

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 12453 of 2017

ORDER:

In this writ petition, petitioner questions the notice dated 22.10.1996 and consequential notice dated 14.03.2017 by respondent No.2 – Municipality. By the impugned notices, respondent No.2 – Municipality asked to remove the Salmon CT Scanning and Health Centre in the stilt area meant for parking or else it would collapse the same.

Learned counsel for the petitioner contends that the petitioner constructed building in accordance with the sanctioned plan; no commercial activity is being conducted in the stilt portion; and he is practicing his profession thereat.

By the impugned notices, respondent No.2 – Municipality intends to demolish the illegal construction raised by the petitioner. Illegal Constructions violate the principle of Rule of Law. It shows scant respect for the legal norms by citizens and failure of the state to enforce the law.

Sri Nimmagadda Venkateshwarulu, learned Standing Counsel for respondent No.2 – Municipality, submits that, having obtained permission for domestic purpose, the petitioner constructed Scanning Centre in the stilt area contrary to the sanctioned plan.

The Supreme Court of India in a series of judgments has dealt with illegal constructions and gave directions for their demolition. In the said cases, the Supreme Court has shown no tolerance for illegal construction.

In **K. Ramadas Shenoy v. Chief Officers, Town Municipal Council**¹, the resolution passed by the Municipal Committee authorizing construction of a cinema theatre was challenged on the ground that the site was earmarked for the construction of Kalyan Mantap-cum-Lecture Hall and the same could not have been used for any other purpose. The High Court held that the cinema theatre could not be constructed at the disputed site but declined to quash the resolution of the Municipal Committee on the ground that the theatre owner had spent huge amount. While setting aside the High Court's order, the Supreme Court observed:

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorized construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.

The Court enforces the performance of statutory duty by public bodies as obligation to ratepayers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

¹ (1974) 2 SCC 506

In **Pratibha Coop. Housing Society Ltd. v. State of Maharashtra**², the Supreme Court approved the order passed by the Bombay Municipal Corporation for demolition of the illegally constructed floors of the building and observed:

"Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorized constructions never pays and is against the interest of the society at large. The rules, regulations and bye-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."

In **Friends Colony Development Committee v. State of Orissa**³, the Supreme Court noted that large number of illegal and unauthorized constructions were being raised in the city of Cuttack and made the following significant observations:

"... Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or

² (1991) 3 SCC 341

³ (2004) 8 SCC 733;

deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders..."

In **Shanti Sports Club v. Union of India**⁴, the Supreme Court approved the order of the Delhi High Court, which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed:

"In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized 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 unauthorized 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

⁴ (2009) 15 SCC 705

in unplanned cities and urban areas. The people belonging to this class do not realize 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 unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized 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. 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/unauthorized constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized 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 unauthorized 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."

From the above judgments the following principles emerge:

- (1) There should be no tolerance for illegal constructions. An illegal construction cannot be justified on the ground that construction has been completed or substantial investment already has gone into the said construction.
- (2) If illegal constructions are allowed it will send a wrong message to other citizens and it is a punishment for a law abiding citizen who carry out construction in accordance with law.
- (3) It is the duty of the Municipal Corporation to strictly enforce the law and take action against illegal constructions. If the Municipality fails to take action against illegal construction, the court can direct the corporation enforcement of its duties.
- (4) It is the duty of the local municipality to take strict action against buildings, which are constructed in violation of law. If they fail to do so, it does not in any way justify the illegal construction, which can be demolished at any point of time either at the instance of the Municipality or the Court Order.

(5) If an innocent purchaser purchases a building unaware of the illegal construction, he is entitled to compensation from the builder and the court can direct him to do so.

In the instant case, since the petitioner is running Scanning Centre in the stilt area meant for parking, respondent No.2 – Municipality shall ensure that there is no deviation from the Master Plan or sanctioned plan under any circumstances and, if there is any deviation, respondent No.2 – Municipality shall take immediate action to enforce the same; and, if the petitioner utilizes the earmarked area for parking, as shown in the sanctioned plan, no coercive steps shall be taken against him.

With the above observations, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:10.04.2017

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