

07.03.2022  
Sl. No.2  
srm

**W.P.A. No. 2981 of 2022**  
**Shyamali Mallick @ Shyamal Mallick**  
**Versus**  
**The Kolkata Municipal Corporation & Ors.**

Mr. Partha Sarathi Deb Barman,  
Md. Shakir

...for the Petitioner.

Mr. Debjit Mukherjee,  
Mr. Anand Firmania

...for the Kolkata Municipal Corporation.

Supplementary affidavit filed by the petitioner is taken on record.

This writ petition has been filed challenging the order dated February 16, 2022 passed by the Municipal Building Tribunal, Kolkata Municipal Corporation in B.T. Appeal No.04 of 2022. By the said order, an application for stay dated January 10, 2022 filed by the petitioner for stay of an order of demolition passed by the competent authority of the Kolkata Municipal Corporation, was rejected.

The order is well reasoned. The technical member of the learned Tribunal found that a four storeyed RCC framed building along with brick work had been erected without sanction from the Kolkata Municipal Corporation. Admittedly, no sanction was granted by the Corporation.

Hence, the building was found to be totally unauthorised and illegal.

The petitioner has not been able to show the sanction plan or the permission granted. Such fact is absent in the pleadings.

It was also found that the structure was not only unauthorised but also dangerous. Such illegalities have been detected from the records and also from the report of the Executive Engineer, Civil, Borough-I dated February 1, 2022. The Corporation had issued a stop work, but it was found that such stop work notice was defied and the construction had continued. According to the learned Tribunal, this was a major illegal construction and granting a stay of demolition, in this case, would amount to passing another illegal order.

The learned Tribunal concluded that the petitioner's attempt to defy the rules and regulations of the Kolkata Municipal Corporation, jeopardised not only the civil engineering aspect, but also continued to be a threat to society. Thus, the learned Tribunal, being the appellate authority was of the opinion that protecting a structure of such nature, which was completely unauthorised, would amount to perpetuation of the illegality.

No further deliberation on the facts are required. As to the law governing the field the Hon'ble Apex Court has time

and again held that unauthorized constructions should be demolished as a matter of public policy.

In the matter of Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn., reported in (2021) 10 SCC 1 , the Hon'ble Apex Court discussed the duties of civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

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

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation

to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

“56. ... We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

169. These concerns have been reiterated in the more recent decisions of this Court in **Kerala State Coastal Zone Management Authority v. State of Kerala** [Kerala State Coastal Zone Management Authority v. State of Kerala, (2019) 7 SCC 248] , **Kerala State Coastal Zone Management Authority v. Maradu Municipality** [Kerala State Coastal Zone Management Authority v. Maradu Municipality, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and **Bikram Chatterji v. Union of India** [Bikram Chatterji v. Union of India, (2019) 19 SCC 161] .

The Hon'ble Apex Court in the said decision further held as follows:-

159. The rampant increase in unauthorised constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

160. From commencement to completion, the process of construction by developers is regulated

within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.”

In the decision of **Supertech (supra)**, the Hon’ble Apex Court held as follows:-

“172. For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order [Emerald Court Owner Resident Welfare Assn. v. State of U.P., 2014 SCC OnLine All 14817] passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without

affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee ("CBRI").

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment."

**In K. Ramadas Shenoy v. Town Municipal Council, Udipi [K. Ramadas Shenoy v. Town Municipal Council, Udipi, reported in (1974) 2 SCC 506],** the Hon'ble Apex Court observed that the municipality functioned for public benefit and when it 'acted in excess of the powers conferred by the Act or abused those powers, then in those cases it was not exercising its jurisdiction irregularly or wrongly, but it was usurping powers which it did not possess'. The Apex Court held as follows:-

"27.... The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been

regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See *Yabbicom v. R.* [Yabbicom v. R., (1899) 1 QB 444]).

This Hon'ble Apex Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorised construction."

**In Friends Colony Development Committee v. State of Orissa** reported in (2004) 8 SCC 733, the Hon'ble Apex Court held as follows:-

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

Noting that the private interest of landowners stands subordinate to the public good while enforcing building and municipal regulations, the Hon'ble Apex Court issued a caution against the tendency to compound violations of building regulations :

“25. ... The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

**In Priyanka Estates International (P) Ltd. v. State of Assam**, reported in (2010) 2 SCC 27, the Hon’ble Apex Court held as follows:-

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

**In Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai** reported in (2013) 5 SCC 357 the Hon’ble Apex Court held as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

In the matter of **Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.**, reported in (2013) 5 SCC 336 the Hon’ble Apex Court held as follows:-

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held

that there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short “the Corporation”) have been extremely vigilant and taken steps for enforcing the provisions of the Calcutta Municipal Corporation Act, 1980 (for short “the 1980 Act”) and the Rules framed thereunder for demolition of illegal construction raised by Respondent 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.”

The Hon’ble Apex Court concluded as follows:-

“28. Before parting with the case, we consider it necessary to observe that Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it

is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

The Court does not find any irregularity in the said order impugned. The learned Tribunal passed the said order with reasons and upon consideration of the fact and law.

The question of retention of the illegal portion based on the latest circular of the Corporation is not gone into.

Therefore, the writ petition is dismissed.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**