

has attained finality. Therefore, these respondents cannot be allowed to take shelter under subsequent regularization scheme and have the undue benefit of utilizing the illegal constructions in the guise of pendency of their application for regularization. By no stretch of imagination the buildings constructed with serious structural alterations can ever be regularized. In *Friends Colony Development Committee* (11 supra), the Supreme Court held as under:

“Structural and lot area regulations authorize the municipal authorities to regulate and restrict the height, number of storeys and other structures: the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.”

21. Therefore, the buildings constructed by respondent Nos.9 to 11 cannot be allowed to be regularized, as such regularization frustrates the concept of planned development and the laws regulating the building activities in urban areas. As held by the Supreme Court, if such regularizations are permitted, it amounts to conferring undue favour on persons who are indulging in lawlessness and thereby cheating the society at large. In a case of this nature, where six separate buildings are joined with a short gap between two blocks, without leaving individual set backs for each sanctioned building, without providing minimum of 30% of parking and with two additional floors and additional constructions on terrace, it will be a grave travesty of justice if the violations are ignored and the buildings are regularized. The Supreme Court in *Friends Colony Development Committee* (11 supra) held that the arms of the law must stretch to catch hold of such unscrupulous builders and stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The Apex Court has advocated zero tolerance by the High

Courts in the matter concerning the buildings constructed with serious violations and held that it is the duty of the High Courts to ensure that the defiers of law are not rewarded.

22. Since the plea raised by the petitioner in W.P. No.11460 of 2015, that at short notice it is not possible for it to find out an alternative accommodation to shift the primary school and junior college by obtaining necessary permissions from the statutory authorities, one year has passed by, and as this period was more than sufficient for an educational society to secure an alternative premises and all necessary permissions, the grounds on which the said writ petition was filed are no longer available to it now. The educational society, the petitioner in W.P. No.11460 of 2015, is thoroughly made known about the fact that it is in occupation of the buildings which are constructed in brazen violation of law. As the said society boasts of imparting education of high standards in both the State of Telangana and Andhra Pradesh, it has a social, legal, moral and ethical responsibility not to utilize the buildings which are constructed in utter violation of the building laws. At any rate, even as per the petitioner's own request it sought time till the end of the academic year 2015-16 for vacating the building and this period has expired.

23. In the above facts and circumstances of the case, the writ petitions are disposed of subject to the following directions.

- (i) The petitioner in W.P. No.11460 of 2015 shall vacate the building in all respects on or before 01.6.2016 after issuing notice to respondent Nos.2 to 4 in W.P. No.9687 of 2015.
- (ii) From 01.6.2016 respondent Nos.2 to 4 in W.P. No.9687 of 2015 shall remove all the portions of the two buildings which are constructed in violation of the sanctioned plan, complete the demolitions and file a report along with photographs in proof of such demolition by 15.6.2016 before the Registry.
- (iii) The Commissioner of the Greater Hyderabad

Municipal Corporation shall identify and initiate departmental proceedings against all the officers who are responsible for dereliction of their duties pertaining to failure to inspect, issue timely notices to respondent Nos.9 to 11 to stop illegal constructions, and displayed lethargy in issuing and enforcing notices under Sections 452 and 636 of the Act, forthwith, and file his report in the Registry, on or before 15.06.2016.

As a sequel to disposal of the writ petitions, W.P.M.P. No.12736 of 2015 in W.P. No.9587 of 2015, and W.P.M.P. Nos.15152 and 35666 of 2015 and W.V.M.P. (SR) No.72512 of 2015 in W.P. No.11460 of 2015 shall stand disposed of as infructuous.

The Registry shall post the cases before the Court on 17.06.2016 under the caption 'for being mentioned'.

C.V. NAGARJUNA REDDY, J

25-04-2016

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[\[1\]](#) (2009) 15 SCC 705

[\[2\]](#) (2013) 5 SCC 336

[\[3\]](#) (1974) 2 SCC 506

[\[4\]](#) (1995) 2 SCC 577

[\[5\]](#) (1995) 6 SCC 127

[\[6\]](#) 1995 Supp (4) SCC 595

- [\[7\]](#) (1991) 3 SCC 341
- [\[8\]](#) (1995) 5 SCC 762
- [\[9\]](#) (1997) 6 SCC 370
- [\[10\]](#) (1999) 6 SCC 464
- [\[11\]](#) (2004) 8 SCC 733
- [\[12\]](#) (2010) 2 SCC 27
- [\[13\]](#) (2013) 5 SCC 357
- [\[14\]](#) (2006) 7 SCC 597