

In the High Court of Judicature at Madras

Reserved on	19.12.2018
Pronounced on	11/01/19

Coram:

The Hon'ble Mr. Justice M. VENUGOPAL
and
The Hon'ble Mr. Justice R. PONGIAPPAN

W.P.No.31949 of 2017 and
W.M.P.Nos.35096 of 2017 and 11651 of 2018

Mariadassou Philomene Dominique
Marie Anthoinette

..Petitioner

Vs.

1. The Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Government of Puducherry
Puducherry
2. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry
3. Francis marit Philomen
Veronique Shanguina
represented by Power Agent,
Francis Arsene Jocelyn
No.89, Kandappa Street,
Puducherry
4. The Junior Engineer,
Pondicherry Electricity Department,
Thambunayakkam Street,
Pondicherry - 605 001

[R4 - Suo Motu impleaded as per order
dated 13.02.2018 by MVJ & SVNJ in
W.P.No.31949 of 2017]

...Respondents

Prayer:

Writ Petition filed under Article 226 Constitution of India
to issue a Writ of Certiorarified Mandamus calling for the
records comprised in No.375/TCP/Board /JTP/(Dev.)/2017/11872

dated 25.10.2017 of the 1st Respondent, quash the same and consequently direct the Respondents 1 and 2 to demolish the deviated building constructed by the 3rd Respondent at Door No.91, Montorsier Street, Puducherry (at T.S.No.169, R.S.No.239 Pt. Old No.55, Ward-D, Block No.13).

For Petitioner :Mr.S.P.Sudalaiyandi
Mr.P.Velmurugan

For Respondents :Mrs.N.Mala
Additional Government Pleader
[Puducherry] for R1, R2 and R4

Mr.R.Sreedhar for R3

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2. Summation of Writ Facts :

2.1 The Writ Petitioner had purchased the property measuring an extent of 2000 Sq.Ft at Door No.93, Montorsier Street, Puducherry by means of a registered Sale Deed dated 18.06.1990 executed by her Mother-in-Law, Jayamary Mariadoss [Mother-in-Law]. She and her family members are in absolute possession and enjoyment of the property for more than 100 years.

2.2. After purchasing the property, the Petitioner had demolished the existing tiled house in the property and constructed a single storied building after securing necessary permission from the Competent Authority. The 3rd Respondent purchased the House and Land situated on the Eastern Side of Petitioner's property, i.e., Door No.91, Montorsier Street, Puducherry [at T.S.No.169, R.S.No.239 pt. Old No.55, Ward-D, Block No.13] . Indeed, the 3rd Respondent / Builder had demolished an existing House and had applied for planning permission for construction of a new Building. The 3rd Respondent at the time of obtaining planning permission, included a portion of Petitioner's property in the plan and accordingly, the 3rd Respondent obtained a planning permission on 12.05.2010 with conditions, as per Byelaw 13(4) of the Puducherry Building Byelaw Zoning Regulations, 1972.

2.3. Apart from the above, the Power of Attorney of the Petitioner along with the Petitioner approached the 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry to stop an illegal construction of the 3rd Respondent and made a request to supply the details of planning permission. The 2nd Respondent, on 24.05.2011, informed that under the

proceedings dated 12.05.2010, approval was granted to the 3rd Respondent for construction of four storied residential flats building and it consists of seven dwelling flats. In the Planning Permission, one of the conditions imposed was that the 'Parking Area', as mentioned in the 'Approval Plan' ought not to be deviated for any purpose.

2.4. The 2nd Respondent on 15.04.2011 had inspected the premises and found out that there was deviation in the said construction and as such, the 3rd Respondent was directed to demolish the unauthorised deviated construction strictly within one month from the date of issuance of notice and restore the building, as per the approved plan. But the 3rd Respondent proceeded with the construction without fulfilling the requirement of Notice. Pursuant to the Notice dated 15.04.2011, the 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry had not taken any further action.

2.5. The Petitioner, made an application on 20.12.2012 and also made another application under the 'Right to Information Act' for furnishing a copy of the plan and on 25.01.2012, the Public Information Officer of the 2nd Respondent / the Member Secretary, Puducherry Planning Authority, Puducherry furnished the building plan, sketch and proceedings of the 'Approval Copy'. The plan shows 261 Sq.Mtr., as plot area, 84.67 Sq.Mtr., as ground floor area, 73.74 Sq.Mtr, as 1st Floor area and 73.Sq.Mtr., as 2nd and 3rd Floors area each. The plan shows the side set back and other places vacant for 'Common Usage'. The 3rd Respondent without adhering to the approved planning permission issued by the 2nd Respondent had constructed the flats in the total plot area without leaving any place in common usage and side setback. The walls of the construction were constructed in Petitioner's building wall, as well as eastern side wall and immediately a written complaint was lodged by the Petitioner before the 2nd Respondent for the violation of the aforesaid construction. The 2nd Respondent / Member Secretary, Puducherry Planning Authority had not taken any action. Since the Petitioner's Power of Attorney and herself approached the 2nd Respondent to take necessary action and to stop the deviated construction put up by the 3rd Respondent, the Written complaint was once again made on 30.09.2013 before the 2nd Respondent for taking necessary action. However, the 2nd Respondent is not taking any action against the 3rd Respondent.

2.6. Further, the 3rd Respondent had totally deviated the plot area, as per the planning permission and that the Authority granted permission for the ground floor only 911 Sq.Ft., = 84.67 Sq.Mtrs, but the 3rd Respondent had constructed 1300 Sq.Ft., [including the setback and OTS] after leaving space for car parking, as such, there is a deviation of 389 Sq.Ft.,. In terms of the planning permission, the area granted to First, Second

and Third floors is 73.74 Sq.Mtrs = 793 Sq.Ft., But, the 3rd Respondent had constructed First, Second and Third Floors in entire plot area respectively, after leaving small space for OTS, resultantly, there is a deviation of 1868 sq.ft., on each floor. The 3rd Respondent was granted permission for construction of 3290 Sq.Ft., in all floors. There is a total deviation of 5993 Sq.ft., in the building constructed by the 3rd Respondent. The 3rd Respondent had constructed the residential flats deviating more than two times of approved plan and the violation is contrary to the Pondicherry Town and Country Planning Act, 1969, Rules and Regulations.

2.7. Earlier, the Petitioner filed W.P.No.30201 of 2013 before this Court praying for passing of an order by this Court in demolishing the deviated building constructed by the 3rd Respondent and this Court on 08.11.2013 was pleased to direct the 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry to pass an appropriate order based on the representation of the Petitioner dated 30.09.2013 on merits and in accordance with Law, after hearing the Petitioner as well as the 3rd Respondent, within a period of eight weeks from the date of receipt of copy of the order.

2.8. The 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry had conducted an enquiry and inspected the building. In the interregnum, the 3rd Respondent admitted the deviation and applied for revised planning permission before the 2nd Respondent / Member Secretary, Puducherry Planning Authority. The 2nd Respondent / Member Secretary, Puducherry Planning Authority had passed a detailed order on 29.11.2013, whereby the planning permission submitted by the 3rd Respondent was rejected and further, pointed out that there were six deficiencies in constructed building and the same could not be considered. The 2nd Respondent / Member Secretary, Puducherry Planning Authority in the order dated 29.11.2013 had specifically directed the 3rd Respondent to comply with the earlier notice and demolished the deviated construction strictly within one month from the date of the said notice, failing which, further action would be taken against the 3rd Respondent, as per provisions of the Act. The 2nd Respondent on 06.01.2014 once again had directed the 3rd Respondent to demolish the deviated construction immediately.

2.9. The 3rd Respondent filed an Appeal before the 1st Respondent on 12.12.2013 as against the demolition order issued by the 2nd Respondent and the Appeal was numbered as Rt.No.6100. The 1st Respondent / Member Secretary, Town and Country Planning Board, Town and Country Planning Department, Government of Puducherry passed an order on 23.12.2013 by stating that during inspection, it was found out that four storied residential flats building was constructed deviating from the approved plan and

further, directed the 3rd Respondent to 'Stop Work' and maintain 'Status Quo' of the building and also that, no further construction should be carried out.

2.10. The Petitioner filed W.P.No.15079 of 2014 before this Court, since the Appeal was not disposed of by the 1st Respondent and on 12.06.2014, this Court directed the 1st Respondent / Member Secretary, Town and Country Planning Board, Town and Country Planning Department, Government of Puducherry to dispose of the Appeal filed by the 3rd Respondent within a stipulated time in accordance with Law. In fact, the 1st Respondent, on 19.09.2014, had disposed of the Appeal preferred by the 3rd Respondent with the following observations :

"Since the coverage and FAR provided are in excess of the permissible limit of 75% and 180, the Board decided to dispose the appeal with a direction to Puducherry Planning Authority to initiate action to seal the topmost two floors [second and third floor] and sealing of staircase and lift which provide access to the third and fourth floor. Therefore, it is requested to comply with the direction of the TCP Board. Case files are returned herewith."

2.11. Further, the 1st Respondent had directed the 2nd Respondent to seal the premises. However, the 2nd Respondent had not complied with the direction of the 1st Respondent and that the 2nd Respondent had rejected the revised planning Permission submitted by the 3rd Respondent and the Appeal was also rejected by the 1st Respondent. The 2nd Respondent had not taken any further action and not complied with his own order as well as the order passed by the 1st Respondent. The Petitioner filed W.P.No.31266 of 2014 before this Court praying for passing of an order in directing the 2nd Respondent to demolish the deviated building constructed by the 3rd Respondent at Door No.91, Montorsier Street, Puducherry (at T.S.No.169, R.S.No.239 Pt. Old No.55, Ward D, Block No.13) in pursuance to the notice of the 2nd Respondent dated 15.04.2011, 29.11.2013 and 06.01.2014.

2.12. Later, the 3rd Respondent filed W.P.No.2108 of 2015 assailing the order passed by the 1st Respondent to remove the lock and seal in respect of his building. This Court by a Common Order dated 03.03.2015 had directed the 1st and 2nd Respondents to take a pragmatic, purposeful, meaningful and result oriented consequent follow up action in an effective, efficacious and expeditious fashion within a period of two weeks from the date of receipt of copy of this order. Pursuant to the common order dated 03.03.2015, the 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry sealed the premises of the 3rd Respondent on 27.03.2015, which was communicated by the 2nd Respondent to the Petitioner through letter dated 16.04.2015.

Thereafter, the 2nd Respondent had not taken any consequential action for demolition of the deviated building, as per the provisions of the Act.

2.13. The Petitioner filed W.P.No.19714 of 2015 before this Court seeking necessary direction being issued to the Respondents therein to demolish the deviated building pursuant to the order passed by this Court in W.P.No.31266 of 2014 dated 03.03.2015, but the Writ Petition was dismissed on the ground that the Authority will take appropriate action, as per Law. Moreover, the 2nd Respondent had informed the Petitioner's husband that the seal of the flat in top most two floors were in tact and not disturbed. Later, the Respondents 1 and 2 have not taken any further action in respect of demolishing 'Deviated building' and the Respondents 1 and 2 maintained silence for taking action against the building.

2.14. The Petitioner filed O.S.No.39 of 2011, which was decreed by the Learned Sub Judge, Puducherry and further that, the Sub Court had directed the eviction of the 3rd Respondent [Defendant] from the suit schedule property and also a permanent injunction was granted restraining the 3rd Respondent from putting up further construction in 'B' Schedule Property. The subject matter of the suit in 'B' Schedule Property is the portion of the subject matter in the Writ Petition. The 1st Respondent / Member Secretary, Town and Country Planning Board, Town and Country Planning Department of Puducherry, after receiving the Judgment and Decree Copy in O.S.No.39 of 2011 informed the Petitioner that the subject matter of the property in the Writ Petition constructed by the 3rd Respondent was regularised and further, directed the 2nd Respondent that approval may be issued to the Four Storied Flat Building.

2.15. The Petitioner filed a Petition under Right to Information Act, 2005 and after receipt of copy of the Order dated 25.10.2017 of the 1st Respondent [Obtained one month later] is assailing the said order by filing the present Writ Petition.

3. Contents of Counter of Respondent Nos. 1 and 2:

3.1. The Petitioner, filed C.P.No.1049 of 2015 before this Court against the then Principal Secretary, Puducherry Planning Authority, Town and Country Planning Board and that the Contempt Petition was closed on 02.07.2015, since the Counter Affidavit was filed by the Respondents that they complied with the Order of the High Court dated 03.03.2015 in W.P.No.31266 of 2014.

3.2. The Petitioner [Applicant] through her Advocate made a request to the Principal Secretary to Town and Country Planning Board and the Principal Secretary, Puducherry Planning Authority

on 10.04.2015 to comply with the order dated 03.03.2015 passed in W.P.No.31266 of 2014 and since the Puducherry Planning Authority had already de-sealed two entrance gates of the premises on 27.03.2015, sealed topmost two floors [Second and Third Floors] and also Blocked the access to staircase and also lift rooms, which provide access to the same, as per the decision of the Town and Country Planning Board, Puducherry, the matter was again placed before its meeting., wherein the Board had deferred the case.

3.3. One Francis Arsene Jocelyn [3rd Respondent's Power Agent] / Appellant submitted a representation dated 15.12.2015 to the Town and Country Planning Board stating that due to blocking of the access to staircase and lift room, which provide access to the third and fourth floors, she was not able to get water from the over head tank and requested to consider the case sympathetically and that the case was placed in the meeting of the Town and Country Planning Board that took place on 16.02.2016. Since the tenure of Town and Country Planning Board got expired on 04.03.2016, the same was reconstituted on 10.04.2017 and that the First Meeting of the Reconstituted Town and Country Planning Board took place on 17.08.2017 and it was decided as under:

'The Board after detailed deliberations decided to allow the appeal. Puducherry Planning Authority may issue approval for the four Storeyed Residential Flats building [Executed] and after compounding the offence of excess Coverage / FAR and unauthorised construction / deviation as per the Puducherry Building Bye-Laws and Zoning Regulations, 2012. Puducherry Planning Authority shall obtain NOC from Fire Service Department. Compounding shall be imposed for deficit parking area. After collecting the required compounding charts, the Puducherry Planning Authority shall remove all sealings done on 27.03.2015, thereafter approval may be issued to the four storeyed residential flats building.'

The decision of the Planning Board was communicated to the said Jocelyn through Communication dated 25.10.2017 and the 2nd Respondent / Member Secretary of Puducherry Planning Authority for further action.

3.4. The representation of A.Jesudoss dated 27.10.2017 was submitted to the Town and Country Planning Board together with the copy of the Judgment of the Principal Sub Judge, Puducherry dated 04.09.2017 and the same was forwarded to the 2nd Respondent / the Member Secretary, Puducherry Planning Authority, Puducherry on 03.11.2017. The 2nd Respondent's Learned Counsel, in respect of the processing of the application for issue of

building approval, had rendered his opinion that the proposal may be considered based on the direction of the Town and Country Planning Board and later, after process, the Appellant was directed to remit the necessary compounding charges for violation of excess F.A.R. for excess construction on 20.11.2017 and that the same was remitted by the Appellant on 21.11.2017. Further, as per the decision of the Town and Country Planning Board, the 2nd Respondent / Puducherry Planning Authority removed all the sealings on 21.11.2017 and the building plan approval for construction of four storied residential flats building was issued in the name of Francis Arsene Jocelyn, self and Power Agent of Francis Marie Philomen Veronique Shanguina / 3rd Respondent.

3.5. The decision of the Board to seal the Third and Fourth floors was revised and it was decided to de-seal the same and compound the excess coverage / FAR. Moreover, as per Section 70 of the Pondicherry Town and Country Planning Act, the 1st Respondent / Town and Country Planning Board, passed an order compounding the offence punishable under this Act, therefore, the present Writ Petition is filed by the Writ Petitioner.

3.6. Section 38 of the Pondicherry Town and Country Planning Act, 1969 speaks of 'Filing of an Appeal' by any Applicant aggrieved by an order passed under Section 7 before the Board within one month of the communication of the said order to him.

3.7. Section 43 of the Pondicherry Town and Country Planning Act, 1969 speaks of 'Penalty for Unauthorized Development or for use otherwise than in conformity with the Development Plan'.

3.8. Section 44 of the Pondicherry Town and Country Planning Act, 1969 pertains to 'Power Requirement to Removal of Unauthorized Developments' by the Planning Authority. In fact, Section 44(5) of the Act, 1969 enjoins that 'after considering the aforesaid report [report submitted to the Board] and hearing the Appellant, the Board may dismiss the appeal or accept the appeal by quashing the order, as it may think fit. Section 70 of the Pondicherry Town and Country Planning Act, 1969 relates to 'Compounding of Offence'.

4. Gist of 3rd Respondent's Counter :

4.1. The decision of the 1st Respondent / Town and Country Planning Board dated 17.08.2017 was communicated to the 3rd Respondent, as per proceedings dated 25.10.2017 and also to the 2nd Respondent / Member Secretary, Puducherry Planning Authority, Puducherry for further action. The 3rd Respondent had duly remitted the compounding charges on 21.11.2017 and as per the

decision of the 1st Respondent / Town and Country Planning Board, the Government of Puducherry, the 2nd Respondent / Puducherry Planning Authority removed all the sealings on 21.11.2017 and that the 'Building Plan Approval' for construction of four storied residential flats building was issued [Vide Permit No.PPA/1454/2554/2 [SB-Puducherry) / 13-17 dated 21.11.2017].

4.2. The Petitioner without any valid basis has chosen to assail the validity of the Order dated 25.10.2017 of the 1st Respondent and sought a direction to demolish the building constructed by the 3rd Respondent.

5. Petitioner's Contentions:

5.1. It is represented on behalf of the Petitioner that no enquiry was conducted by hearing the Petitioner prior to the passing of the Impugned Order dated 25.10.2017.

5.2. The Learned Counsel for the Petitioner submits that the Respondents 1 and 2 have no power to regularise an unauthorised construction put up by the 3rd Respondent and therefore, the Impugned order of the 1st Respondent / Town and Country Planning Board, Town and Country Planning Department, Government of Puducherry is an illegal one.

5.3. The Learned Counsel for the Petitioner contends that Section 70 of the Puducherry Town and Country Planning Act, 1969 'Compounding of Offence' is not applicable to the present case.

5.4. The Learned Counsel for the Petitioner projects an argument that under the Puducherry Bye-law and Zoning Regulations, 2012, the Appellate Authority, has power to entertain an Appeal and in the instant case, the Appellate Authority had already rejected the Appeal filed by the 3rd Respondent on 19.09.2014 and that the said Authority has no power to entertain the Appeal for the second time, for the very same subject matter and therefore, the Impugned order dated 25.10.2017 passed by the 1st Respondent is without jurisdiction.

6. Petitioner's Citations:

6.1. The Learned Counsel for the Petitioner cites the decision of this Court between Kondumuri Ganikamma V. Member Secretary, Yanam Planning Authority, Mini Civil Station, Yanam and Another reported in [2014] 2 MLJ 385 at Special Page 387 wherein at Paragraph Nos.14 to 17, it is observed as under:

'14. The petitioner has no respect to the building regulations. The local planning authority issued a stop work notice on 17 August 2010. It was only thereafter, the demolition order was passed.

15. It was represented across the Bar that there is a mushroom growth of illegal constructions in the Union Territory of Puducherry, especially in Puducherry Region. The builders without proper planning permit and without even providing parking area. As a result, the roads are now flooded with vehicles parked in an disorderly manner, making it difficult even for pedestrians to move freely. Those who failed to obtain planning permits from the Planning Authority, managed to obtain it by filing appeals.

16. The development plans are prepared for the orderly development of the city / towns. The illegal constructions in violation of the Zoning Regulations would be a threat to the orderly development of the city. It would also cause environmental problems.

17. The Government and Board have no power under the Act to regularize illegal construction. The Government and the Board have to act within the four corners of the Puducherry Town and Country Planning Act. In case the authorities have exempted illegal buildings from the provisions of the Act and building bye-laws or regularized the illegal constructions, such actions are justiciable. The illegal constructions are a source of danger to the society and public at large. Therefore, it is open even to the neighbours and public to challenge such illegal constructions and regularization, which are not permitted by law.'

6.2. The Learned Counsel for the Petitioner relies on the decision of Hon'ble Supreme Court between Royal Paradise Hotel (P) Ltd., V. State of Haryana and Others reported in (2006) 7 SCC 597 at Special Pages 601 and 602 wherein at Paragraph Nos.7 and 8, it is observed as under:

'7. It is clear from the statement of the synopsis and list of dates furnished by the appellant itself, that on 4.2.1998, Mr. Chawla, who put up the construction before it was sold to the appellant received a notice under Section 12 of the Act informing him of contravention of Section 3 or Section 6 and of violation of Section 7(1) and Section 10 of the Act and directing him to stop further construction. When it was found that the appellant was defying the direction to stop, an order was passed on 26.2.1998 under sub-Section (2) of Section 12 of the Act directing him to remove the unauthorized construction and to bring the site in conformity with the relevant provisions of the Act on finding that there was clear violation of

Section 7 and Section 10 of the Act. On 16.3.1999, another notice was issued to Mr. Chawla mentioning therein that there is a contravention of Section 7(1) or Section 10 of the Act and directing removal of the unauthorized construction. The copies of the original notices are produced by the respondents along with the counter affidavit filed on behalf of the respondent Nos.1 to 3. Though the copies of such notices have been produced by the appellant also, we find that there are some omissions in the copies produced on behalf of the appellant. 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 defiers 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'.

6.3. The Learned Counsel for the Petitioner seeks in aid of the decision of Hon'ble Supreme Court between Shanti Sports Club and Another V. Union of India and Others reported in (2009) 15 Supreme Court Case at page 705 at Special Page 742 at Paragraph Nos.73 to 75, it is observed as follows:

"73. Before concluding, we consider it necessary to enter a caveat. In all developed countries, great emphasis has been laid on the planned development of cities and urban areas. The object of planned development has been achieved by rigorous enforcement of master plans prepared after careful study of complex issues, scientific research and rationalisation of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity.

74. In 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 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. -

K. Ramadas Shenoy V. Town Municipal Council, Udipi 1974 (2) SCC 506, G.N. Khajuria(Dr.) V. DDA (1995) 5 SCC 762, M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu 1999 (6) SCC 464, Friends Colony Development Committee V. State of Orissa 2004 (8) SCC 733, M.C. Mehta V. Union of India 2006 (3) SCC 399 and S.N. Chandrasekhar V. State of Karnataka 2006 (3) SCC 208.

75. Unfortunately, despite repeated judgments by the this Court and 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 of 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 wrong doers 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."

6.4. Apart from the above, the Learned Counsel for the Petitioner refers to the following decisions:

(i) In the decision of Hon'ble Supreme Court reported in (2010) 2 Supreme Court Cases, Priyanka Estates International Private Ltd., and Others V. State of Assam and others at page 27, at Special Page 29, wherein it is observed and held as under :

"The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder / coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders. In the case in hand, a number of occupiers were put in possession of the respective flats by the builder / developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles, ultimately the flat already pocketed the price of the flat. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly. In the case on hand, admittedly, at no point of time was the builder able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned."

(ii) In the decision of Hon'ble Supreme Court reported in (2009) 1 Supreme Court Cases 240 [Rikhabdas Nathusao Jain V.

Corporation of the City of Nagpur and Others] at special page 250 wherein at Paragraph Nos.20 and 21 it is stated as under:

'20. The law relating to town planning having regard to the necessity to have a planned township keeping in view the ecology thereof has assumed great significance. The statutory authorities under the Act, therefore, must be allowed to exercise their statutory powers reasonably and in good faith. It, however, would not mean that the right of an owner of the land to raise constructions over the land would not be attended to for a long time. Erection or re-erection of a building must precede grant of an express sanction of building. The statute provides as to how and in what manner an application for grant of sanction of building plan should be dealt with. Section 275(3) of the Act, however, raises a legal fiction specifying the period of sixty days within which an application for grant of sanction of building plan should be considered by the appropriate authorities of the Corporation. The legislature, therefore, considered the said period of sixty days to be reasonable one during which the application for grant of sanction for a building plan should be attended to and appropriate order thereupon should be passed. However, there cannot be any doubt whatsoever that when queries are raised or defects are pointed out in the building plan, the owner of the land must reply thereto and/or remove the defects pointed out.

21. A building plan deemed to have been sanctioned must also satisfy the conditions laid down in the building bye-laws'.

(iii) In the decision of this Court reported in 2018-1- Writ Law Reporter 589 between Kiran Bai V. The District Collector, Collectorate Building, Coimbatore and others at Special page 595, at Paragraph Nos.11 and 13 it is observed as follows :

"11. This Court is of the view that as the building in question has been constructed in violation of the sanctioned Plan, the entire building has to be razed to the ground. It is made clear that if the 4th respondent herein submits a Revised Plan for approval, the same may be approved by the authorities concerned, if it is in conformity with the norms and the 4th respondent will have to construct the building only in accordance with the Plan so sanctioned.

13. It is disheartening to note that many buildings, including individual houses, Apartments,

Commercial Complexes, etc. are constructed in violation of the sanctioned Plan, without leaving proper setback and in several cases, knowing well that it is a public road and Park, constructions are made. The fact remains that only the owner of the building is at loss, when a building, which is not constructed in accordance with the Plan, is ordered to be demolished, and the authorities, who issue Completion Certificate to such buildings, make hay while the sun shines. It is in collusion with the officials, these buildings are raised and on complaint, this Court directs them to be razed. This Court is of the view that unless a liability is fixed on the Government Servants, it will be very difficult to curtail encroachments. To safeguard the interest of the public at large, this Court issues the following directions:

(i) After getting the approved Plan, once the basement of the building is constructed, the applicant shall approach the authorities concerned seeking to inspect the site before further progress, to ensure that there is no encroachment on the road and that there is proper setback on all sides, in accordance with the Plan. The authorities concerned shall inspect the site within 15 days from the date of such application and point out the defects, if any;

(ii) Once the structure of the building is completed as per the Plan, the applicant shall apply for Completion Certificate, be it to the Corporation/CMDA/Municipality/Local Authority, etc., and the authorities concerned shall inspect the building as to whether it is constructed as per the sanctioned Plan, within a period of 15 days from the date of receipt of application;

(iii) If any violations are pointed out by the said authorities, the applicant shall rectify the defects and send the Compliance Report to the authorities, who, on receipt of the same, shall again inspect the building and issue Completion Certificate to the applicant, if the building is in accordance with the sanctioned Plan. Such exercise shall be completed within a period of 15 days from the date of receipt of the Compliance Report from the applicant;

(iv) After obtaining Completion Certificate, if any construction is made in violation of the Approved Plan, such violated construction shall not be regularized at all;

(v) Thereafter, it is open to the applicant to apply for Electricity service connection/Water and Sewerage connection to the authorities concerned. The

authorities of Tamil Nadu Electricity Board/Tamil Nadu Water and Sewerage Board shall effect the respective service connection to the applicant, only on receipt of a copy of the Building Completion Certificate issued by the Corporation/Municipality/local authority concerned;

(vi) The Officials concerned shall visit the site at every stage of completion of the building as may be identified or intimated to the authorities and that the second floor and floors above, shall be inspected at the stage of completion by CMDA/Corporation/local authority under whose jurisdiction, it falls, to avoid construction of buildings with violations;

(vii) The conditions applicable to multi-storied and special buildings shall also be equally applicable to the buildings that are constructed as per the Plan sanctioned by the Corporation / CMDA/ Municipality/local authority;

(viii) The authority, who issues Completion Certificate to the applicant, shall furnish a copy of his Aadhar Card/Government Identity Card/Employment Card/PAN Card/Passport, if any, with the Completion Certificate, so that he cannot escape from the clutches of law, in case, if he had issued Completion Certificate to a building constructed in violation of the sanctioned Plan;

(ix) If there is any complaint from the applicant with regard to the non-issuance of Completion Certificate on the ground that officials have demanded bribe, such complaint will have to be investigated and in case, it is established by means of an enquiry, major penalty under various provisions of law/Service Regulations, shall be imposed on the officials demanding bribe and the same shall be entered into their service records.

(x) Details of the authorities, who sanction the Building Plan/inspects the Building/issues Completion Certificate, need to be uploaded in the internet together with their Employment Card, so that the applicant can have access to the same and in case of violation of the building Plan, the officials can be brought to book.

and to safeguard the interest of public at large issued necessary directions.

7. Submissions of Respondent Nos.1, 2 and 4 :

7.1. In response, the Learned Additional Government Pleader, Puducherry for Respondent Nos.1, 2 and 4 contends that in regard to the Appeal of the 3rd Respondent preferred before the 1st

Respondent / Town and Country Planning Board, Government of Puducherry dated 10.04.2015, the said 1st Respondent, after examining the Appeal had decided to allow the appeal on 25.10.2017 by observing that the 2nd Respondent / Puducherry Planning Authority may issue approval for Four Storied residential building [Executed] and after compounding the offence of excess Coverage / FAR and unauthorised construction / deviation, as per the Puducherry Building Bye-laws and Zoning Regulations, 2012 etc.,

7.2. The Learned Additional Government Pleader for the Respondents 1, 2 and 4 brings it to the notice of this Court that the Appellant was directed to remit the compounding charges for the violation of excess F.A.R. and unauthorised construction on 20.11.2017 and the same was remitted on 21.11.2017 and that as per the decision of the 1st Respondent / Town and Country Planning Board, the 2nd Respondent / Puducherry Planning Authority removed all the sealings on 21.11.2017 and the building plan approval for the construction of four storied residential flats building was issued on 21.11.2017 in the name of Francis Arsene Jocelyn, self and Power Agent of the 3rd Respondent.

7.3. Advancing her arguments, the Learned Additional Government Pleader for Respondents 1, 2 and 4 proceeds to point out that the term 'Compounding' includes regularisation and the Puducherry Building Bye Laws and Zoning Regulations, 2012 [Framed under Section 47 of the Pondicherry Town and Country Planning Act, 1969] Annexure XX under the Caption 'Penal Action for violation of provisions of Development Code of Master Plan, Building Bye-laws and Zonal Regulation' speaks as under:

(A) Non-Compoundable Items:

Any deviations except those set in para 'AA' hereunder, from the maximum, minimum prescribed limits regarding:

(1) Coverage, (2) F.A.R., (3) Setbacks, (4) Open Spaces, (5) Total Height of the Building, (6) No. of floors, (7) No. of DUs and density, (8) Parking Norms, (9) Light and Ventilation Provisions, (10) Use, (11)

All other provisions of these bye-laws except item given in para 'B' below shall not be compounded / regularised and shall have to be rectified by altering / demolition at the risk and cost of owner. Besides this any other action as per terms and conditions of lease and provisions of Act shall proceed.

(B) Compoundable Items:

If a building of part thereof has been constructed unauthorisedly, i.e., without obtaining the requisite building permit from the concerned Authority as required under the building bye-laws, the same shall be compounded at the following rates provided the building

or part thereof so constructed other wise conforms to the provisions contained in the Building Bye-laws and Master / Zonal Plan regulations. For this party shall have to submit the request for building permit in the prescribed procedure.

Rates:

(a) Rs.50 per sq.m. Of the covered area constructed unauthorisedly in residential building up to 500 sq.m. Plot size.

(b) Rs.100 per sq.m. Of the covered area constructed unauthorisedly in the building categorized below:

- All Government Public and Semi-Public and Utility Buildings.

- Religious, Institutional and Educational Buildings.

(c) Rs.250 per Sq.m. Of the covered area constructed unauthorisedly

- Residential Building above 500 sq.m. Plot size, Group Housing and Guest Houses.

- Industrial Buildings:

- Storage Buildings (underground or above ground)

(d) Rs.1000 per sq m. of covered area constructed unauthorisedly

- Cinema and Theatre Building

- Petrol Pumps [Filling / Service station]

- Hazardous buildings

- Commercial / Business Buildings

7.4. Expatiating her contention, the Learned Additional Government Pleader for the Respondents 1, 2 and 4 takes a plea that once the compounding was done, it is deemed to be regularised and further that the sum of Rs.7,35,729/- was remitted towards the compounding charges on 21.11.2017 by the Appellant [Francis Arsene Jocelyn].

7.5. The Learned Additional Government Pleader for the Respondents 1, 2 and 4 refers to G.O.Ms.No.2/Hg dated 08.01.2013 of the Government of Puducherry, Chief Secretariat (Housing) [issued under the Exercise of Powers Conferred as per Section 47 of the Puducherry Town and Country Planning Act, 1969 [No. 13 of 1970]] wherein in the Amendment to Puducherry Building Byelaws and Zoning Regulations, 2012, the following Amendment to the Puducherry Zoning regulations Issued in G.O.Ms.No.5/ 2012-Hg., dated 05.03.2012 of the Chief Secretariat (Housing) and published in the Extraordinary Official Gazette No.21 dated 08.03.2012, the Clause 5 reads as under:

'5. Amendment of Part II - Zoning Regulations - In the said Bye-laws and Regulations, in Part II - Zoning Regulation, in Clause 9 relating to '(A) Primary Residential', -

for the existing Note (1), the following shall be substituted, namely :-

' Note:(1) (a) Setbacks are not compulsory in the case of areas within the Boulevard where existing developments are of row housing and having a well defined building line, but the building should be re-erected so as to keep up an uniform building line. However, for erection or re-erection of building on corner plots, suitable setbacks would be required and shall be approved by the Planning Authority.'

8. Pleas of the 3rd Respondent:

8.1. The Learned Counsel for the 3rd Respondent contends that the 3rd Respondent was issued with a building plan by the 2nd Respondent / Puducherry Planning Authority dated 12.05.2010 and that the Writ Petitioner filed O.S.No.39 of 2011 on the file of the Learned Principal Sub-Judge, Puducherry against the Power Agent of the 3rd Respondent [Francis Arsene] wherein a relief for Declaration was sought for that the Writ Petitioner / Plaintiff is the absolute owner of the Suit 'B' Schedule Property, for Recovery of 'B' Schedule Property after eviction of 3rd Respondent [Arsene Jocelyn] and removal of encroachment, for Mandatory Injunction in directing the Defendant to demolish all illegal constructions raised by him in the suit 'B' Schedule Property and for Permanent Injunction restraining the Defendant, his, men, Agents, and Servants from raising further construction in 'B' Schedule Property and thereby committing waste and damage of the suit B Schedule Property and that the 3rd Respondent's building is 100 years old.

8.2. The Learned Counsel for the 3rd Respondent takes a stand that there is a dispute between the Petitioner and the 3rd Respondent and that the Tahsildar cum Executive Magistrate, Taluk Office, Puducherry on 11.04.2014 had addressed a letter to the Deputy Collector (Revenue) (North), Puducherry as under:

'Adverting to the subject above, I am inform that the field was inspected by VAO, RI and the Deputy Surveyor of this Office. During the field measurement it was ascertained that there is no encroachment either by Thiru. Jesudass or by the Petitioner herein in each other property ie. T.S.No.168 & 169 as claimed by the petitioners through a sketch said to be prepared by a retired Deputy Surveyor.

As far as other claims and counter claims are concerned the Petitioner and Counter Petitioner may be advised to settle their differences through appropriate court / other agencies like Pondicherry Planning Authority.

The Collector by his marginal notings had directed to apprise him on the matter which was done on 10th April 2014 personally. Petition may be disposed of accordingly.'

8.3. The Learned Counsel for the 3rd Respondent points out that the 3rd Respondent's Power Agent, as Petitioner, filed I.A.No.281 of 2018 in O.S.No.39 of 2011 on the file of Learned Sub Judge, Puducherry seeking to condone the delay of 40 days in presenting the Petition to set aside the exparte decree dated 04.01.2017 passed against him in the suit and the same is pending.

8.4. The Learned Counsel for the 3rd Respondent forcefully takes a stand that the 3rd Respondent was granted with a 'New Planning and Building Permission' by the 2nd Respondent / Puducherry Planning Authority on 21.11.2017 [with reference to the application of 3rd Respondent's Power Agent dated 27.11.2013] and the said permission was granted with the following conditions:

"1. Occupancy certificate under Part-I Clause 17 of the Puducherry Building Bye-Laws and Zoning Regulations, 2012 should be obtained from this Authority, soon after the completion of the work.

2. This permit is valid for three years from the date of issue and expires on 20.11.2020.

3. The stages of construction as stated in item 3 of the note below should be notified to the Authority without fail. In case of non-compliance, action will be initiated against the permit holder and the License holder who has authenticated the plan.

4. The conditions stipulated in the Annexure of building permit should be strictly adhered to.

5. This Permit is issued based on the directions of Puducherry Town and Country Planning Board Meeting held on 17.08.2017."

In fact, the new building plan issued by the 2nd Respondent to the 3rd Respondent on 21.11.2017 in Annexure PPA/1454/2554/Z (SB-Puducherry)/2013-17 at Sl.No.11 mentions that 'This permit supersedes the previous approval issued vide No.PPA/90/3074/Z (B/4)/2009 dated 12.05.2010'.

8.5. It is represented on behalf of the 3rd Respondent that the Petitioner's husband, A.Jesudass was issued with a Notice on 09.03.2018 in respect of the unauthorised / deviated construction of the two storied residential building at R.S.No.239 Pt., Door No.93, Montorisier street, Puducherry

Revenue Village, Puducherry Municipality, Puducherry in contravention of Section 47(3) of the Pondicherry Town and Country Planning Act. Further, he was directed to submit a copy of the building planning approval to the existing two storied building, objections if any for the existing two storied building within ten days from the date of receipt of copy of notice.

9. Petitioner's Reply:

9.1. By way of Reply, the Learned Counsel for the Petitioner submits that the new building plan issued by the 2nd Respondent to the 3rd Respondent dated 21.11.2017 is based on the direction of 1st Respondent / Puducherry Town and Country Planning Board and that the construction put up violating the Law cannot be compounded and that the concerned authority cannot encourage such a violation.

10. Contents of 4th Respondent's Compliance Affidavit:

10.1. As per Order dated 13.02.2018 of this Court, the Junior Engineer, South Central O&M, Electricity Department, Government of Puducherry was suo motu impleaded as the 4th Respondent with a direction to disconnect the electricity supply relating to the violated portions of the subject matter of the property.

10.2. Presently, no electricity supply was there in the building that too service connections with Policy No.(1) 02-07-01-0036/A2 and (2) 02-07-01-0036A/A2 and one number of Commercial Service Connection 02-07-01-0036B/A2 were already disconnected, as per request of the consumer after collecting necessary charges.

10.3. The 3rd Respondent on 14.12.2017, again, made a request for extention of service for a connected load of 50,750W Load and approval for the service was issued on 07.02.2018 in respect of the premises situated at 91, Montorsier street, Puducherry along with documents in proof of substantiating ownership / occupancy, as per clause 3.5 of JERC Regulations.

10.4. At present, one number of service connection on the ground floor and two numbers of service connections in the first floor found fit for extension of power supply in respect of the building of the 3rd Respondent and approval of the Superintending Engineer O&M, Puducherry has been communicated and Work Order dated 04.04.2018 was issued by the Assistant Executive Engineer, Town-I, Puducherry and that the power supply was extended to the building on 06.4.2018.

Discussions :

11. It is to be pointed out that the 2nd Respondent / Member Secretary, Planning Authority had issued a Deviation cum Demolition Notice dated 15.04.2011 in Reference No.PPA/901/3074/Z(SB/4)/2009-11/1716 addressed to the 3rd Respondent rep. By Power Agent wherein it was mentioned that she had obtained building planning Approval for construction of four storied residential flats at R.S.No.239pt., T.S.No.169, Ward D, Block No.13, Door No.55, Montorsier Street, Puducherry Revenue Village and Municipality, Puducherry [vide Permit No.PPA/901/3074/Z(SB/4)/2009 dated 12.05.2010].

12. Further, in the said notice, it was also mentioned that during site inspection on 01.04.2011 she had started construction works and reached up to Ground floor [Roof laid] level deviating the approved plan without obtaining prior plan from the 2nd Respondent / Puducherry Planning Authority, as required under the Pondicherry Town and Country Planning Act, 1969, which is contravention to the provisions of Sub-Clause 1 of Clause 12 of Part I of Building Bye-laws and Zoning Regulation, 1972. Added further, the 3rd Respondent by the Demolition Notice dated 15.04.2011 was directed to demolish the unauthorised deviated construction strictly within one month from the date of issuance of Notice and restore the building as per the 'Approved Plan', failing which, was informed that further action would be taken against her, as per the provisions of the Pondicherry Town and Country Planning Act, 1969.

13. The 2nd Respondent / Member Secretary, Puducherry Planning Authority had issued a communication dated 29.11.2013 [vide Ref.No.2554 /PPA/ Z(SB/4)/ 2013/ 5206] to the 3rd Respondent interalia stating that her request for approval of the building being constructed at the said location could not be considered for the following reasons:

a) The coverage (97.33%) and FAR (368.40) of the building being constructed at side exceeded the permissible limits of 75% and 180 respectively.

b) The stair width, room size, ventilation, OTS size and parking space are sub standard. Fire escape staircase has not been provided.

c) The roof for whole length has been projected over the road in front.

d) This Authority has received a representation from your neighbour that you are constructing the building with deviations from approved plan and that the petitioner plot has been encroached. The same should be clarified.

e) All the owners should sign in application, plan and documents.

f) Necessary clearances should be obtained from Fire Service Department, Electricity Department, SP(T), Police Department, Public Health Division, P.W.D., & Intach, Puducherry.'

and instructed the 3rd Respondent to comply with the earlier Deviation Notice issued by the Authority dated 15.04.2011 and Demolish the said deviated constructions strictly within one month from the date of issuance of notice etc.,

14. As a matter of fact, in the notice dated 29.11.2013, the 2nd Respondent had apprised the 3rd Respondent that the building being constructed deviating the approved plan at the said location, which was at fourth storied roof laid level being in contravention of the Provisions of the Puducherry Town and Country Planning Act, 1969 and Puducherry Building Bye-Laws and Zoning Regulations, 2012.

15. It comes to be known that the 3rd Respondent on 23.12.2013 was issued with a 'Stop Work Notice' and was directed to maintain 'status quo' of the building besides informing that no further construction should be carried out till the decision is taken by the Board on the Appeal dated 12.12.2013 by the Chief Town Planner cum Member Secretary, TCP Board [1st Respondent].

16. It is to be noted that the 2nd Respondent / Member Secretary, Puducherry Planning Authority had addressed a letter dated 06.01.2014 to the Petitioner to her representation dated 30.09.2013 among other things, it is mentioned that subsequently this Authority has received revised plan from the 3rd Respondent on 27.11.2013 and on scrutiny of the said plan, it was observed that the said proposal was not in conformity of Puducherry Building Bye-Laws Zoning Regulations, 2012 and therefore, a letter was sent again to the Power Agent of the 3rd Respondent as well as to the 3rd Respondent to comply with the earlier demolition notice dated 15.04.2011 and demolish the said deviated construction immediately.

17. In this connection, this Court relevantly points out that the 1st Respondent / Member Secretary, Town and Country Planning Board, Government of Puducherry had addressed a letter dated 19.09.2014 to the 2nd Respondent / Member Secretary, Planning Authority, in and by which it was stated that the Appeal of the Power Agent of the 3rd Respondent was examined and the following observations were made,

'Since the coverage and FAR provided are far in excess of the permissible limit of 75% and 180, the Board decided to dispose the appeal with a direction to

Puducherry Planning Authority to initiate action to seal the topmost two floors (second & third floor) and 'sealing of staircase & lift which provide access to the third and fourth floor' and a request was made to comply with the directions of the 1st Respondent / TCP Board.

18. It is evident from the proceedings of the 2nd Respondent / Member Secretary, Puducherry Planning Authority that Francis Arsene Jocelyn [Building Owner] had submitted representations to the Puducherry Planning Authority dated 20.03.2015 and 26.03.2015 with a request to de-seal the flats building. Pursuant to the common order of this Court dated 03.03.2015 in W.P.Nos.31266 of 2014 and 2108 of 2015, the 2nd Respondent / Puducherry Planning Authority had de-sealed two entrance gates of the premises on 27.03.2015 at 5.00 p.m. and thereafter, sealed the topmost two floors [second and third floors] and also blocked the access to staircase and lift rooms, which provide access to the third and fourth floors, as per the decision of the Town and Country Planning Board, Puducherry.

19. In regard to the Petition of the Petitioner's husband dated 22.07.2016 addressed to Her Excellency of Puducherry, the Member Secretary of the 2nd Respondent / Authority had informed him that the officials of Puducherry Planning Authority made a joint inspection on 18.07.2016 at 10.30 a.m., along with Tahsildar of Puducherry Taluk and during inspection, it was observed that two floors are intact and not disturbed and further, the access to stair case and lift rooms which provide access to the second and third floors blocked earlier by wooden frames were also intact.

20. The Writ Petitioner as against the 3rd Respondent's Power Agent had filed a suit in O.S.No.39 of 2011 on the file of Learned Principal Sub Judge, Puducherry and that the trial Court passed a decree in favour of the Writ Petitioner / Plaintiff in regard to the relief of declaration that she is the absolute owner of the Suit 'B' Schedule Property and further, entitled for recovery of possession of 'B' Schedule Property from the Defendant. Moreover, the 3rd Respondent / Defendant, as per Judgment and Decree dated 04.09.2017 in O.S.No.39 of 2011 was directed to be evicted from the 'B' Schedule property by removing the encroachment in the said property. Further, the Writ Petitioner / Plaintiff in the said suit was granted the relief of Permanent Injunction against the Defendant / 3rd Respondent's power Agent, restraining him, his agents and servants from raising further construction in the suit 'B' Schedule Property and thereby committing waste and damage in the suit 'B' Schedule property.

21. The 2nd Respondent / Planning Authority had obtained a legal opinion from its Advocate with reference to the Judgment and Decree dated 04.09.2017 in O.S.No.39 of 2011 passed by the trial Court along with a representation dated 20.10.2017 received from A.Jesudass to the effect that the 2nd Respondent / Planning Authority was not a party to the aforesaid suit and that there was no specific direction to the said authority to take action against the Defendant [3rd Respondent's Power Agent]. It is to be pointed that the Advocate's opinion addressed to the 2nd Respondent / Member Secretary Planning Authority was dated 06.11.2017 and that the 3rd Respondent's Power Agent, as Petitioner / Defendant filed I.A.No.281 of 2018 on 13.11.2017 in O.S.No.39 of 2011 on the file of trial Court.

22. The 1st Respondent / Board with reference to the Appeal of the 3rd Respondent dated 10.04.2015, on 25.10.2017 while determining to allow the Appeal had among other things directed the remittance of compounding charges, which was paid by the 3rd Respondent on 21.11.2017 and in terms of the decision of the 1st Respondent / Planning Board, the 2nd Respondent had removed all the sealings on 21.11.2017 and the building plan approval for the construction of four storied residential flats building was issued on 21.11.2017 in the name of the power agent of the 3rd Respondent, viz., Francis Arsene Jocelyn.

Ingredients of the Puducherry Town and Country Planning Act, 1969 (Act 13 of 1970) :

23. Section 2[5] of the Puducherry Town and Country Planning Act, 1969 (No.13 of 1970) [came into force on 15.09.1971 under the Head 'Building' includes,

(a) a house, out-house, stable, latrine, godown, shed, hut, wall [other than a boundary wall not exceeding 2.5 metres in height] and any other structure whether of masonry, bricks, mud, metal or any other material whatsoever;

(b) a structure on wheels or simply resting on the ground without foundations; and

(c) a ship, vessel, boat, tent, van or any other structure used for human habitation or used for keeping or storing any article or goods;

24. Further, Section 2[7] of the Act defines 'Building Operations' including as under:

(a) erection or re-erection of a building or any part of it;

(b) roofing, re-roofing of any part of building or open space;

(c) any material alteration or enlargement of any building;

(d) any material change in the use of a building including the use of its one or more parts used for human habitation into a greater number of such parts;

(e) any such alteration of a building as is likely to effect an alteration of its drainage or sanitary arrangements or materially affects its security;

(f) the construction of a door opening on any street or land not belonging to the owner;

25. Section 2[10] of the Act defines 'Court' meaning a Principal Civil Court of Original Jurisdiction and, includes any other Court empowered by the Government to perform the functions of the Court under this Act within the pecuniary and local limits of its jurisdiction.

26. It is useful to refer the Definition to Section 2[25] of the Puducherry Town and Country Planning Act, 1969 which speaks of 'Planning Area' means, any area declared to be a local planning area under Section 8 of this Act. Section 2(31) of the Act, 1969 under the caption 'Regulation' means, a 'Regulation' made under this Act by the Government and includes Zoning and Other Regulations made as a part of a Development Plan.

27. Section 37 of the Puducherry Town and Country Planning Act, 1969 concerns that 'Prohibition of Development without payment of Development Charges and without Permission'.

28. It is to be remembered that Section 43 of the Puducherry Town and Country Planning Act, 1969 speaks of 'Penalty for unauthorised Development or for use Otherwise than in Conformity with the Development Plan'. Section 44(1) of the Act relates to 'Power to require removal of Unauthorised Development'. Section 45 of the Act pertains to 'Power to Stop Unauthorised Development'. Section 46 of the Act deals with 'Power to Require Removal of Unauthorised Development or Use'.

29. Section 44(5) of the Act says that after considering the report being submitted and hearing the Appellant, the Board may dismiss the Appeal or accept the appeal by quashing or varying the notice as it may think fit.

30. Section 44(7) of the Act enjoins that any person prosecuted under Sub Section (6)(a) of Section 44 shall be punishable with a fine which may extend to ten thousand Rupees and in the case of a continuing offence with a further fine, which may extend to five hundred rupees for everyday, during which, such offence continues after conviction for the first commission of the offence.

31. Section 47 of the Act enjoins 'Power to make Building Bye-Laws and Zoning Regulations' by the Government, in consultation with the Town and Country Planning Department, may, by notification in the Official Gazette, make Building Bye-laws

and Zoning Regulations to be applicable to such areas as may be specified in the notification to carryout the purposes of this Act.

32. Section 69 of the Act deals with 'Sanction of Prosecution' for which the previous sanction of the Board or Planning Authority or any Officer authorised by the Board or the Planning Authority in this behalf shall be obtained. Section 70 of the Act speaks of 'Composition of Offences' punishable by or under the Act, 1969. Further, when an offence is compounded as per Section 70(2) of the Puducherry Town and Country Planning Act, 1969, the offender, if in custody, shall be discharged and no further proceeding, shall be taken against him in respect of the offence compounded.

33. Section 71 of the Act relates to Jurisdiction of First Class Magistrate, who shall try an offence punishable under this Act. Section 72 of the Act pertains to 'All fines realised in connection with prosecution shall be paid to the Planning Authority concerned'.

34. The scheme of any Town and Country Planning Act of any State can only be to identify the numerous planning areas into the Residential, Mixed Residential, Commercial, Institutional Use, Open Space, Recreational House etc. In fact, the Planning permission and Building permission are two different concepts and both will have to be obtained by the person concerned.

35. What is an Offence:

35.1. The term 'Offence' shall mean any act or omission made punishable by any law for the time being in force as per Section 3(38) of the General Clauses Act [10 of 1897].

35.2. It is to be mentioned that certain types of wrongs are of a public character because it affects the entire public and not only the person whose rights or property were infringed and such a wrong is characterised a Crime. In short, the said wrong can be defined as any act or omission which is prohibited by Law, to which a punishment is annexed and that the State Government prosecutes in its own name

35.3. Also, this Court points out the decision of the Hon'ble Supreme Court in State of Rajasthan V. Bhagwan Das Agrawal and others, (2013) 16 Supreme Court Cases 574 at special page 584 wherein at Paragraph No.18, it is observed as under:

"18.An offence means any act or omission made punishable by law."

Composition / Compounding:

36. A 'Composition' is of arrangement whereunder there is a settlement of differences between the affected / injured party and the person against whom the complaint is made. If a person is charged with an offence, unless there is some provision of composition of it, the Law must take its course and the charge enquired into resulting in either conviction or acquittal of an accused.

37. The term 'Compounding' in respect of an offence means forbearing from prosecution for consideration or private motives. A 'Compoundable Offence' is an offence, which the Law allows to be compounded privately between the parties. As a matter of fact, certain less serious offence can be compounded, meaning thereby that an accused paying an aggrieved amount to the victim, an accused is acquitted. Some compoundable offence, in Indian Law, can be compounded only with the permission of the concerned Court. It must be borne in mind that the word 'Compromise' cannot be equated with 'Compounding'. As a matter of fact, the payment of compounding fee / charges in respect of Building violation / Unauthorised development / construction does not ipso facto mean a 'Deemed Regularisation', in the considered opinion of this Court. An exercise of discretion by the Authorities concerned cannot be guided / goaded by an Exigency. The Administrative / Executive Authorities are not supposed to exercise their discretion based on their strange dispositions and special likings. Based on sound legal principles, a discretion is to be exercised by the authorities concerned, of course, in accordance with Law.

38. In the present case, when the 1st Respondent passed an Impugned Order on 25.10.2017, the Petitioner or her Husband was not heard. In respect of an illegal construction / breach of plan / encroachment, it is the complainant, who is the real and suitable person to bring to the attention of the authorities about the violation / unauthorised development made and in reality, no prejudice would be caused to anyone, if the complainant was heard. Unfortunately, since the Petitioner and her Husband, as an objector, was not heard by the 1st Respondent at the time of passing the Impugned Order dated 25.10.2017, this Court earnestly opines that the Impugned Order dated 25.10.2017 suffers from Patent, Material, Legal Infirmary in the Eye of Law.

39. In regard to the Impugned Order dated 25.10.2017 of the 1st Respondent / Member Secretary, Town and Country Planning Board, Government of Puducherry, this Court is of the considered view that it does not in an express manner point out that the 'Policy and Purposes of the Puducherry Town and Country Planning Act, 1969' had weighed with the requisite Authority while

deciding to allow the appeal of the 3rd Respondent's Power Agent dated 10.04.2015. Also that, the Impugned order dated 25.10.2017 of the 1st Respondent is conspicuously silent as to the qualitative and quantitative detailed deliberations that took place while deciding to allow the Appeal at the Puducherry Town and Country Planning Board's Meeting that took place on 17.08.2017.

40. It is to be remembered that in the Impugned Order dated 25.10.2017 of the 1st Respondent does not refer to Annexure-XX 'Penal Action for Violation of Provisions of Development Code of Master Plan, Building Bye-law and Zonal Regulation' relating to the (i) Compounding Excess Coverage / FAR and (ii) Compounding Items. That apart, in the Impugned Order dated 25.10.2017, there is no mention to the ingredients of Section 44(5) of the Puducherry Town and Country Planning Act, 1969, as opined by this Court.

41. A mere glance of the Impugned Order dated 25.10.2017 of the 1st Respondent / the Member Secretary, Puducherry Planning Board, Puducherry indicates that the same does not refer to the Judgment of the Principal Sub Judge, Puducherry in O.S.No.39 of 2011 filed by the Writ Petitioner [as Plaintiff] against the Power Agent of the 3rd Respondent, viz., Francis Arsene. Although the Respondent Nos.1 and 2 were not parties in the Suit in O.S.No.39 of 2011 on the file of the trial Court, yet, this Court is of the considered view that the existence of the Judgment made in O.S.No.39 of 2011 dated 04.09.2017, it's legal implications / consequences, the production of the copy of the same, is a conclusive evidence of the facts against the whole, based on the reason that 'Judgment' is a Public transaction of the solemn character, having sanctity of the Court. If a right of a litigant was decided by a Judgment, the fact can be established by producing a copy of the Judgment, since in such a case, the existence of Judgment is quite relevant. A Judgment not inter-parties, is admissible in evidence in a particular circumstances, in certain cases, if an existence of such Judgment is a 'Relevant Fact' or 'Fact in Issue'. Section 43 of the Evidence Act, 1872 clearly visualises the cases in which the Judgment could be admissible under other Sections of the Act, which are not admissible under Sections 40, 41 and 42 of the Act.

42. As per Section 43 of the Indian Evidence Act, the issue that may crop up for one's rumination is whether existence of the Judgment and decree a 'Fact in Issue or is it relevant' under some other provisions of the Indian Evidence Act, 1872. That apart, 'Judgments' not inter-parties are admissible as evidence of assertion of right claimed. Moreover, recitals in the Judgment 'Inter-parties' is admissible and if it refers to the points in issue.

43. At this juncture, this Court significantly points out that if an Authority passes an Administrative Order, then, it ought to be a reasoned one. There must be at least an outline process of reasoning. It cannot be gainsaid that an 'Unreasoned Order' may be just from the point of view of the person, who passes such an order. However, the same may not appear to be so to the dis-satisfied / affected person. To put it precisely, a 'Reasoned Order' will have an 'Appearance of Justice'.

44. The power of granting exemption of Building Rules, Regulations or satisfying the conditions imposed in a particular act is to be exercised with utmost care, caution and the same cannot be exercised in a free manner resulting in the material policy of the enactment being affected. Furthermore, the exercise of power bestowed on the delegatee is undoubtedly controlled by the Policy of the act in issue. It is to be mentioned that the discretionary power enjoined upon any authority shall be exercised by taking into all relevant factors and not otherwise.

45. One cannot ignore an important fact that the Civil Court shall have jurisdiction to try all the suits of Civil nature except taking cognizance of such suit is expressly or impliedly barred. As per Section 101 r/w Sections 49, 56 and 80 of the Tamilnadu Town and Country Planning Act, 1971, the Civil Courts jurisdiction are barred.

The Issuance of Mandamus:

46. It is to be pointed out that a 'Writ of Mandamus' will lie not only to enforce statutory right, but, it can also be issued to enforce a public duty. It is a primordial duty of Public Authorities to adhere to the specific provisions of Law for a particular purpose and they cannot take Law into their hands, if there is a genuine and reasonable apprehension of negation of such duty, then, a citizen can approach a competent Court of Law for seeking redressal of his grievances, if he so desires / advised.

47. Scenario of Decided Cases :

47.1. At this stage, this Court worth recalls and recollects the decision of Gopi Sundari Dasi and Others V. Kherod Gobinda Chowdhury and Others reported in 1925 Calcutta 194, wherein it is observed as under:

"Under certain circumstances and in certain cases, the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit."

47.2. In the decision of Hon'ble Supreme Court reported in (1991) 4 Supreme Court Cases 54 Bangalore Medical Trust V. B.S.Muddappa and Others at Special Pages 57 and 58, held as under:

Discretion is an effective tool in administration. It provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. In a democratic set up the people or community being sovereign the exercise of discretion is accountable for his action. It is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society is involved. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law.

47.3. In the decision of Hon'ble Supreme Court reported in AIR 2000 Supreme Court 164 between State of Uttar Pradesh V. Chandrika at Paragraph No.3, it is observed as under:

'3. It is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It appears that the learned Judge has overlooked the settled law or is unaware that concept of 'plea bargaining' is not recognized and is against public policy under our criminal justice system. Section 320 Cr.P.C., provides for compounding of certain offences with the permission of the Court and certain others even without permission of the Court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the Public prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flee bite sentence by pleading guilty'.

47.4. At this stage, this Court cites the decision of S.T.Sundaram V. Veerateswaran and Others reported in 2003 - 2 - L.W. 454 at Special Page 461 at Paragraph Nos. 12 and 13 observed as under:

"12.The scheme of the Act provided for constitution of the Planning Board and notifying planning area, constitution and appointment of planning authorities, the terms of office and meetings of the planning authorities. The Act provided for procedure for approval and preparation of development plan and control of the development and use of the land. The Act also provided for provision for revocation of the permission to develop the land and imposition of penalty for the development of the land, otherwise than in conformity with the Act. It further provided power to the authorities require removal of unauthorised development. Hence, the entire scheme of the Act is for the purpose of development of the area and the granting of permission for the purpose of developing the land i.e., granting of planning permission for putting up construction and taking action against violation or irregularities and the Act also provides for appeal provision to appellate authority by the aggrieved person. Hence, so far as the application for planning permission, refusal and any order passed thereon can be adjudicated under the provisions of the Act. However, a third party, who is being aggrieved by the action taken

by the authorities under the Act cannot have recourse under the Act as per the Scheme of the Act and as such, it cannot be said that he cannot move Civil Court for ventilating his grievance against the statutory authorities.

13. It is very well settled that the normal rule of law is that civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. Where a statute gives finality to the orders of the special tribunals jurisdiction of the civil Courts must be held to be excluded if there is adequate remedy to do what the civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. This legal principle has been settled by the Supreme Court for nearly more than 30 years back in Dhulabhai's case. [Dhulabhai V. State of Madhya Pradesh reported in AIR 1969 Supreme Court 78].

47.5. In the decision of Hon'ble Supreme Court in Mohinder Singh Gill and Another V. The Chief Election Commissioner, New Delhi and Others reported in (1978) 1 Supreme Court Cases 405, Special Page 417 at Paragraph No.8 had observed the following:

'8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J in Gordhandas Bhanji [Commr. Of Police, Bombay V. Gordhandas Bhanji, AIR 1952 SC 16]'

47.6. In the decision of Hon'ble Supreme Court reported in (1995) 1 Supreme Court Cases 47 PT. Chet Ram Vashist (Dead) by Lrs. V. Municipal Corporation of Delhi at Paragraph No.6 it is observed as follows:

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.'

47.7. It is useful to refer to the decision of Hon'ble Supreme Court in Chairman, Indore Vikas Pradhikaran V. Pure Industrial Coke Chemicals Limited and others reported in (2007) 8 Supreme Court Cases 705, at Special Pages 706 and 707, it is observed and held as follows:

"Expropriatory legislation, as is well-known, must be given a strict construction. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rules.

Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right of property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation. (Paras 57 and 58).

Whereas an attempt should be made to prevent unplanned and haphazard development but the same would not mean that the court would close its eyes to the blatant illegalities committed by the State and/or the statutory authorities in implementation of the statute concerned. Implementation of such land development as also building laws should be in consonance with public welfare and convenience....(Para 46)"

47.8. In the Full Bench Decision Ramaraju V. the State of Tamilnadu rep. By its Secretary to Government, Revenue, Department, Fort. St. George, Chennai and Others [Madurai Bench of Madras High Court] reported in 2005(2) CTC 741 at special pages 757 and 758 wherein at Paragraph No.38, it is observed as under:

"38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner :

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6) Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be

effected by affixture. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised

Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law.

Law of the Land :

48. As per Article, 141 of the Constitution of India, a Law laid down by the Hon'ble Supreme Court is the 'Law of the Land' and shall be binding on all the Courts within India. As per Article 144 of the Constitution of India, all the authorities, i.e., Civil, Judicial, shall act in aid of the Supreme Court. No wonder, it is the obligation of all concerned to act thereof and obey the decision and directions issued therein until and unless the same is varied or modified or recalled.

49. In a democracy, where a Rule of Law prevails, then, no consideration should be shown to a Person or Builder for that matter where construction / development made, is an unauthorised one. As a matter of fact, 'Unauthorised Construction', if it is illegal, cannot be compounded and a judicial discretion is to be exercised by a Court of Law, in accordance with Law and based on said legal principles. In this regard, this Court aptly refers to the decision of Hon'ble Supreme Court M.I.Builders Pvt., Ltd., V. Radhey Shyam Sahu and Others reported in AIR 1999 Supreme Court at page 2468 wherein at Paragraph No.82 at Special Page 2505, it is observed and held as under:

"82. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is no almost bordering rule of law. Stress was laid by the appellant and the

prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

50. It may not be out of place for this Court to make a mention that no one has any vested right to seek for 'Regularisation', as per decision of this Court reported in 2006 (5) CTC 449 between P.T.Prabhakar and Another V. The Member Secretary, Chennai Metropolitan Development Authority and others.

51. Also that, this Court in the decision reported in 2005 (1) Law Weekly at Page 643 between Salahudeen Babu V. P.T.Prabhakar had observed that 'Putting up of illegal construction without applying for Planning Permission and latter seeking ratification or regularisation must be stopped forthwith and such constructions should be demolished.'

52. An Orderly planned development of Town is the scheme of any State Government under the Town and Country Planning Act. In fact, Planning under the Town and Country Planning Act, of any welfare Government must only be related to the development and it shall not deal with Acquisition of property. An unauthorised building can be demolished without notice, as per decision of this Court in Madras Metropolitan Development Authority represented by its Member Secretary V. P.Muthukrishnan and others reported in 2005 [1] CTC Page 573.

53. The prime considerations of regulating provisions pertaining of construction activities are public interest and convenience. In regard to the aspect of seeking sanction for construction, no vested right can be claimed by anyone divested from public interest or public convenience, as per decision of Hon'ble Supreme Court in Howrah Municipal Corporation V. Ganges Rope Company Limited, (2004) 1 Supreme Court Cases 663.

Appraisal :

54. In the plaint 'A' Schedule Property in O.S.No.39 of 2011, in respect of the property being a terraced house, Door No.93 situated at Monthorsier Street with an extent of 6.30 ms East to West and 31.40ms South to North comprised in Ward D, Block No.13, T.S.No.168, R.S.No.239 pt. An extent of 50 Sq.ft., being a portion of 'A' Schedule Property, was described as 'B' Schedule Property, wherein the Defendant [3rd Respondent's Power Agent] had put an illegal construction, for which the eviction was sought against the Defendant [3rd Respondent's Power Agent] for removal of encroachment etc.,

55. Suffice it for this Court to pertinently point out that the Issue No.5 of the Judgment in O.S.No.39 of 2011 of the trial Court unerringly points out that the Defendant therein [3rd Respondent's Power Agent] was restrained from putting up further construction in 'B' Schedule Property and that the Plaintiff [Writ Petitioner] was granted the relief of Permanent Injunction in respect of the 'B' Schedule Property. In pith and substance, the Defendant in the aforesaid suit [3rd Respondent's Power Agent] in the present W.P.No.31949 of 2017 was directed to demolish the construction on the 'B' Schedule property and accordingly, the Issue No.4 was answered by the trial Court to and in favour of the Writ Petitioner / Plaintiff.

56. In so far as the Official Respondents 1 and 2 pertaining to the Judgment and Decree of the trial Court dated 14.09.2017 in O.S.No.39 of 2011 [filed by the Writ Petitioner as Plaintiff against the Defendant therein (3rd Respondent's Power Agent in present Writ Petition)] is concerned, it is to be pointed out that even though they were not parties and no specific direction was given to them to take action against the Defendant, the fact of the matter is, when the Impugned Order dated 25.10.2017 passed by the 1st Respondent / Member Secretary, Town and Country Planning Board, Puducherry and when the building permit was granted on 21.11.2017 for four storied residential flats building at R.S.No.239 pt., T.S.No.169, Ward-D, Block No.13, Door No.91 [Old No.55], Montorsier Street, Puducherry Revenue Village, Puducherry Municipality, Puducherry by the 2nd Respondent / Member Secretary, Puducherry Planning Authority, as on those dates, the Judgment and Decree dated 04.09.2017 in O.S.No.39 of 2011 stare at them and it cannot be bypassed or ignored or supplanted or circumvented by anyone on the ground one was not party to the civil case and no specific direction was issued to the concerned authority to take action against the concerned Person.

57. Indeed, when the Judgment of the trial Court in O.S.No.39 of 2011 is very much in favour of the Writ

Petitioner / Mariadassou Philomene Dominique Marie Anthoinette and as against the Defendant [3rd Respondent's Power Agent] then, it ought to be obeyed even by the 3rd parties / strangers, since the said Judgment is quite admissible even against them. By not taking into account of the Judgment dated 04.09.2017 in O.S.No.39 of 2011 on the file of the trial Court, the Impugned Order dated 25.10.2017 passed by the 1st Respondent and later the subsequent order passed by the 2nd Respondent dated 21.11.2017 in granting permission for four storeyed residential flats building [executed] situated at Rs.No.239 pt., T.S. No.169, Ward D, Block D, Old no. 55, Door No.91, Montorsier Street, Puducherry Revenue Village, Puducherry Municipality, Puducherry, are per se illegal, in the considered opinion of this Court.

58. Besides the above, this Court points out that (i) when the Deviation-Cum-Demolition Notice dated 15.04.2011 issued by the 2nd Respondent addressed to the 3rd Respondent's Power Agent mentioned about the commencement of construction works and reached up to ground floor (roof laid) level deviating from the approved plan without obtaining prior permission as required under the Pondicherry Town and Country Planning Act in negation to the provisions of Sub-Clause (1) of Clause 12 of Part I of Building Byelaws and Zoning Regulation, 1972; (ii) when the Demolition notice dated 29.11.2013 of the 2nd Respondent addressed to the 3rd Respondent had not considered the request for approval of the building being constructed at the location in question for the reasons,

(a) The coverage (97.33%) and FAR (368.40) of the building being constructed at site exceeded the permissible limits of 75% and 180 respectively

(b) The stair width, room size, ventilation, OTS Size and parking space are sub standard. Fire escape staircase has not been provided.

(c) The roof for whole length has been projected over the road in front. etc.;

and (iii) when the Appeal of the 3rd Respondent's Power Agent dated 12.12.2013 was disposed of by the 1st Respondent / Member Secretary, Town and Country Planning Board, Puducherry on 19.09.2014 by giving a direction to the 2nd Respondent to initiate action to seal the topmost two floors [2nd and 3rd floors] and sealing of staircase and lift which provide access to the third and fourth floor etc., it passes beyond one's comprehension as to how the Concerned Authority has power to entertain the Appeal for the second time and this aspect was not dealt with and also not meted out by the 1st Respondent / Member Secretary, Town and Country Planning Board in the Impugned Order dated 25.10.2017. Moreover, when a Judgment and Decree of a

Competent Court in O.S.No.39 of 2011 are very much in existence, even though it is an Exparte Decree, in Law, the same holds good and when the Judgment and Decree in O.S.No.39 of 2011 dated 04.09.2017 on the file of the trial Court are not set aside, in accordance with Law, passing of an Impugned Order dated 25.10.2017 by the 1st Respondent and the Building Permit issued by the 2nd Respondent dated 21.11.2017 are legally untenable, in the considered opinion of this Court.

Disposition:

58. In the light of detailed qualitative and quantitative discussions aforesaid and notwithstanding the plea taken on behalf of the Respondents 1 and 2 that Section 70 (1) of the Puducherry Town and Country Planning Act, 1969 [Act 13 of 1970] permits 'Composition of Offences' either before or after the institution of the proceedings in respect of any offence made punishable by or under this Act etc., this Court is of the considered view that in Law, when an offence is compounded either by an arrangement or settlement, the same will result in an Acquittal of the offender / Accused and as per Section 70(2) of the Puducherry Town and Country Planning Act, 1969, when an offence was compounded and when an offender is in custody, he shall be discharged and that no further proceedings shall be taken against him in respect of an offence compounded. In other words, the Composition / Compounding of an Offence under the Puducherry Town and Country Planning Act, 1969 will restrain a person from being prosecuted, since he had paid the necessary charges. But, in the present case, as regards an Unauthorized Development / Building Violation made or committed by the 3rd Respondent, this Court keeping in mind of the dictum laid down by the Hon'ble Supreme Court between M.I.Builders (P) Ltd., V. Radhey Shayam Sahu in 1999 (6) Supreme Court Cases at Page 464 = AIR 1999 SC 2468, the unauthorised construction in the subject matter in issue being an illegal one cannot be compounded by any means whatsoever. Even the Puducherry ByeLaw Zoning Regulations, 2012 issued under Section 47 of the Puducherry Town and Country Planning Act, 1969 cannot come to rescue of the Respondents 1 and 2 as well as the 3rd Respondent. If an unauthorised construction/development made by the 3rd Respondent is given the seal of approval by the Respondents 1 and 2 in passing the Impugned Order dated 25.10.2017 and the consequential order dated 21.11.2017 respectively, then, the same will result in encouraging an illegality or perpetuating illegality and the Court of Law cannot encourage the same in a Democratic Polity, based on the 'Principle of Rule of Law'. Looking at from any angle, the Impugned Order dated 25.10.2017 and the consequential order dated 21.11.2017 do not stand scrutiny in the eye of Law, since they are per se illegal. Viewed in that perspective, the Writ succeeds.

In fine, the Writ Petition is allowed. Resultantly, the Impugned Order dated 25.10.2017 and the consequential order dated 21.11.2017 are quashed by this Court for the reasons assigned in the present Writ Petition. As a logical corollary, the Respondents 1 and 2 are directed to take follow up Enforcement action, as envisaged under Puducherry Town and Country Planning Act, 1969 [Act 13 of 1970] to its logical end against the 3rd Respondent, by scrupulously adhering to the orders passed by this Court in true letter and spirit, of course, in accordance with Law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(I)

True Copy

Sub-Assistant Registrar

ssd
To

1. The Member Secretary,
Town and Country Planning Board,
Town and Country Planning Department,
Government of Puducherry
Puducherry
2. The Member Secretary,
Puducherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry
3. The Government Advocate
High Court, Madras.

+2 Ccs to Mr.R. Sreedhar, Advocate sr 3009.

+1 CC to The Govt. Pleader sr 3333

+1 CC to Mr.S.P. Sudalaiyandi, Advocate sr 3003.

W.P.No.31949 of 2017

SP(25/01/2019)