

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8880 of 2015

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M/s Gayatri Engicon Pvt. Ltd. through its Managing director Muni Lal Yadav Son of late Baishakhi Yadav resident of Flat No. 402, Shri Hari Apartment, road NO. 10, East Patel Nagar, Police Station Shastri Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Urban Development, Govt. of Bihar, Patna.
2. The Patna Municipal corporation Through its Commissioner Maurya Lok , Patna.
3. The Vigilance Officer, Patna Municipal Corporation Maurya Lok Patna.
4. Smt. Meena Devi wife of Sri Ashok Kumar Singh Resident of Road No. 1/A Mahesh Nagar , Police Station Patliputra District Patna,.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narain Singh, Advocate
Mr. Kundan Kumar Sinha, Advocate
For the Respondent-PMC : Mr. Prasoon Sinha, Advocate
For the Private Respondent: Mr. Ashutosh Ranjan Pandey, Advocate
For the Respondent-State : Mr. Ajay Bihari Sinha, GA-8
Mr. Upendra Kumar Singh, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 19-06-2018

Heard Mr. Aditya Narain Singh, learned Advocate for the petitioner, Mr. Prasoon Sinha, learned Advocate for the Patna Municipal Corporation, Mr. Ashutosh Ranjan Pandey, learned Advocate for the private respondent and Mr. Ajay Bihari Sinha, learned Government Advocate No.8 for the respondent-State.

2. This writ petition has been filed by the petitioner for quashing of the concurrent finding of facts recorded in the order dated 15.05.2015 passed by the Municipal Building Tribunal (for



short 'Tribunal') in Appeal No.104 of 2014 as well as in the order dated 12.04.2014 passed by the Municipal Commissioner, Patna in Vigilance Case No.24B of 2010 holding therein that the building in question shall not be allowed more than 11 meters of height as per the building bye-laws and further directed the petitioner not to create any interruption on the approach road situated west of the building in question for use of private respondent and further declared that those part of the deviation which are beyond the condonation limit shall be liable to be demolished.

3. The admitted facts of the case are that the petitioner is a company engaged in building and developing plots for commercial purposes. It had applied for construction of Bhagwat Kunj Apartment on Plot No.1440 and 1441 situated at 1A, Mahesh Nagar, Patna, which was numbered as Plan Case No. P/Mainpura-PRN-207/09 and was sanctioned vide order dated 16.06.2009 14 for construction of G+4 with height of 14.40 meter from ground level whereas the petitioner has constructed G+5 upto the height of 19.09 meter from the road. Subsequently, the private respondent no.4 filed a complaint before the Commissioner, Patna Municipal Corporation alleging inter alia that the petitioner was constructing the building in question after obtaining the sanction fraudulently. He complained that the thoroughfare being used by



him and others was shown in the sanctioned map as a part of the land over which the building was being constructed by the petitioner. He claimed that the total area of land of the petitioner is only 373.421 square meter which has wrongly been shown as 492.071 square meter and by practicing fraud the petitioner succeeded in getting the plan map sanctioned for constructing ground plus four storey building.

4. On the basis of the said complaint filed by respondent no.4, Vigilance Case No.24B of 2010 was registered and notices were issued to the parties concerned.

5. After making a preliminary inquiry, the Municipal Commissioner, Patna vide order dated 20.12.2010 passed an interim order directing the petitioner to stop the construction work forthwith as it had indulged in an unauthorized construction after deviating from the sanctioned plan and to file its explanation as to why the unauthorized construction be not demolished.

6. The Vigilance Officer, Municipal Corporation, Patna vide memo no.719 dated 27.12.2010 informed the SHO, Patliputra Police Station to stop the construction work carried out by the petitioner as the same was found unauthorized and for which Vigilance Case No.24B/2010 was pending before the Municipal Commissioner, Patna.



7. The petitioner preferred an appeal before the Tribunal against the order dated 20.12.2010 issued by the Municipal Commissioner and the memo dated 27.12.2010 issued by the Vigilance Officer of the Patna Municipal Corporation. The Tribunal, however, refused to interfere in the aforestated orders and the petitioner was directed to raise the matter before the competent authority.

8. Being aggrieved, the petitioner filed CWJC No.1286 of 2011 before this Court seeking quashing of the aforestated orders dated 20.12.2010 and 27.12.2010. The said writ petition was disposed of by this Court with a direction to the petitioner to raise his grievance before the competent authority and the Commissioner, Patna Municipal Corporation was directed to pass final order in the vigilance case within six weeks from the date of appearance and filing objection by the petitioner failing which it was directed that the order staying the construction would stand vacated. Since the petitioner failed to appear pursuant to the direction given by this Court before the Municipal Commissioner, the vigilance case was disposed of vide order dated 03.03.2012 directing the petitioner to demolish the deviations as pointed out in the order.



9. The petitioner challenged the aforesaid order dated 03.03.2012 by filing a writ petition bearing CWJC No.1154 of 2012. The respondent no.4 also filed writ petition before this Court vide CWJC No.2736 of 2012 stating therein that the building raised by the petitioner is in violation of sanctioned plan and the building bye-laws as the building raised is without any setback and whatever little setback has been shown that is part of a lane.

10. Both the writ petitions were heard together and were disposed of vide common order dated 18.07.2012 with observation that the petitioner of CWJC No.1154 of 2012 will be at liberty to apply for compounding within one month before the Commissioner, who shall consider the request and pass the final order in the matter in accordance with law in another one month, observing further that the petitioner may raise construction in accordance with sanctioned map at his own risk, which would be subject to the order passed by the Commissioner considering the compounding of the deviation made by the petitioner. Similarly, the petitioner of CWJC No.2736 of 2012 was also given liberty to invite the attention of the Municipal Commissioner towards the illegalities, which could not be noticed in the order dated 03.03.2012.

11. After disposal of the aforestated two writ



petitions vide order dated 18.07.2012, the petitioner filed a representation before the Municipal Commissioner, Patna on 08.08.2012 requesting therein to calculate the compounding fee so that it may deposit the same in order to condone the deviation made, if any, in raising building in question. Similarly, the private respondent also filed representation before the Municipal Commissioner inviting attention of the Municipal Commissioner towards the illegalities committed by the petitioner in erecting the building in question.

12. After hearing the parties, the Municipal Commissioner, Patna vide order dated 12.04.2014 passed in Vigilance Case No.24B of 2010 directed the petitioner to demolish the 4th and 5th floor of Bhagwat Kunj Apartment situated at Road No.-1, Mahesh Nagar (Nala), PS-Patliputra, District-Patna and also directed the petitioner to correct the non-compoundable deviations and further directed the petitioner not to obstruct/encroach the private road of the apartment, which is used by the other residents of the locality.

13. Against the aforestated order dated 12.04.2014 passed in Vigilance Case No.24B of 2010, the petitioner filed a writ petition vide CWJC No.9131 of 2014, which was disposed of



directing the petitioner to approach the Tribunal. Thereafter, the petitioner filed an appeal before the Tribunal vide Appeal No.104 of 2014. The Tribunal after hearing the parties, vide order dated 15.05.2015 affirmed the order dated 12.04.2014 passed in Vigilance Case No.24B of 2010 by the Commissioner, Patna Municipal Corporation and dismissed the appeal. The operative part of the order passed by the Tribunal in appeal No.104 of 2014 reads as under:-

“The learned counsel for the appellant has urged that the appellant has got sanctioned map for construction of G+4 and construction of 5th floor is permissible under note 14 and appendix-L clause 10.2 of Building Bye laws on the payment of requisite fee and to achieve required FAR. The learned counsel for the respondent no.-2 has replied that the total area of land in possession to the appellant as per Amin report (annexure-11) is only 373.471 sqr. m. whereas it has been wrongly shown as 492.071 sqr. m. in the sanctioned map and according to the correct area, the appellant has achieved required FAR in G+4 and as per existing road less than 20 feet wide, the building up to G+3 height up to 11 m. can only be sanctioned in place of G+4. In this regard, we have already discussed above that the building in question has been situated abutting the existing road less than 6m. wide, hence the building in



question shall not be allowed more than 11 m height as per clause 20.1.1. note 11 of the Bye Laws hence there is no need to discuss the said issue.

Considering the facts and circumstances of the case as well as the discussion made above, the tribunal is of opinion that the building in question shall not be allowed more than 11 m height as per clause 20.1.1. Note 11 of the building Bye laws and the appellant shall not create any interruption on the approach road situated west of the building in question for common use of the respondent no. 2. The deviations within the permissible condonation limit as per bye laws should be condoned and the learned municipal commissioner is directed to condone the same after calculating the area of condonation which comes within the condonable limit and rest deviation is liable to be demolished.

Accordingly, this appeal is hereby disposed of with the aforesaid observation.”

14. Being aggrieved by the aforestated orders passed by the Municipal Commissioner and the Tribunal, the petitioner has filed the present writ petition.

15. Learned counsel for the petitioner submitted that the Municipal Commissioner and the Tribunal have failed to appreciate the correct provisions of law enumerated in Clause nos.



2.74 and 2.83 of modified building bye-laws. The drain (nala) in between two sides of road on which building has been constructed is being covered by the State Government and even otherwise the drain would be the part of the existing road as per clause no.2.74 of the bye-laws. He submitted that if the existing drain is considered as part of the road then the construction of the 5th floor of the building would not be illegal rather, at best, it can be termed as construction without permission, but considering the entire height of building even the construction of 5th floor is within the limit of 20 percent deviation and, hence, the same would be condonable. According to him, the petitioner had resumed the construction of building in view of the order passed in CWJC No.1154 of 2012 and, therefore, it cannot be held guilty of offending the provisions of modified building bye-laws. He submitted that the building plan was approved on 16.06.2009 and the validity of the building plan had lapsed on 15.06.2012. However, the building could not be completed within the stipulated time, as the petitioner was restrained from undertaking construction work by the municipal authorities without examining the facts in right perspective. The findings of the Tribunal and the Municipal Commissioner that construction of building of more than 15 meters height requires road of 12.20 meters (40 feet) width is erroneous on two counts.



Firstly, because they have measured the height from the road level whereas the same has to be measured from plinth level and, secondly, because they have excluded the width of the drain, which as per their own measurement is 5.98 meter wide and combined with the width of the two roads, there is 13.13 meter wide open space in front of the building. On the basis of these submissions, he contended that the orders impugned passed by the Tribunal and the Municipal Commissioner are erroneous and fit to be set aside.

16. *Per contra*, learned counsel for the Patna Municipal Corporation submitted that admitted position is that the width of the road in front of the building in question was found 5.60 meters to 5.75 meters. Hence, the building in question has been constructed in utter violation of building bye-laws. As such, the Municipal Commissioner as well as the Tribunal has rightly held that the existing road abutting the building in question is less than 6 meters in width and, therefore, permitted the petitioner to construct the building only upto the height of 11 meters in obedience to the order passed by this Court in CWJC No.8152 of 2013. He submitted that the width of the road available on 23.11.2013 can only be taken into account to assess the actual width of road and any future expansion while assessing the width of the road for the purpose of determining the admissible height of the building in



question would be of no consequence. He submitted that any building under construction having more than 11 meter in height on a road less than 20 feet wide has been dealt with extensively by a Division Bench of this Court in the matter of **Narendra Mishra vs. State of Bihar and Others [2015 (1) PLJR 650]**. He submitted that the Tribunal has dealt with clause 2.74 of building bye-laws while meeting the objections/grounds taken by the petitioner and has categorically mentioned that the width of drainage is 5.98 meters in the mid of the road and the public had no access to pass thereon either at any point of time in the past nor has any access in the present. The Tribunal has also taken into consideration that the open drainage divides the road into two streets, in north width of road is 3.79 meter and in south width of the road is 3.36 meter. The roads situated on both sides of the drainage are running independently and the drainage is situated in the mid of the aforesaid two roads. Hence, it cannot be included within the road as per the provisions contained in clause 2.74 of the bye-laws. He submitted that there is concurrent findings on facts by the Municipal Commissioner and the Tribunal that the building in question has been constructed by the petitioner on the existing road having 3.79 meter width, which is less than 6 meter (20 feet) and, therefore, clause 20.1.1 note 11 of the building bye-laws shall



prevail according to which for the construction of building upto the height of 15 meter, the existing road should be 6 meter wide, but so far the building in question is concerned, there is 3.79 meter wide existing road in front thereof and, as such, the same cannot be allowed more than 11 meter height. He contended that in violation of abovementioned clause, the building in question has been constructed G+5 upto the height of 19.09 meter from the road level. Therefore, the portion of the building in question, which is more than 11 meter in height, is liable to be demolished.

17. Learned counsel for the respondent no.4 has supported the contentions and argued on behalf of the respondent Municipal Corporation.

18. Having heard the learned counsel for the parties and on perusal of records, I am inclined to dismiss the writ petition, in my opinion, it has no merit.

19. At the outset, it would be relevant to note that while hearing the parties, this Court vide order dated 06.07.2015 had observed as under:-

“The entire issues raised by the petitioner hinges on his contention that the drain running adjacent to the road on which the building in question has been constructed, is being covered by the State Government and thus the width of the road would be



increased to more than 13 meters.

The situation as it stands today is that the road on which the building in question abuts is 3.79 meters. Lying adjacent to the said road is a drain which has a width of 5.98 meters and across the drain there is another road of a width of 3.36 meters. According to the petitioner, there is a decision of the State Government to cover the drain and as a consequence, the width of the road would meet the statutory requirement.

According to the statutory authorities since the road on which the building abuts is less than 6 metres, the height of the building cannot be more than 11 meters and thus the 4th floor and the 5th floor so constructed by the petitioner are illegal and have to be demolished. The orders also reflect that for condonation of the minor deviation noticed the petitioner has been given liberty to move an application for condonation.

As I have observed hereinabove, the matter hinges on the issue whether there is a decision of the State Government to cover the drain. If the contention of the petitioner is supported by the decision of the State Government then the issues raised by him would merit consideration but in case there is no such decision then the petitioner would have to abide by the decision impugned in this writ petition.

Learned counsel for the State prays for a



short adjournment to seek instructions as to whether the public drain running at Mahesh Nagar is to be covered so as to join the two streets situated on either side of the drain and if the answer is in affirmative then let the decision to such effect be placed on record.

Put up this case under the same heading on Monday i.e. 13.7.2015.

Let status quo as existing today be maintained by the parties and the petitioner would not indulge in any construction work in the meanwhile.”

20. In the light of the aforesaid order dated 06.07.2015, a counter affidavit has been filed on behalf of the respondent-State stating therein that there is no proposal from the Patna Municipal Corporation to cover the public drain running so as to join two streets situated on either side of the drain. The relevant paragraph nos.7 and 8 of the counter affidavit read as under:-

“7. That the instant counter affidavit is being filed on behalf of the answering State respondent in compliance of the order dated 06.07.2015 passed by this Hon’ble Court in the present case whereby a short adjournment has been granted to the State to seek instructions as to whether the public drain



running at Mahesh Nagar is to be covered so as to join the two streets situated on either side of the drain and if the answer is in affirmative then let the decision to such effect be placed on record.

8. That in reply to the aforesaid query made by this Hon'ble Court it is humbly stated that at present there is no such proposal from Patna Municipal Corporation. The State Government shall take decision within 15 days of receipt of such proposal.”

21. A reply to the counter affidavit has also been filed on behalf of the petitioner wherein it has been stated that there is no requirement of any proposal from Patna Municipal Corporation for covering the drainage and the State Government is competent enough to take a decision for such construction for the purpose of covering up the drainage. It is further contended that the State Government has already taken a decision to cover nine drainages passing from different part of Patna Capital Town and, thus, the drainage, which passes through in between the two streets, are to be covered for the purpose of widening the road.

22. Be that as it may, from the pleadings of the parties, it is an admitted position that width of the road in front of the building in question was less than 6 meters when the building



plan was sanctioned and building was erected.

23. At this stage, it would be pertinent to note that in **Narendra Mishra (supra)**, a public interest litigation, it was highlighted that a large scale violation of building bye-laws was being committed by the builders and developers in Patna. In the said litigation, vide order dated 10.05.2013, a Division Bench of this Court directed the authorities concerned that till further orders, no apartment, complex or multi-storied building can be constructed beyond 11 meters and upto 15 meters in height unless the entire stretch and length of road in front abutting the building is uniformly and throughout 20 feet in width. The observations made by the Division Bench in its order dated 10.05.2013 read as under:-

“We take notice of the fact that the present is not an isolated exception case in the Town of Patna. It is not possible for every citizen to approach this Court every time there is a building violation. Yet the number of such cases filed reveals a serious malady with allegations for construction of illegal apartments by builders. Complaints are filed by citizens before the Corporation which are ignored for very obvious reasons suiting the builder and those required to enforce the law. If applications are disposed of by the Court to consider the grievances still no action is taken by the Corporation leading to a



repeat writ application by the aggrieved. The Corporation then reluctantly looks into the matter to report violations. Urban planning in the town of Patna leaves much to be desired. The municipal building bye laws appear to be followed more in breach by the Corporation than enforcement of the law. There has been and continues a mushroom growth of apartments even in lanes and bye lanes in gross violation of building bye laws. An ingenious device was introduced by the authorities that even if the road in front was uniformly not twenty feet wide, the builder would leave area in front of a building to make the road twenty feet wide in front only. The Corporation would then imagine a non-existent state of affairs that the entire road was twenty feet wide and approve the building plan. Urban planning has been reduced to a zig zag road with the builder also subsequently enclosing that area shown as part of the road and private use ultimately. The resultant is urban chaos in Patna, all its aspects.”

24. Having observed as above, the Division Bench issued mandamus to the authorities concerned in the following words:-

“We therefore direct that till further orders no apartment complex or multistoried building can be constructed beyond 11 meters and upto 15 meters



in height unless the entire stretch and length of road in front abutting the building is uniformly and throughout 20 feet in width.

This shall be enforced with immediate effect collectively by the Secretary, Urban Development Department, the Municipal Commissioner, the District Magistrate, the Senior Superintendent of Police and Officer In-charge of the Police Station of the area concerned.”

25. In view of the order passed by the Division Bench in **Narendra Mishra (supra)**, the building in question could not have been constructed beyond 11 meters.

26. The very foundation of the pleading of the petitioner is that the government had taken a decision to cover up the drain (nala) which will ultimately expand the width of the road would make it manifest that the petitioner is trying to take advantage of its own wrong. The petitioner admits that the construction of the 5th floor is without any sanctioned plan. There is no provision in the bye-laws, which stipulates waiving of width of road or height of the building on the basis of future expansion for widening of road and, therefore, no relief can be granted to the petitioner on such pleadings. The width of the road is to be measured on actual basis and not any future hope of widening of road. If such plea is permitted and buildings are allowed to be



erected on the basis of anticipated widening of road, there would be a complete chaos.

27. So far as the alternative plea taken by the petitioner that road includes drains in view of clause 2.74 of the modified building bye-laws is concerned, it would be relevant to extract clause 2.74 which reads as under:-

“2.74. Street- Any highway, street lane, pathway, alley, stairway, passage way, carriage-way, footway, square, place or bridge whether a thorough fare or not, over which the public have a right of passage or across or have passed and had access uninterruptedly for a period within one year after completion of road development, whether existing, proposed in any scheme and includes all bunds, channels, ditches, storm water drains, culverts, sidewalls, traffic in lands, road side trees and hedges, retaining walls fences, barriers and railing within the street lines.”

28. From a reading of the aforesaid clause 2.74, it would be evident that the definition of street does not include the word ‘drains’ rather it includes ‘storm water drains’ which are meant to drain out rainy water.



29. Thus, the argument advanced by the petitioner in this regard is also contrary to the definition of the street as provided under clause 2.74 of the bye-laws.

30. Furthermore, it is not the case of the petitioner that resident of the locality have a right of passage or across or have passed and had access uninterruptedly for a period of one year after completion of road.

31. So far as the plea taken by the petitioner in respect of construction having been made pursuant to the order passed by this Court in C.W.J.C. No.1154 of 2012 is concerned, it would be evident from perusal of the order dated 18.07.2012 that the petitioner was granted liberty to proceed with the construction in accordance with sanctioned building plan at his own risk. Since the petitioner had constructed the building in question after obtaining the plan of the building sanctioned for construction of G+4 floors upto the height of 14.40 meters by wrongly showing the total area of land in its possession as 492.071 square meter in his map whereas according to the physical verification report made by the Amin, the area of land was found only 373.471 square meter on the existing road, which is less than 20 feet wide on which a building upto the height of 11 meter could have only been sanctioned, no illegality can be



found with the impugned orders passed by the Municipal Commissioner and the Tribunal.

32. Thus, the issue as it stands presently is that the width of the road is only 3.79 meters. The permissible limit as per the bye-laws on a 20 feet wide road is ground plus three storey building with a ceiling of height upto 11 meters. The petitioner has misled the authorities in getting the building plan approved for ground plus four storey by misrepresenting the size of the plot. It has also made an unauthorized construction of fifth storey, which was never approved or sanctioned. It is taking a lame excuse of road widening on account of decision taken by the State to cover open drain for condoning the unauthorized and illegal construction made by it. The State has refuted the claim of the petitioner by filing counter affidavit. Thus, the undeniable and undisputed facts that emerge are that the petitioner has indulged in blatant violation of law in constructing multi storied apartment. The Municipal Commissioner and the Tribunal while passing the impugned orders have given concurrent findings on fact, which are based on sound appreciation of evidence. They are neither perverse nor illegal and have been passed after affording opportunity of hearing to the petitioner.

33. In **Esha Ekta Apartments Cooperative**



Housing Society Limited and others v. Municipal Corporation of Mumbai and others [(2013) 5 SCC 357], the Supreme Court while examining the question whether the orders passed by the Deputy Chief Engineer, Building Proposals (City) of the Mumbai Municipal Corporation and the Appellate Authority refusing to regularize the illegal constructions made on a plot at worli, Mumbai were illegally sustainable took note of observations made in its previous judgments in *Friends Colony Development Committee v. State of Orissa [(2004) 8 SCC 733]*; *Royal Paradise Hotel (P) Ltd. v. State of Haryana and others [(2006) 7 SCC 597]*; *Priyanka Estates International (P) Ltd. v. State of Assam [(2010) 2 SCC 27]* and *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and other [(2012) 10 SCALE 29]* in its opening paragraph which reads as under:-

“In last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc., have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the



concerned authorities against arbitrary regularization of illegal constructions by way of compounding and otherwise.

2. In *Friends Colony Development Committee v. State of Orissa* (2004) 8 SCC 733, this Court examined the correctness of an order passed by the Orissa High Court negating the appellant's right to be heard in a petition filed by the builder who had raised the building in violation of the sanctioned plan. While upholding the appellant's plea, the two-Judge Bench observed:

"20. ...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 unauthorised 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 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... .

21. The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorised. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the



arm of the law by some manipulation. This impression must prove to be wrong.

22. *In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the*



property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorise 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. ...

25. Though the municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. *The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed*



to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

(emphasis supplied)

3. In *Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors.* (2006) 7 SCC 597, this Court noted that the construction had been made in the teeth of notices issued for stopping the unauthorized construction and held that no authority administering municipal laws can regularize the constructions made in violation of the Act. Some of the observations made in that judgment are extracted below:

“7. ...Whatever it be, the fact remains that the construction was made in the teeth of the notices and the directions to stop the unauthorized construction. Thus, the predecessor of the appellant put up the offending construction in a controlled area in defiance of the provisions of law preventing such a construction and in spite of notices and orders to stop the construction activity. The constructions put up are thus illegal and unauthorized and put up in defiance of law.



The appellant is only an assignee from the person who put up such a construction and his present attempt is to defeat the statute and the statutory scheme of protecting the sides of highways in the interest of general public and moving traffic on such highways. Therefore, this is a fit case for refusal of interference by this Court against the decision declining the regularization sought for by the appellant. Such violations cannot be compounded and the prayer of the appellant was rightly rejected by the authorities and the High Court was correct in dismissing the Writ Petition filed by the appellant. 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 High Courts to ensure that such definers of law are not rewarded. The High Court was therefore fully justified in refusing to interfere in the matter. The High Court was rightly conscious of its duty to ensure that violators of law do not get away with it.

8. We also find no merit in the argument that regularization of the acts of violation of the provisions of the Act ought to have been permitted. No authority administering municipal laws and other laws like the Act involved here, can encourage such violations. Even otherwise, compounding is not to be done when the violations are deliberate, designed, reckless or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply



with all the requirements of the law can alone qualify for regularization which is not the rule, but a rare exception. The authorities and the High Court were hence right in refusing the request of the appellant.”

4. The aforesaid observations found their echo in *Shanti Sports Club v. Union of India* (2009) 15 SCC 705 in the following words:

“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.”

5. In *Priyanka Estates International Pvt. Ltd. v. State of Assam* (2010) 2 SCC 27, this Court declined the appellant’s prayer for directing the respondents to



regularize the illegal construction and observed:

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

6. A somewhat similar question was recently considered in *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and others* (2012) 10 SCALE 29. While setting aside the order of the Division Bench of the Calcutta High Court, this Court referred to the provisions of the Kolkata Municipal Corporation Act, 1980 in the context of construction of additional floors in a residential building in violation of the sanctioned plan and observed:

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the



concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. 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.”

34. In the said case, after elaborately discussing the contentions advanced by the parties, the Supreme Court held as under:-

“In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularize the construction made in



violation of the sanctioned plan. Rather, the ratio of the abovenoted judgments and, in particular, *Royal Paradise Hotel (P) Ltd. vs. State of Haryana* is clearly is clearly attracted in the present case. We should like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

In the result, the appeals and the transferred case are dismissed and it is declared that there is no impediment in the implementation of notices issued by the Corporation under Section 351 of the 1888 Act and order dated 3-12-2005/8-12-2005 passed by the competent authority. The Corporation is expected to take action in the matter at the earliest.

We also direct that the State Government and its functionaries/officers as also the



officers/employees of the Corporation shall not put any hurdle or obstacle in the implementation of the notices issued under Section 351 of the 1888 Act.

It is needless to say that the flat buyers shall be free to avail appropriate remedy against the developers/builders.”

35. Keeping in mind the totality of the facts and circumstances of the case and the ratio laid down by the Supreme Court in **Esha Ekta Apartments (supra)** after taking into consideration its various decisions, I am of the considered opinion that no ground is made out to upset the concurrent findings on fact in exercise of writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
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