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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.284/2022

MR. GURUDAS VATTU CHATI
ALDONKAR, age 76, resident of
H.No.125/A, Khursawaddo, Carona, Aldona,
Bardez, Goa.

... Petitioner

Versus

1. STATE OF GOA, Through Chief
Secretary, Secretariat, Alto Porvorim, Goa.

2. VILLAGE PANCHAYAT OF ALDONA,
through its Secretary, Aldona, Bardez, Goa.

3. MR. RAJU HALDANKAR, also known as
Mr. Rajendra Datta Chatim, resident of
Khursawaddo, Carona, Aldona, Bardez, Goa.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. T. Sequeira,
Advocate *for the Petitioner*.

Mr. Shubham Priolkar, Additional Government Advocate *for the
State*.

Mr. Allan F.C. Andrade, Advocate *for Respondent No.2*.

Mr. Vilas P. Thali, Advocate *for Respondent No.3*.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

**Reserved on: 21st SEPTEMBER 2022
Pronounced on: 29th SEPTEMBER 2022**

JUDGMENT: (Per M.S. Sonak, J.)

1. Heard Mr. S. D. Lotlikar, learned Senior Advocate, who appears along with Mr. T. Sequeira for the Petitioner, Mr. Andrade for respondent no.2 and Mr. Vilas Thali for respondent no.3.

2. By order dated 05.05.2022, notices were issued to the respondents indicating that this petition will be finally disposed of at the admission stage. Accordingly, we issue Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. On 26.04.2022, the Petitioner filed a complaint to respondent no.2 (Panchayat) about the commencement of illegal construction in Survey No.274/15 by respondent no.3. The Petitioner enclosed coloured photographs of the ongoing construction and requested appropriate action to stop/demolish the illegal construction.

4. On receipt of the complaint, the acting Sarpanch, on 26.04.2022, issued a stop work notice under Section 64(J) of the Goa Panchayat Raj Act, 1994 (said Act), requiring respondent no.3 to stop the illegal activity of construction immediately and to present himself in the office within three days along with all

the documents to prove that the construction undertaken is not unlawful or is backed by permissions from various departments. This stop work notice stated that if respondent no.3 failed to produce the necessary documents, it would be presumed that he has nothing to say in the matter, and further action in terms of Section 66 of the said Act will be initiated against the said construction.

5. The Petitioner has pleaded, and with some justification, that after issuing the above stop work notice dated 26.04.2022, the Panchayat did not bother to ensure its implementation. Additionally, the Petitioner has pleaded that the construction continued on a war footing despite service of stop work notice on respondent no.3. Therefore, the Petitioner instituted this petition on 02.05.2022 and obtained circulation on 05.05.2022.

6. In writing on 02.05.2022, the Petitioner informed the Panchayat about the institution of the petition and its hearing on 05.05.2022. In this communication, the Petitioner pointed out that even though the Petitioner was made to believe that a stay notice was issued to respondent no.3, the construction continued. Additionally, the Petitioner pointed out that the Panchayat had taken no steps to enforce its stop work notice, no panchanama was drawn, and the matter was not taken to its logical conclusion.

The Petitioner also enclosed new photographs of the ongoing construction.

7. On 05.05.2022, this Court, upon hearing the learned Senior Advocate appearing for the Petitioner and the learned Additional Government Advocate, made the following order:-

"1. Heard Mr. S.D. Lotlikar, learned Senior Counsel who appears along with Mr. Terence Sequeira, learned Counsel for the Petitioner. Mr. S. Priolkar, learned Additional Government Advocate appears for respondent no.1.

2. Issue notice to respondent nos.2 & 3, returnable on 07.06.2022. The notice to indicate that this petition will be finally disposed of at the stage of admission.

3. Mr. Lotlikar points out that acting Sarpanch has already issued a Stop Work Order dated 26.04.2022. He, however, submits that respondent no.3 continues with the work.

4. Since, the Stop Work Order has already been issued, it is the duty of the Panchayat to enforce the same. Therefore, until the Stop Work Order is in operation the respondent no.3 shall not undertake any further construction at the site and maintain status quo in all respects.

5. The respondent no.2 should visit the site and make a record of the status quo. The Panchayat should ensure compliance of its own Stop Work Order as well as the restraint order now made by this Court."

8. By communication dated 06.05.2022, the Petitioner forwarded the above order to the Panchayat and requested the Panchayat to ensure compliance with its stop work notice. On 19.05.2022, the Petitioner once again requested the Panchayat to provide an update on the action taken. The Petitioner enclosed photographs with dates to facilitate action by the Panchayat. However, it is apparent that the Panchayat failed or avoided any action in the matter.

9. Smt. Navanya Goltekar, Secretary of the Panchayat, has filed an affidavit in this petition. She has referred to the stop work notice dated 26.04.2022. She has also referred to some civil litigations between the petitioner and respondent no.3. However, she has neither stated that any permission was issued for the construction by respondent no.3 nor had she referred to any steps taken by the Panchayat after the issue of the stop work notice dated 26.04.2022. Significantly, the Panchayat Secretary has offered no comments on the compliance with our directions to visit the site and make a record of the status quo. The affidavit also does not refer to the compliance of its stop work notice and the restraining order of this Court.

10. The affidavit thus supports the Petitioner's case that the construction undertaken by respondent no.3 was unlawful, and

the Panchayat, except for issuing a stop work notice, took no steps to enforce the same. Instead, respondent no.3 was permitted to proceed with the unlawful construction despite full knowledge and satisfaction with its unlawfulness. The affidavit of respondent no.2 does not even refer to any site visit to record the status quo. As a result, respondent no.3 now conveniently claims that the unlawful construction was completed by 26.04.2022, i.e. the date on which the stop work notice was issued. This claim is belied by the periodic photographs filed by the Petitioner with the Panchayat showing the construction progress.

11. Respondent no.3 has filed an affidavit referring to the civil disputes with the Petitioner. Respondent no.3 also claimed that the Petitioner should be relegated to avail of the alternate remedy under Section 66 of the said Act. Respondent no.3 has even gone to the extent of claiming that the Panchayat is in collusion with the Petitioner. However, in the affidavit, there is no statement about the construction being backed by any permissions from any authorities, including the Panchayat. Instead, respondent no.3, in his affidavit dated 14.09.2022, in paragraph 11, has stated as under:-

"11. It is again denied that the alleged illegal structure was completed after the Stop Order Notice was issued. It is denied that the alleged illegal structure is liable to be

demolished. It is stated that the Respondent No.3 vide his reply dated 14th June 2022 to the Stop Work Notice, has already applied for regularization of the alleged illegal construction in terms of Rule 3 (6) of the Goa Panchayats (Regulation of Buildings) Rules, 1972, which provision by mistake was quoted as Section 184(21), in the reply."

12. Mr. Vilas Thali, learned counsel for respondent no.3 at the outset, admitted that respondent no.3 had obtained no permission for unlawful construction. He, however, submitted that respondent no.3 had applied for regularization in terms of the above-referred Rules of 1971. Mr. Thali submitted that the above Rules are still in force, and in terms of the above rules, respondent no.3 was entitled to regularization of the illegal construction he put up. Mr. Thali relied on *Raghubir Singh And Chatter Singh v/s. Union Territory of Chandigarh and Ors. - 1993 Supp (3) SCC 675*, *Syed Muzaffar Ali & Ors. v/s. Municipal Corporation of Delhi – 1995 Supp (4) SCC 426*, *M/s. Rajata Enterprises v/s. S. K. Sharma & Ors. - (1989) 2 SCC 495* and *Christopher Fernandes v/s. State of Goa & Ors. - Writ Petition No.110 of 2003 decided on 02.06.2003* in support of his contention about the regularization of the illegal construction.

13. The Goa, Daman and Diu Village Panchayats (Regulation of Buildings) Rules, 1971 (1971 Rules) were enacted in the

exercise of powers conferred by Section 65 r/w Section 83 of the Goa, Daman and Diu Village Panchayats Regulation (Amendment) Act, 1969. Rule 3 of the 1971 Rules provides the procedure for submitting and scrutinizing applications for land development or sub-divisions.

14. Mr. Thali relies upon Rule 3(6) of the 1971 Rules, which reads as follows:-

"(6) The Panchayat may direct a person who erects or re-erects or commences to erect or re-erect any building without its permission to present to its application for such permission, within a period of thirty days, and may grant such permission after following the procedure laid down in this rule subject to the payment of penalty, which shall not be less than one and half times and not more than two times of the fee payable for such permission."

15. The Goa Panchayat Raj Act, 1994 (said Act) was passed by the Legislative Assembly of Goa on 25.05.1994 and assented to by His Excellency the Governor of Goa on 09.07.1994. The said Act was published for general information on 13.07.1994. The Preamble of this Act states that the said Act was to replace the present enactment relating to Panchayats with comprehensive legislation. However, the "*present enactment*" referred to in the Preamble is nothing but the Goa, Daman and Diu Village

Panchayat Regulations, including the Goa, Daman and Diu Village Panchayats Regulation (Amendment) Act, 1969.

16. Section 1(2) of the Goa Panchayat Raj Act provides that Section 245 shall be deemed to have come into force with effect from 20.04.1994, while the remaining sections shall come into force on such date as the Government may, by notification in Official Gazette specify and different dates may be specified for different provisions of the Act.

17. The Government, vide the following notifications brought the various provisions of the Panchayat Raj Act into force:-

Synopsis

Commencement of the Act : The Government vide following notifications various provisions of Act brought into force :

<i>Sl. No.</i>	<i>Notification number and date</i>	<i>Sections</i>	<i>Gazete reference</i>
1	1/15(42)/94-CDP dated 19-8-1994	Except the following sections 2(5), (6), (8), (21), 5(5), 7, 12(2), 13, 45, 46, 57(2), 60(3), 65(d), proviso to (e), sections 12 (3) and 81, 115(1), (4) 116 to 139, 140 to 149, 150 to 152, 156(2), (3), Proviso to section 158, 162(2) (iii), 164 to 172, 173, 174(3), 175, 180, 182(2), (4), (5), second proviso to section 183, 185, proviso to sub-section (4), sub-sections (5), (6), (7), (8), (9) of sections 187, 188 to 198. 200(2),	Series I No.20 (Extraordinary) dated 19-8-1994

		210(2), (3), (4), 229(2), (3), (4), 238, 239 and 242.	
2	1/1115(42)/94 -CDP dated 6-3-1995	Section 46	Series I No.51 (Extraordinary) dated 23-3-1995
3	I/15(42)/94- CDP dated 26-10-1995	Remaining Section Brought into force	Series-I No.30 (Extraordinary) dated 26-10-1995

18. Section 245 of the Panchayat Raj Act, which deals with the "Repeal and Savings", reads as follows:

245. Repeal and savings – *The Goa, Daman and Diu Village Panchayats Regulation, 1962 (9 of 1962) and the Goa Panchayat Raj Ordinance, 1994 (Ordinance No. 2 of 1994) is hereby repealed:*

Provided that such repeal shall not affect –

(a) the previous operation of the Goa, Daman and Diu Village Panchayats Regulation, 1962 (9 of 1962) or the said Ordinance or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Regulation; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Regulation; or

(d) any investigation, legal proceedings or remedy in respect of such right, privilege, obligations, liability, forfeiture or punishment as aforesaid and any such

investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that –

(a) subject to the preceding provisions, anything done or any action taken (including any appointment or delegation made, tax, fee or cess imposed, notification, order, instrument or direction issued, rules, Regulation, forms, bye-laws or schemes framed, certificates obtained, permits, or licences granted or registration effected) under the said Regulation or the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act;

(b) every officer and servant of a Panchayat other than such class of servants as the Government may specify by order, shall until other provisions are made, receive the salary and allowances and be subject to the conditions of service to which they were entitled immediately before the commencement of this section;

(c) it shall be competent to the Panchayat subject to the previous sanction of the Government, to discontinue the service of any officer or servant who, in its opinion is not necessary or suitable to the requirements of the Panchayat, after giving such notice as is required to be given by the terms of his employment and every officer or servant whose services are discontinued, shall be entitled to such leave, pension, provident fund and gratuity as he would have been entitled to take or receive on being invalidated out of

service as if the Panchayat in the employ of which he was, had not ceased to exist;

(d) any reference in any enactment or in any instrument to any provision of the repealed Regulation or the said Ordinance shall, unless a different intention appears, be construed as a reference to the corresponding provisions of this Act:

Provided further that notwithstanding anything contained in any law for the time being in force all Panchayats continued in terms of proviso to Article 243 N of the Constitution of India, shall continue to exercise the power under this Act until the Panchayats are duly constituted under this Act."

19. Mr. Thali relied upon Section 245 to contend that the 1971 Rules continue in force under this provision. Accordingly, based upon the same, the respondent no.3 is entitled to regularization of the unlawful construction he put up. However, Mr. Thali, even after minute analysis of the provisions of Section 245, could not satisfy us how the 1971 Rules survived the repeal of the parent enactment under which the 1971 Rules came to be enacted.

20. Section 245 of the Panchayat Raj Act specifically repeals the Village Panchayat Regulations, 1962. The 1971 Rules were admittedly made in exercising powers conferred by the 1962

Regulations as amended in 1969. Therefore, upon the repeal of the 1962 Regulations, the 1971 Rules would no longer survive unless they were saved by the savings clause under the Proviso to Section 245 of the Panchayat Raj Act.

21. The Proviso to Section 245 states that the repeal of the Village Panchayat Regulations, 1962 shall not affect the previous operation of the 1962 Regulations or anything duly done or suffered thereunder; or any right, privilege, obligation, or liability acquired, accrued or incurred under the said Regulation; or any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Regulation; or any investigation, legal proceedings or remedy in respect of such right, privilege, obligations, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed. There is a further Proviso to Section 245, which is not even remotely applicable. Therefore, this additional proviso was not even referred to or relied upon by Mr. Thali to support his contentions.

22. Based on the first proviso and the savings clause therein, there is no question of the 1971 Rules coming to the aid of a

party who carried out an unlawful construction in the year 2022, i.e. almost 28 years after the repeal of the 1962 Regulations and consequently the 1971 Rules made thereunder. This is not a case of any unlawful construction that was made and regularized before 20.04.1994. This is also not a construction made before 20.04.1994, i.e. the day on which Section 245 of the Panchayat Raj Act entered into force. In any case, the first Proviso to Section 245 of the Panchayat Raj Act does not create any right or privilege in respondent no.3 to put up an unlawful construction and seek its regularization by resort to the 1971 Rules. Therefore, based upon Section 245 of the Panchayat Raj Act, respondent no.3 is not justified in claiming any right or privilege of regularization by relying upon the 1971 Rules. Mr. Thali's contention will therefore have to be rejected.

23. Mr. Thali could not show any provisions under the Panchayat Raj Act for regularising unlawful and unauthorized construction. Section 66 of the Panchayat Raj Act, in no uncertain terms, provides that subject to such Rules as may be prescribed, *no person shall erect any building or alter or add to any existing building or reconstruct any building without the written permission of the Panchayat.* The permission may be granted on paying such fees as prescribed. The proviso introduced by Amendment Act 32 of 2021 provides that alteration of a

building which consists of a single dwelling unit constructed or in existence before the commencement of this Act shall be permitted to the extent of replacement of tiles roofing with the R.C.C. slab roofing upon production of a certificate of stability of such building issued by the Registered Structural Engineer.

24. Thus, Section 66(1) of the Panchayat Raj Act is quite evident in that it bars a person from erecting any building, altering or adding to any existing building, or reconstructing any building without the written permission of the Panchayat. The proviso introduced in 2021 applies to a single dwelling unit constructed or in existence before the commencement of the Panchayat Raj Act. Even this proviso permits only the replacement of tiles roofing with R.C.C. Slab roofing upon production of a certificate of stability to such building issued by the registered structural engineer.

25. Therefore, even if we were to assume that the 1971 Rules survived the repeal of the 1962 Regulations, the 1971 Rules would not acquire any precedence over the substantive provisions in Section 66(1) of the Panchayat Raj Act. This is more so when there is no dispute that the unlawful construction, in this case, was put up by respondent no.3 only in the year 2022. Section 2(2) of the Panchayat Raj Act defines "Building" to include a

house, outhouse, stable, privy, urinals, shed, hut, wall, and any other structure whether of masonry, bricks, wood, metal or any other material, but does not include a temporary structure erected on ceremonial or festive occasion or a tent. Therefore, the construction by respondent no.3 answers the definition of "Building".

26. Mr. Thali did not even dispute that the construction of the building by respondent no.3 was without obtaining permission from the Panchayat or, for that matter, any other authority. Therefore, the construction of the building by respondent no.3 was very clearly unlawful and unauthorized. As noted earlier, no provision was shown under which such construction could be regularized. The only provision offered in the 1971 Rules no longer survives after the Regulations under which they were made stood repealed on 20.04.1994.

27. In *Raghubir Singh (supra)*, the issue concerned the Capital of Punjab (Development and Regulation) Act, 1952, which possibly permitted the regularization of a technical breach subject to a penalty payment. However, even in that case, the applicant had obtained initial permission but converted the mezzanine floor into yet another floor without re-submitting the plans and getting

them sanctioned. The regularization was therefore allowed subject to payment of compensation at the prescribed rates.

28. The facts in *Raghubir Singh (supra)* and the other decisions relied upon by Mr. Thali are not even remotely comparable to the facts in the present case where respondent no.3 quite brazenly proceeded with an illegal construction without obtaining any permission from any authorities and even in defiance of the stop work notice issued by the Panchayat. There was nothing bonafide or inadvertent about his actions. This was not a case of some accidental technical breach. The unlawful construction was put up in open defiance of the law and stop work notice. If regularization is allowed in such circumstances, respect for the laws would be a casualty. Such constructions would be put up in defiance of the law, and if detected, regularization applied. This modus, having no sanction of the law, would introduce two classes of persons. Those that put up constructions in accord with the law after obtaining permissions from several prescribed authorities, and those that put up buildings openly and brazenly flouting all legal procedures.

29. Moreover, the latter class would secure a premium for their unlawfulness. As it is, for reasons not very far to seek, the Panchayat bodies are reluctant to act diligently even after

witnessing the mushrooming of illegal constructions or even after receipt of repeated complaints. Therefore, if this *modus operandi*, having no sanction of the law, is encouraged, not only will the menace of illegal constructions explode, but the respect for the Rule of law would also implode. Therefore, the Hon'ble Supreme Court has repeatedly cautioned against any undue indulgence in retention of illegal constructions.

30. *Syed Muzaffar Ali (supra)* was a case where possibly the relevant Town Planning Statutes had made a provision for regularization. Therefore, liberty was granted to apply for compounding or regularization. *M/s. Rajatha Enterprises (supra)* was also a case where the relevant Town Planning Act possibly had a provision for regularization. On noticing that the builder had not resorted to any dishonesty, fraud or negligence, demolition of the illegal construction was not ordered. Besides, there was some issue about the Petitioner, who was not personally aggrieved by the unlawful construction but claimed to be a champion of the public cause. No such facts arise in the present case.

31. *Christopher Fernandes (supra)* was a case under Section 184(21) of the Goa Municipalities Act. This provision began with a *non-obstante* clause and permitted the Chief Officer, subject to the recommendation of the Council, to regularize any

construction in respect of which no notice as required under Section 184(2) was given on payment of a prescribed fine. This provision does not even remotely apply to the construction by respondent no.3, admittedly governed by Section 66 of the Panchayat Raj Act.

32. The records show that respondent no.3 put up unlawful construction without obtaining permission from any authorities. Moreover, even after a stop work notice was issued under Section 64(J) of the Panchayat Raj Act, respondent no.3 proceeded with the construction. It is apparent, therefore, that the unlawful construction was put up in defiance of the provisions in Section 66(1) of the Panchayat Raj Act and the stop work notice issued under Section 64(J) of the Panchayat Raj Act. Therefore, even assuming that any powers for regularization existed, this was not the case for exercising such powers. Any attempt at regularization would conflict with the Hon'ble Supreme Court rulings on this subject. Some such rulings are discussed hereafter.

33. In *Shanti Sports Club v. Union of India - (2009) 15 SCC 705*, the Hon'ble Apex Court has, after adverting to its several earlier judgments on the subject, 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 a substantial amount on the construction of the buildings. The Hon'ble Supreme Court proceeded to state that *unfortunately, despite repeated judgments of the Supreme Court and High Courts, illegal constructions continue to mushroom, and thereafter, pleas are made for regularization on grounds of compassion and hardship. Hon'ble Supreme Court has observed that it is high time that the executive and political apparatus of the State take a serious view of the menace of illegal and unauthorized constructions.*

34. In *Royal Paradise Hotel (P) Ltd. v. State of Haryana - (2006) 7 SCC 597*, the Hon'ble Supreme Court rejected the plea for regularization of construction made in violation of the provisions of the planning and municipal legislation by observing that no authority administering municipal laws and other laws like the Act involved in the matter, can encourage such violations. *Even otherwise, compounding is not to be done when violations are deliberate, designed, reckless, or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all the law requirements can alone qualify for regularization, which is not the Rule, but a rare exception.*

35. In *Friends Colony Development Committee v. State of Orrisa - (2004) 8 SCC 733*, the Hon'ble Apex Court has held that structural and lot area regulations authorize the municipal authorities to regulate and restrict the height, the 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 and do achieve the larger purpose of public health, safety or general welfare. So are front setback provisions, average alignments, and structural alterations. Any violation of zoning and regulation laws takes a toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience, and hardship posed to the occupants of the building.

36. The Hon'ble Apex Court further observed that though municipal laws permit deviations from sanctioned constructions being regularised by compounding, that is by exception. Unfortunately, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, the exception has become the Rule. *Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to*

be condoned and compounded. Therefore, compounding of deviations ought to be kept at a bare minimum.

37. Relying on the above decisions, this Court in ***Commissioner v/s. Tahir Isani – 2021 S.C.C. OnLine Bom 122*** had set aside the order of regularization of a patently unlawful construction. This decision was challenged before the Hon'ble Supreme Court of India by instituting Special Leave to Appeal (C) No.4135 of 2021. However, the same was dismissed by the Hon'ble Supreme Court, observing thus:-

" Heard learned counsel for the Petitioner.

The violation of municipal regulations on construction must be met with an iron fist. That deviation from the regularisation by compounding is only an exception. Only deviations that are bonafide or when the benefit of demolition would be less compared to the disadvantage suffered, can the exception be applied. We do not find any ground to interfere. The demolition was ordered in the year 2001. Till this day, the same is being prolonged. Hence, we decline to interfere with the judgment and order of the High Court. The Special Leave Petition stands dismissed."

38. In ***Capt. Lance Irwin Lobo v/s. Village Panchayat of Reis Magos, thr. Secretary & Ors. - Writ Petition No.1292 of 2022 (F) decided on 20.07.2022***, the Division Bench relying on *Shanti Sports Club (supra)*, *Royal Paradise Hotel (P) Ltd.*

(supra) and *Friends Colony Development Committee (supra)*, declined the Petitioner's prayer to seek regularisation of the illegal constructions. The petition for Special Leave to Appeal (C) No.15156 of 2022 against this decision was also dismissed by the Hon'ble Supreme Court on 02.09.2022.

39. Very recently, in ***Kaalkaa Real Estates Private Limited & Anr. V/s. Municipal Corporation of Greater Mumbai & Ors. - Writ Petition (L) No.22398 of 2022***, decided by the Division Bench of our Court on 20.09.2022, it was held that no indulgence must be shown to unlawful constructions that are brazenly put up. Only such deviations deserve to be condoned as are bonafide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered.

40. The Division Bench relied *inter alia* on ***Mahendra Baburao Mahadik & Ors. v/s. Subhash Krishna Kanitkar & Ors. - (2005) 4 S.C.C. 99, M.I. Builders (P) Ltd. vs. Radhey Sham Sahu (1999) 6 SCC 464, Sharad Nago Chinawale vs. Ulhas Devram Sabale, 2017 S.C.C. OnLine Bom. 8179, Overseas Chinese Cuisine (India) Pvt. Ltd. & Another vs. The Municipal Corporation of Greater Bombay & Ors. – (2000) 1 Bom CR 341, Savitribaiphule Shikshan***

Prasarak Mandal, Kamapur Vs. Solapur Municipal Corporation & Anr. 2019 S.C.C. OnLine Bom 1771, *Divgi Metal Wares Pvt. Ltd. Vs. Municipal Corporation of the City of Pune & Ors.* (2019) 5 Mah LJ 484, *Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others*, (2021) 10 S.C.C. (1), *K.Ramadas Shenoy vs. Town Municipal Council, Udipi*, (1974) 2 SCC 506, *Priyanka Estates International (P) Ltd. vs. State of Assam*, (2010) 2 S.C.C. 27, *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corporation of Mumbai*, (2013) 5 SCC 357, *Pratibha Co-operative Housing - Society Ltd. and another vs. State of Maharashtra & Others*, (1991) 3 SCC 341, *Jilani Building at Bhiwandi vs. Bhiwandi Nizampur Municipal Corporation and others*, (2022) S.C.C. OnLine Bom 386, *Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation and Ors.*, (2013) 3 S.C.C. (Civ) 72 and *Sudhir M. Khandwala vs. Municipal Corporation of Greater Mumbai & Ors.*, 2010 (2) Mh.L.J. 759, on the subject of regularisation of illegal constructions. Finally, the Division Bench reiterated that the regularization of illegal constructions brazenly put up in defiance of the legal provisions and the stop work notice must not ordinarily be permitted. The Hon'ble Supreme

Court dismissed the Special Leave Petition against this order on 26.09.2022.

41. For all the above reasons, the plea of Mr. Thali on behalf of respondent no.3 will have to be rejected. Since there is virtually an admission about the construction being unlawful, the Panchayat will have to take necessary steps to demolish the illegal construction within three months. In this case, not even an attempt was made to demonstrate the legality of the construction. The only argument was that the Panchayat must regularize the illegal construction. Since that plea lacks merit, as discussed above, the Panchayat cannot avoid action against the unlawful construction by Respondent no. 3 in brazen defiance of the law and the stop-work notice issued by the Panchayat.

42. The Panchayat, in this case, has failed to discharge its duty of preventing the unlawful construction from coming up even though the Petitioner made repeated complaints to it. The Sarpanch was content with issuing a stop work notice on 26.04.2022. However, despite protests that the construction was proceeding despite the stop work notice, the Panchayat took no further action to implement its own stop work notice. As a result, respondent no.3 proceeded to complete the construction, which he now admits was unlawful. Additionally, respondent no.3 only

claims some right of regularisation, which, for reasons discussed above, is not available to respondent no.3.

43. The Panchayat did not even bother to draw out a panchanama recording the construction status at the site at the time of the stop work notice issue. Despite specific directions of this Court in the order dated 05.05.2022, the Panchayat officials did not visit the site and make a record of the status quo. Though the Panchayat was directed to ensure compliance with its own stop work notice, no steps were taken by the Panchayat in this regard.

44. Therefore, the Panchayat facilitated the continuance and completion of the unlawful construction by respondent no.3. Therefore, it is only appropriate that the Panchayat must pay ₹25,000/- to the Petitioner. The Panchayat should recover such costs from the members and other officials, who were, at the relevant time, responsible for the execution of the stop work notice dated 26.04.2022. Further, since the respondent no.3 proceeded with the unlawful construction even after the receipt of the stop work notice and without obtaining permissions from any authorities, the respondent no.3 must also pay costs quantified at ₹25,000/-.

45. In **Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.** (2013) 5 SCC 336, the Hon'ble Supreme Court has held that illegal and unauthorized constructions violate the municipal laws and the concept of planned development of the particular area and affect various fundamental and constitutional rights of other persons. *The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing the master plan/development plan/zonal plan. The failure of the State machinery when it is required to deal with those who have money, power or unholy nexus with power corridors. Therefore there should be no judicial tolerance of illegal constructions by those who treat the law to be their subservient.* The Court disallowed the builder to avail benefit of regularization by holding that: *Respondent 7 cannot take benefit of Rule 25 because the disputed structure was in clear violation of the sanctioned plan and notices issued by the competent authority of the Corporation and also because the application was made after the completion of the construction.*

46. Accordingly, this petition is allowed by directing respondent no.2 - Panchayat to take necessary steps to demolish the unlawful construction by respondent no.3 within three months. The Panchayat should also pay costs of ₹25,000/- to the

Petitioner within three months. The respondent no.3 should also pay costs of ₹25,000/- to the Petitioner within three months.

47. The Panchayat should recover such costs from the members and other officials responsible for implementing the stop work notice dated 26.04.2022 so that public or panchayat finances are not employed to pay for the indolence and inaction of the panchayat officials. Unless such members and officials are held accountable and even personally responsible, this menace of illegal constructions encouraged by deliberate inaction or simply failure to discharge duties would grow and mushroom.

48. The Rule is made absolute in the above terms.

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49. At this stage, Mr. Thali, learned counsel for the respondent no.3 seeks a restraint on the Panchayat to undertake demolition for a period of six weeks. We have given the Panchayat three months time to take steps to demolish the unlawful construction. However, we now direct the Panchayat not to proceed with the demolition for six weeks from today.

BHARAT P. DESHPANDE, J. M. S. SONAK, J.

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