

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 1196 of 2015

(Reserved for Order on 03/04/2018)

(Order Passed on 28/06/2018)

Bilaspur Infrastructure Pvt. Ltd. Registered Address- BF-1, 1st Floor, Rajiv Plaza, Opp. Axis Bank, Bilaspur, Dist. Bilaspur, Chhattisgarh.

Through - Ashok Agrawal, A/O 50 Years, S/o Late Shri Jagmohan Das Agrawal, R/o Kranti Nagar, Bilaspur. Dist. Bilaspur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through - Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Commissioner, Municipal Corporation, Bilaspur, Chhattisgarh,
3. Joint Director, Town and Country Planning, Bilaspur, Chhattisgarh.
4. District Regularisation Authority, Through Collector, Bilaspur, District : Bilaspur, Chhattisgarh.

---- Respondents

W.P.C. No. 1197 of 2015

1. Hari Prasad Budhia, S/o. Late Shri Murlidhar Budhia, Aged About 69 Years, Resident of Nanakram Murlidhar, City Kotwali Chowk, Shastri Nagar, Bilaspur, District Bilaspur, Chhattisgarh.
2. Parvinder Singh Rajpal, S/o. Late Shri Harbans Singh Rajpal, Aged About 40 Years, Resident Of Dayalbandh, Near Gurudwara, Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh

2. Municipal Corporation Bilaspur, Through Its Commissioner, Municipal Corporation Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, Chhattisgarh.
3. Joint Director, Town and Country Planning, Regional Office, New Composite Building, Collector Parisar, Bilaspur, Chhattisgarh.
4. Bilaspur Infrastructure Pvt. Ltd., A Company Duly Incorporated Under The Provisions Of The Companies Act 1956, Having Its Registered Office At BF-1, 1st Floor, Rajiv Plaza, Bilaspur, District : Bilaspur, Chhattisgarh.
5. Commissioner, Municipal Corporation, Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

W.P.(C) No. 1207 of 2015

1. Deepak Choudhary, S/o. G.C. Choudhary, Aged About 44 Years, R/o. Flat No. 446, Vaishali Tower, Near Gudhakhu Factory, Shanker Nagar, Police Station Shanker Nagar, Bilaspur, Civil and Revenue District -Bilaspur, Chhattisgar.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Municipal Corporation Bilaspur, Through Its Commissioner, Municipal Corporation Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, Chhattisgarh.
3. Joint Director, Town and Country Planning, Regional Office, New Composit Building, Collector Parisar, Bilaspur, Chhattisgarh.
4. Bilaspur Infrastructure Pvt. Ltd., A Company Duly Incorporated Under The Provisions Of The Companies Act 1956, Having Its Registered Office At BF-1, 1st Floor, Rajiv Plaza, Bilaspur, District : Bilaspur, Chhattisgarh.

5. Commissioner, Municipal Corporation, Bilaspur, Vikas Bhawan, Nehru Chowk, Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

W.P.(C) No. 1209 of 2015

1. Tejpal Saluja, S/o. Shri Jagat Singh Saluja, Aged About 39 Years, Resident of Tarbahar Chowk, Bilaspur, Police Station - Tarbahar, District- Bilaspur, Chhattisgarh.
2. Motilal Thawran, S/o Shri Amritlal Thawran, Aged About 38 Years, Resident Of Bandhawapara, Bilaspur, District- Bilaspur Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : The Secretary, Department Of Urban Administration and Development, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Joint Director, Town and Country Planning, Bilaspur, Chhattisgarh.
3. The Municipal Corporation, Bilaspur, Through : the Commissioner, Bilaspur, Chhattisgarh
4. Aman Agrawal, Director, Bilaspur Infrastructure Pvt. Ltd., R/o. Kranti Nagar, Bilaspur (C.G.)

---- Respondents

AND

W.P.(C) No. 1604 of 2015

1. Deepak Chowdhary, S/o. Shri Gulak Chand, Aged About 44 Years, R/o. Flat No. 406, Viashali Tower, Near Shankar Nagar, Godaku Factory, Bilaspur, Distt. Bilaspur, Chhattisgarh.
2. Bilaspur Infrastructure Pvt. Ltd. Registered Address- B F-1, 1st Floor, Rajiv Plaza, Opp. Axis Bank, Bilaspur, Distt. Bilaspur, Chhattisgarh.

Through Ashok Agrawal, A/o 50, S/o Late Shri Jagmohan Das Agrawal, R/o. Kranti Nagar, Bilaspur, Distt. Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Chhattisgarh State Electricity Board, Through : Chairman, Energy Info Tech Centre, Dayaniya, Raipur, Distt. Raipur, Chhattisgarh.
2. Chhattisgarh State Power Distribution Company Ltd. Through Managing Director, Near Water Tank, Mowa Road, Dubey Colony, Raipur, Distt. Raipur, Chhattisgarh.
3. Executive Engineer, Bilaspur Division, Chhattisgarh State Power Distribution Company Ltd., Tifra, Bilaspur, Chhattisgarh.
4. Collector Of Stamp, Bilaspur, Opposite Collectrate, Near District Court, Bilaspur, Distt. Bilaspur, Chhattisgarh.
5. Dy. Registrar, Bilaspur, Opposite Collectrate, Near District Court, Bilaspur, Distt. Bilaspur, Chhattisgarh.

For Petitioners	: Mr. Sourabh Dangi, Mr. Manoj Paranjpe, Mr. Amrito Das, Mr. Prateek Sharma, Advocates.
For Respondent/State	: Mr. Anil S. Pandey, Advocate
For Respondent/Municipal Corporation	: Mr. A. S. Kachhwaha, Addl. Advocate General. with Ms. Pushpa Dwivedi, Advocate
For Intervenors	: Mr. R.S. Marhas, Advocate and Mr. P.K. Tulsyan, Advocate (Applications for intervention has been rejected)

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

28/06/2018

1. All the above petitions are heard and decided together by this common order as the Petitioners in Writ Petition (C) No.1197/2015, 1207/2015, 1209/2015 & 1604/2015 have similar interests compared to that of petitioner in Writ Petition (C) No.1196/2015 for the reasons that the petitioners in Writ Petition (C) No.1197/2015, 1207/2015, 1209/2015 are purchasers or have agreed to purchase the shops and other accommodations according to the agreement entered into between

these petitioners with the petitioner in W.P.(C) No.1196/2015 and they have also prayed that the impugned order be set-aside. Petitioner in W.P.(C) No.1604/2015 is also a purchaser, who has prayed for relief of re-installation of electricity supply against respondent No.1, 2 & 3 and for direction to allow registration of transfer deed against respondent No.4 and 5.

2. This petition has been brought with a prayer for issuance of appropriate writs and for setting aside the impugned order dated 04.07.2015, passed by the Respondent No.2.
3. It is submitted by the counsel for the petitioner-company that the petitioner-company has constructed commercial/residential complex at Khasra No.232, 235, 236, 237, total area 0.827 hectare at Juna Bilaspur with the approval and permission of the respondents. The sanction was duly given on 14.12.2010 and thereafter on 03.09.2011. The construction is near completion, which was time to time inspected and verified by the respondents. All of sudden, a notice was issued by respondent No.2 on 04.07.2015 mentioning that the proposed front road from Shiv Talkies line on Khasra No.488 is not permissible and the approach road from Karbala side is only 36 feet wide, which should have been minimum 40 feet wide. Hence, because of these discrepancies, now, the complex can be permitted only for residential purposes and the petitioner company was directed to submit a fresh lay out and also directed to demolish the excess construction within 15 days.
4. It is submitted by the counsel for the petitioner-company that front road from Shiv Talkies line situated on Khasra No.488 was sanctioned and approved and the issue regarding shops present on Khasra No.488

has been decided by this Court. As alleged by the respondent that the petitioner-company has made excess construction, is not correct and the allegation that some modification has been made contrary to the sanctioned plan is inconsistent as the petitioner - company has constructed two unit staircase instead of one staircase. The petitioner-company has invested huge amount in the said construction and thus the order passed by respondent No.2 is arbitrary in nature. Some excess construction that has been done for that the petitioner company is ready to compound the same. It is submitted that the respondent Municipal Commissioner has held that the road lying on Khasra No.488 is not permissible for the construction of the petitioner, whereas, the permission has been granted to another builder to make use of the road lying on Khasra No.488 itself, which shows that the act of respondent No.2 is biased. Hon'ble the High Court has directed that shop situated on Khasra No.488 be removed and the same be used for public purpose. The other point raised in the notice regarding width of the Karbala road being of 36 feet is without any basis as the road that was available was of only 36 feet width at the time the construction was permitted and the petitioner-company is not in a position to increase the width of the said road.

5. After grant of sanction for construction by respondent No.2, passing of order dated 04.07.2015 is without jurisdiction as the respondent No.2 has no power to review its own order of sanctioning the construction. Respondent No.2 had no authority to raise objection regarding the width of the road as it was in the domain of the Town and Country Planning Department. The excess construction as alleged is made inside the building, there is no excess construction in the external area

of the building. Hence, it is no case of encroachment. Permissible floor area ratio was 1.25 i.e. 1,12,130 sq.ft., whereas, the petitioner has raised construction only on 64,000 sq. ft., therefore, 49,440.16 sq. ft. of FAR is still left, which can be utilized by the petitioner. It was within the knowledge of the respondent No.2 that the approach road from Karbala side was 36 feet, even then the sanction was granted. Hence, the order passed by respondent No.2 is bad in law.

6. Section 299 of the Municipal Corporation Act, 1956 (*herein after referred to as the "Act of 1956"*) empowers a Commissioner to direct modification of plan of builder before it is constructed. It is at that stage the Commissioner can revoke the permission for construction or may give a fresh permission with fresh conditions. The only recourse available to the Commissioner after completion of construction is to refer the matter to the State Government under Section 299A of the Act of 1956 to revise the permission for construction of the building granted by corporation. In **W.P. No.8681/2012 (Sitaram & Anr. Vs. State of M.P. & Ors.)** decided on 20-06-2017, it was held that a Commissioner has no authority to cancel the permission once construction had commenced and any such order passed is devoid of authority vested in the Chief Municipal Officer, the impugned order passed amounts to cancellation of sanction.
7. Reliance has been placed in case of **Adarsh Thok Fal Sabji Vikreta Vyapari Sangh & Anr. Vs. State of M.P. & Ors.**¹, wherein it has been held that after commencement of the construction, the Commissioner has no authority to revoke the permission granted earlier, only option available is to refer the matter to State Government under Section 299-

¹ 2010 (1) M.P.L.J. 388.

A of the Act of 1956 to cancel or revise the permission of the building granted by the corporation. In case of *Sitaram & Anr. Vs. State of M.P. & Ors.* In W.P. No.8681/2012, decided on 20.06.2017 by the High Court of Madhya Pradesh, the view mentioned above was followed.

8. On applicability of the doctrine of promissory estoppel subsequent to the grant of permission for construction, it is similarly held in case of ***The Delhi Cloth & General Mills Ltd. Vs. Union of India***², and in case of ***Motilal Padampal Sugar Mills Co. Ltd. Vs. State of U.P.***³ and in case of ***Express Newspaper Pvt. Ltd. Vs. Union of India***⁴ by Supreme Court of India. The Bombay High Court in case of ***Shree Ambica Developers, Navi Mumbai Vs. State of Maharashtra and other***⁵, applying the principle of promissory estoppel has held that permission granted can not be revoked once huge investment has been made in the project. The High Court of Madras in case of ***S. Shanmughanathan Vs. The Executive Engineer and Administrative Officer, Tamil Nadu Housing Board***⁶ it has been similarly held. Reliance has also been placed in case of ***Indore Municipal Corporation & Anr. Vs. Hemlata***⁷ in the point of excess construction that where the construction has not exceeded the permitted FAR, it can not be held that there is excess construction.
9. Reliance has also been placed by the counsel for the petitioner-company in case of ***Rajatha Enterprises Vs. S.K. Sharma***⁸, in which the Hon'ble Supreme Court has held that, if any, excess construction does not cause danger or nuisance to the public at large that can be

2 (1988) 1 SCC 86.

3 (1979) 2 SCC 409.

4 (1986) 1 SCC 133.

5 (2011) SCC OnLine Bom. 1673.

6 (1991) SCC OnLine Mad. 82

7 (2010) 4 SCC 435

8 (1989) 2 SCC 495

regularized. In case of ***Syed Muzaffar Ali and Others Vs. Municipal Corporation of Delhi***⁹, it was held that mere departure from the authorized plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. Only in case of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition. Reliance has also been placed in the judgment passed by the Hon'ble Supreme Court in case of ***Municipal Corporation, Ludhiana Vs. Inderjit Singh***¹⁰, in which the judgment passed by the High Court of Madras in case of ***P.T. Prabhakar & Anr. Vs. The Member Secretary, Chennai Metropolitan Development Authority***¹¹ and in case of ***Kewal Kishan Gupta Vs. J & K Special Tribunal***¹², wherein it has been held that in case of minor deviation or excess construction which can be compounded the demolition should not be resorted to. On these grounds it is prayed that impugned order be set-aside.

10. W.P.(C) No.1604/2015 is slightly different. It is submitted on behalf of the petitioner that respondent No.2 and 3 have refused to provide electric connection to the petitioner because of the instruction given by the Municipal Corporation to the respondent No.2 and 3. It is further prayed that the transfer deed that was presented, before the respondent No.4 and 5 for registration in that matter, the registration of the said document is kept pending on account of some communication sent by the Municipal Corporation, Bilaspur to the respondent No.4 and 5.

9 (1995) Supp.-4, SCC 426

10 (2008) 13 SCC 506

11 (2006) SCC OnLine Mad. 873

12 (2005) 7 SCC 110

11. Counsel for the respondents No.1 & 3 (in W.P.(C) No.1196/2015) submits that sanction for construction was granted by the respondent No.2 on specific condition that the area of ground floor shall not exceed 30% and the floor area ratio shall not exceed 1.25. It was specific condition in the sanction granted that any violation of the condition shall have the effect of automatic cancellation of the permission granted. It was further specific condition laid down that the petitioner has to develop the roads from Shiv Talkies and Karbala that should not have been less than 40 feet. Subsequent to grant of permission for construction number of complaints were received by the Municipal Corporation, on that basis the notices were issued to the petitioner company. In reply, the petitioner company requested for regularization. On the request of the petitioner, a three members' committee was constituted by the respondent No.2 on 30.03.2015. The Committee inspected the construction site and submitted the detailed report on 28.04.2015, in which specific finding has been given that the excess construction that has been made by the petitioner company out of which 10% is compoundable, whereas, further 4.05% which is about 3627.00 sq.ft. can not be compounded according to the provisions of the Act of 1956. Another discrepancy pointed out in the report is that there was no front approach road for the complex, whereas, according to the rule road of 40 feet width is a necessary condition.
12. It is submitted that at the time of seeking permission of respondent No.2, an erroneous demarcation report was submitted by the petitioner-company, which shows the road of 40 feet width in the front area of the complex, whereas, the road shown is land bearing

Kh.No.488, which is the property of respondent No.2 on which some of the shops constructed by the Corporation are existing and already allotted to some persons. Regarding which litigation is going on before the High Court.

13. It is further submitted by the counsel for the respondents No.1 & 3 that according to the provision of Chhattisgarh Bhumi Vikas Adhiniyam, 1984 that with respect to the building having commercial purpose the width of approach road must be 40 feet because of which by the impugned order dated 04.07.2015, the permission granted to the petitioner-company has been revised for the use of residential purposes only.
14. Rule 39 (4) of C.G. Bhumi Vikas Niyam, 1984 is very specific, that width of the approach road for commercial building up to the extent of 200 meter shall not be less than 12 meters i.e. 40 feet. The disputed road shown on nazul land bearing Kh. No.488, in which there is already existence of constructed shops, the allottees of those shops have filed writ petitions before this High Court. After the decision of the Single Bench of this Court on these writs, the judgment was challenged by the allottees before the Division Bench of this Court in Writ Appeal No.301/2012 and in other connected writ appeals, which have been decided by the Division Bench of this Court vide order dated 28.07.2017, in which it has been directed that the Municipal Corporation shall give a hearing to the writ petitioners as well as interveners before taking any final decision. It is submitted by the counsel for the respondent No.1 and 3 that in the light of this judgment of Division Bench, the dispute regarding the shops situated at land bearing Kh.No.488, are still existing, hence, the petitioner can not

claim the presence of approach road on the land bearing Kh.No.488.

15. It is also submitted that under Section 308 (A) of the Act of 1956, Clause (b) provides that where the excess construction does not exceed 10% of the prescribed floor area ratio that shall be compounded. Further such construction should not have encroached upon the road. The petitioner company has admitted the excess construction. The authority to pass order of removal of such construction is within the jurisdiction of respondent No.2. It is submitted that principle of promissory estoppel is not applicable, hence, the petitions be dismissed.
16. In W.P. No.1604/2015 on behalf of the respondent No.1 to 3, it is submitted that a temporary electric connection was provided to the petitioner, which has not been disconnected. This petitioner had applied for permanent service connection on 15.10.2015, but that application was not accompanied with necessary approval/permission and no objection of Municipal Corporation because of which, the permanent connection to the petitioner has been denied, which is in accordance with the provisions under Section 292 (d) of the Municipal Corporation Act. On behalf of the respondent No.4 & 5, it is submitted that the petitioner No.1, who has purchased the unit of the commercial/residential complex constructed by the petitioner No.2, has presented documents for registration. The communication has been received by the respondent No.4 from Municipal Corporation to withhold registration of any such transfer deed. Apart from that, the petitioner has filed Writ Petition (C) 1196/2015, hence for this reason, respondent No.4 & 5 have kept the registration of the documents in waiting to see the outcome of that writ petition.

17. Counsel for the respondent No.2 has adopted the arguments advanced by the counsel for the respondent No.1 and 3 and it is submitted that the petitioner company had made use of false information about the existence of approach road for obtaining permission for construction. The demarcation report showing existence of 40 feet wide approach road for the proposed construction was false, as it has been found in the subsequent inspection and demarcation, that the road from Karbala side though exists, but it's width is of only 36 feet. Hence, the essential requirements according to the guidelines of the Town and Country Planning Department is absent. On non fulfillment of essential requirement according to the norms of Town and Country Planning, permission can not be granted for the use of the building for commercial purposes. Apart from that the case of the allottees in nazul land bearing Kh.No.488 is still pending, hence, the contention of the petitioner-company that road is available for the construction in question is without any basis, because the nazul land bearing Kh.No.488 does not have any road according to the development plan made by the Town and Country Planning Department. Hence, the action taken against the petitioner company vide impugned order does not suffer from any infirmity.
18. The provision under Section 299 of the Act of 1956 has no effect to bar the authority of respondent No.2 under Section 307 of the Act of 1956, which clearly shows that any building if erected or re-erected in contravention of any town planning scheme mentioned under Section 291 or of any building byelaws made under Section 427, then without prejudice to his right, the Commissioner shall have the power to pass order for demolition of such building after drawing proceeding as laid

down in the provision. Hence, no case is made out in favour of the petitioner. Therefore, it is prayed that the petition be dismissed.

19. I have heard the learned counsels for the parties, and perused the documents placed on record.
20. Considering on the submissions made by both the parties, the relevant points of issue for consideration in this case are as under :-

“(i). Whether the impugned order passed by the respondent No.2 is in accordance with the provisions of Chhattisgarh Municipal Corporation Act, 1956 ?

(ii). Whether the issue regarding the width of approach road can be made a ground to alter the purpose of the construction within the powers of the respondent No.2 ?

(iii). Whether the excess construction made by the petitioner company has exceeded the limits of composition under Section 308-A of the Act of 1956 ?”

Points No. (i) & (ii)

21. Regarding the impugned order (Annexure P-1), the permission for construction of ground floor was granted to the extent of 26520 sq.ft. and to the extent of 26520 sq.ft. for the first floor to the petitioner-company. It is mentioned in the order that the excess construction of 6279 sq.ft. has been made by the petitioner-company out of which 10% i.e. 2652 sq.ft. is compoundable and the remaining excess construction 3627 sq.ft. is not compoundable, which is 4.04% in excess. The second ground raised in the impugned order is non-availability of 40 feet wide approach road for the constructed building and on this ground, the purpose of the construction has been revised from commercial purpose to residential and order has been passed for removal of the excess construction.

22. The contention of the petitioner is this that respondent No.2 has exceeded the scope under Section 299 of the Act of 1956. Section 299 of the Act of 1956 reads as under :-

“Section 299 :-Power of Commissioner to direct modification of a sanctioned plan of a building before its completion. – The Commissioner may before any work has been commenced in pursuance of any permission granted by it under [Section 293] revoke such permission and may give fresh permission in lieu thereof on such conditions, in accordance with this Act and the rules, and byelaws made thereunder, with reference to the matters mentioned in the said section as it thinks proper, and may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any street have been decided to its satisfaction.”

23. It is not disputed that construction in question is now completed and the order of revising the permission for use of the building and the removal of excess construction has been passed by the respondent No.2 on the basis of the reports submitted by the Committee and the Committee has made the inspection after completion of the said construction.
24. Section 299 of the Act of 1956 clearly stipulates, that the authority of Commissioner to revoke permission for construction and grant fresh permission to construct is before the construction has commenced and before the grant of permission, the respective location of the building, street, etc. had been visited to the satisfaction of the Commissioner. Clearly the impugned order passed by the respondent No.2 is not covered under this provisions for the simple reasons that action has

been taken by the respondent No.2 subsequent to completion of construction. The view in *Adarsh Thok Fal Vikreta's case* (supra) is applicable. Hence, there was no stage for revoking the permission or revising the same. The wordings of the impugned order do not expressly make out revocation of permission granted for construction and the order revising of the permission by modifying the purpose of the construction is also clearly is not within the scope of Section 299 of the Act of 1956. Such power is available only to the State Government U/s. 299A of the Act, 1956. As such, the modification can not be made at the stage, when the construction was completed within the powers of Commissioner under Section 299 of the Act of 1956.

25. As there is order to remove the excess construction, which appears to be covered under Section 307 of the Act of 1956, which simply provides that any building which is erected or re-erected in contravention of any town planning scheme mentioned under Section 291 of the Act of 1956 or of any building byelaws made under Section 427, the Commissioner without prejudice to his right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alteration therein as may be necessary to make it comply with the said scheme or byelaws.
26. This provision limits the power of Commissioner only to inspect the construction with respect to this points whether any contravention of any town planning scheme or any building byelaws has been made or whether any conditions stipulated for grant of permission has been violated, in that case, the Commissioner has limited power to order for pulling down or removing the construction. This provision does not

speaking about authority of Commissioner to revise or review on the point of the use of the building.

27. It was found in the inspection that there is absence of approach road, which is a necessary requirement under town planning scheme, according to which, the approach road for the constructed complex should have been of width not less than 40 feet. From the perusal of the documents placed on record, it appears that the proposed approach road according to the map shown on the southern boundary of the proposed construction on the map, it has been brought to the notice of this Court that piece of land is part of land bearing Kh.No.488 nazul land on which there exist some shops. Although, it appears that some proceedings have been initiated for removal of the existing shops situated at land bearing Kh.No.488, which was challenged and subsequent to the order passed by the Division Bench of this Court, in Writ Appeal No.301/2012 dated 28.07.2017, it seems that litigation is still pending.
28. It may be so that the respondent No.2 while granting permission for construction to the petitioner had overlooked or was misguided due to erroneous or false information supplied on the basis of the said demarcation report of Tahsildar. Such mistake on the part of the respondent No.2 can not be made a ground for rescue of the petitioner-company, because, it was for the petitioner to ensure that the guidelines laid down under town planning scheme are followed and the requirements are fulfilled. Under these situations, the claim of existence of approach road for the complex constructed by the petitioner can not be accepted, because there is clear finding of the Division Bench of this Court about existence of such nazul land, which

is not a declared road.

29. The question raised that the excess construction is within the compoundable limits shall be dealt with another point in issue. The clear finding has been arrived that the respondent No.2 has no power to review or revise the purpose of construction in this case. The points raised in this discussion shall be completely answered after the decision on the another point in issue in this case.

Points No.(iii)

30. Clause (b) of Section 308 (A) of the Act of 1956 are as under :-

“308-A. Compounding of offences of construction of buildings without permission. - Notwithstanding anything contained in this Act or any other Act, for the time being in force or any rules or byelaws made thereunder, the offence of constructing buildings without permission or contrary to the permission granted, may be compounded, if –

(a) x x x x x

(b) the area of unauthorised construction made in the marginal open spaces or in excess of the prescribed Floor Area Ratio does not exceed ten percent of the prescribed Floor Area Ratio.

31. On plain reading of this provision, it is very clear that the construction exceeding the prescribed floor area ratio if not exceed more than 10% in that case, the Commissioner has power to compound the offence.
32. It has been submitted by the counsel for the petitioner that in this case, the floor area ratio as prescribed in town planning scheme is 1.25, whereas, the petitioner has used of only 0.69 of the floor area ratio for raising the construction. Report given by the special Committee

constituted by the respondent No.2 does not speak of prescribed floor area ratio. The excess construction that has been pointed out is with respect to the sanctioned area of construction and not with respect to the floor area ratio. Copy of the report (Annexure R-2/6 and R/2-7) does not speak of floor area ratio. The calculation is only on the basis of the sanctioned area of construction and the excess construction has been pointed out, which shows that the reports submitted by the Committee constituted by the respondent No.2 is by itself erroneous and it is needed to be worked out, whether excess construction made by the petitioner company has exceeded the floor area ratio of 1.25 and in case that excess is within 10% then that shall be regarded as compoundable within the authority of respondent No.2 under the provisions of Section 308-A of the Act of 1956.

33. The report of the Committee simply speaks that petitioner has made excess construction of 6279 sq.ft., whereas the sanctioned area of construction was 26520 sq.ft. of ground floor and the similar area of construction was permitted for the 1st floor. The Committee has not worked out and given a finding on the basis of FAR.
34. Section 308-A Part (b) clearly provides that the unauthorised construction has not to be in the marginal open spaces or it should not exceed more than 10% of FAR only then the composition shall be permissible.
35. Details of discrepancies on the basis of the report of the Committee are mentioned in the impugned order, which does not mention about any unauthorised construction in the marginal open spaces. Hence in the case in hand the only issue is the excess construction simplicitor. It exceeds the FAR or not should have been worked out by the

Committee or by respondent No.2, before passing the impugned order.

36. On the basis of these findings, I am of the opinion, that the impugned order has not been passed considering on all the legal aspects and the provisions of the Act of 1956. Respondent No.2 has no authority to revise the purpose of construction, order permitting the construction at the stage of completion of such construction. The best course would have been to refer the matter to State Government with request to invoke the powers U/s. 299-A of the Act, 1956, on account of non-fulfillment of requirement of the scheme of Town and Country Planning Department.
37. Secondly, without working out whether the construction has exceeded FAR, the order passed about demolishing the so called excess construction is also not in accordance with the provisions under Section 308A, Part (b) of the Act, 1956.
38. Hence, for these reasons and findings herein above, I feel inclined to allow this petitions. Accordingly, the W.P.(C) No.1196/2015, W.P.(C) No.1197/2015 and W.P.(C) No.1207/2015 are allowed and the impugned order dated 04.07.2015 is hereby set-aside.
39. Accordingly the Writ Petition (C) No.1604/2015 is also allowed. The respondent No.2 and 3 are directed to provide uninterrupted electricity supply to the petitioner. It is made clear that this order does not speak for allotting of any permanent electric connection to the petitioners without fulfillment of conditions according to the Rules, bye-laws and other official orders. Further the respondent No.4 & 5 are directed to consider and decide on the registration of the documents presented by the petitioners in accordance with law.

40. The respondents are at liberty to act and proceed in case of such requirement against the petitioner company in view of the observations made in this order.
41. No order as to costs.

Sd/-
(Rajendra Chandra Singh Samant)
Judge