



AFR



2026:AHC:147816-DB

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 2229 of 2026

Faimuddeen and 2 others

.....Petitioner(s)

Versus

State of U.P. and 7 others

.....Respondent(s)

Counsel for Petitioner(s)	: Shamsuddin Khan, Syed Ahmed Faizan, Zaheer Asghar
Counsel for Respondent(s)	: C.S.C., Dileep Kumar Srivastava, Sant Ram Sharma

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.
HON'BLE SIDDHARTH NANDAN, J.

(Per: Hon'ble Atul Sreedharan, J)

لوگ ٹوٹ جاتے ہیں ایک گھر بنانے میں
تم ترس نہیں کھاتے بستیوں جلانے میں
लोग टूट जाते एक घर बनाने में
तुम तरस नहीं खाते बस्तियां जलाने में

*People face ruination in just making a home
and you feel no remorse setting ablaze entire settlements*

....Bashir Badr (passed away on: 28/05/2026)

“..... For an average citizen, the construction of a house is often the culmination of years of hard work, dreams, and aspirations. A house is not just a property but embodies the collective hopes of a family or individuals for stability,

security, and a future. Having a house or a roof over one's head gives satisfaction to any person. It gives a sense of dignity and a sense of belonging....”¹

‘Home is where the heart and hearth is’, so it is said.

It is where a warm meal awaits a man when he returns from a gruelling day’s work, it is where his wife (in the larger Indian context even today) feels a sense of pride and accomplishment as a sheet anchor of the family, holding it together through trying times, it is where his children have a stable and settled environment to study and progress in knowledge and ability, to contribute to the family, society and nation once they grow up, it is where his old parents rest blissfully in the evening of their lives making peace with the aches and pains only because of they have a home. A man can absorb the uncertainties of life and bounce back if he has a shelter over his head. Take that away abruptly without giving him adequate time to re-settle himself elsewhere, and you may have consigned, not just him, to the deepest abyss of despair, but all those dependent on him, whose normal rhythm of life was dictated by a sense of security of not having to bother about a safe shelter.

2. The Supreme Court of India recently passed an epoch-making judgement in “**In re: Directions in the Matter of Demolition of Structures**”² (hereinafter referred to as the

¹ Supreme Court In re: Directions in the Matter of Demolition of Structures – (2025) 5 SCC 1 – Paragraph 89.

² (2025) 5 SCC 1

“bulldozer case”), to put an end to State action of razing the houses of those accused of a crime. This action by the State is largely to satiate the perceived blood lust of a society fed on a staple diet of bulldozer justice over the electronic media, social media and messaging platforms, on account of which the State of Uttar Pradesh (and now several others), has found it convenient to raze the dwelling place of citizens in the name of irradiating “land mafia” and removing “illegal encroachments”, a phrase substituting the word “criminals” after the Supreme Court judgement against demolition of dwelling places of persons accused of crime. This judgement was followed up by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Ors.**,³ and supplementary directions were passed. While the bulldozer case was to prevent and regulate the demolishment of dwelling place of the accused after the commission of an offence, the judgment in Rajendra Kumar Barjatya issued directions in paragraph 21 of far reaching consequences to prevent the mushrooming of illegal dwelling places.

3. Two situations emerge for consideration before this Court. The **First** relates to the demolition of dwelling places of persons accused of a crime. The **Second** is demolition of dwelling places (residence and/or place of business) which have existed for long, under the pretext that they are illegal encroachments on government land. However, the judgment

³ 2024 SCC OnLine 3767

of the Supreme Court notwithstanding, the demolition of structures continue at will, with the State running through the mandatory directions of the Supreme Court in the case abovementioned within a couple of months and then demolishing the structure even before the affected citizen has a fighting chance to approach the courts for succour. This decision of the Supreme Court notwithstanding, the executive continues with its actions of demolishing homes across the country with impunity⁴, and therefore this judgement aims to curtail all demolitions of dwelling places in the State of Uttar Pradesh by *inter alia* adopting all the directions of the Supreme Court passed **In re: Directions in the Matter of Demolition of Structures and Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Ors.**, as direction of this Court and ensure that all future demolitions of dwelling places in the State Uttar Pradesh are strictly in accordance with the directions of Supreme Court, passed in aforementioned judgements and the judgement of this Court, and any violation of the same, the citizen so affected can sustain a contempt petition before this Court instead of approaching the Supreme Court.

4. There are three Petitioners in the case under judgement. They reside at 386 Thokchand, Ward No. 11 Bharua Sumerpur in District Hamirpur. Petitioners 1, 2 and 3 are son, father and mother, respectively. According to the Petitioners, the

⁴ <https://sabrangindia.in/razed-to-the-ground-taken-to-court-the-legal-and-social-fallout-of-indias-demolition-drives/>

residential house was purchased through an agreement to sell dated 11/12/2001, and the Petitioner No. 2, by another sale deed executed on 11/12/2001, purchased additional portion of the property from the same seller and later, by a third sale deed dated 27/01/2009, purchased the remaining part of the property from the seller Maiya Deen, and on the basis of the aforesaid sale deeds, the Petitioner No. 2 claims himself to be the owner in possession of the residential property. However, the title deeds of the house are presently inside the house to which the Petitioners do not have access to.

5. An FIR bearing Crime No. 20/2026 came to be registered against one Aafan Khan, S/o. Ainuddin @ Maulana Khan, R/o. Kamlesh Tiraha, Kasbah and Thana Sumerpur, District Hamirpur, u/ss. 64(1), 62/351(3), 61(2) of the BNS and s. 67(A) of the IT Act, s. 3 and 4 of the POCSO Act and s. 3 and 5(1) of the U.P Prohibition of Unlawful Religious Conversion Act. The accused Aafan Khan is the cousin of Petitioner No.1 and the nephew of Petitioner Nos. 2 and 3. It is stated on behalf of the Petitioners that a mob targeted the house of the Petitioners immediately after the incident, allegedly in collusion with the police.
6. The case of the Petitioners appears to be (1) that though the Petitioners are not co-accused in the FIR (subsequently, the Petitioner No.1 was included as a co-accused during the pendency of this petition), the Respondents have issued a notice to the Petitioner No.2 who owns the residential house

in which they dwell, immediately after the commission of the offence and registration of the FIR. (2) A commercial property registered in the name of the Petitioner No.3 as “Indian Lodge”, has been sealed by the Respondents, (3) a saw mill, the license of which has been renewed in the name of the Petitioner No.2 on 11/02/2025, has lapsed and its renewal is pending, which too has been sealed by the Respondents, and (4) an apprehension has been voiced by the Petitioners that their properties are marked for destruction by *mechanical means* (a euphemism for bull dozer action). The prayer is for judicial intervention to prevent the anticipated destruction of the properties.

7. The State on the other hand has argued for the dismissal of the petition on the grounds that (1) the petition is premature as no cause of action has arisen and the Petitioners have to respond to the notices issued to them, (2) that the residence and the lodge have not been sealed, (3) that the Petitioners have not approached the Court with clean hands as they have concealed the fact that the saw mill was sealed as prohibited wood (neem and dhaak) were recovered from its premises, and (4) an assurance has been given orally by Mr. Anoop Trivedi, the Ld. Additional Advocate General that no demolition would take place without adhering to the procedure established by law and without giving a due opportunity to the Petitioners to place their case before the authorities concerned.

8. This Court is a witness to several cases where the notice for demolition is issued to persons occupying a dwelling place, hard on the heels upon registration of an FIR and thereafter demolished after the ostensible fulfilment of statutory requirements. These demolitions have continued unabated, notwithstanding the law laid down by the Supreme Court in **Re: Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022 – (2025) 5 SCC 1)** that punitive demolition of structures is violative of the separation of powers, as the authority to punish for an offence, vests exclusively with the judiciary.
9. Therefore, bearing in mind the overarching nature of the case spanning the right of the state to demolish a dwelling place and the rights of its occupants under Article 14 and 21, and how these demolitions continue in the State despite the judgement of the Supreme Court which compelled this Court to frame the following issues for consideration. (1) **Is there non-compliance of the judgement of the Supreme Court in Re: Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022 – (2025) 5 SCC 1) with specific reference to paragraphs 85 and 86 of that judgement?**, (2) **Does the authority to demolish, justify the act of demolishing a structure or, is there a duty on the anvil of *parens patriae* upon the State, not to demolish a dwelling place in the absence of public need/purpose?**, (3) **Would steps taken in the direction of demolishing a structure immediately**

following the commission of an offence, be a *colourable exercise of executive discretion*?, (4) how is the High Court to balance the conflicting interests between the statutory authority of the State to demolish a structure and the fundamental right of the average citizen under article 21 and 14, to prevent it?, and (5) can “reasonable apprehension” of demolition be a cause of action for a citizen to approach this Court and if ‘yes’, what is the bare minimum for this Court to hold the existence of such “reasonable apprehension”? All these questions are answered together in this judgment generally.

10. The parties have advanced oral arguments through their respective Ld. Counsels and have placed on record their written submissions in support of their arguments.

THE PETITIONER’S CASE

11. On behalf of the Petitioners, Mr. S.M.A. Naqvi, Ld. Sr. Counsel, has argued that the Petitioners are law abiding citizens and the sealing of their residential house, sawmill and the lodge, without any notice and in disregard of the procedural formalities prescribed under the law, renders the state action unconstitutional and violative of the petitioners rights under Article 14, 19(1)(g), 21 and 300-A of the Constitution of India. It is further submitted that the Petitioners are residing in the residential house since the year 2001 and till date no objection regarding the title, construction or land use was ever raised by the authorities.

As regards the commercial establishments being the ‘Indian Lodge’ and the ‘Saw Mill’, they are registered as per the requirement of law and license has been granted by the authorities concerned and has been in operation for more than twenty-five years without any objection.

12. He has further submitted that on 16/01/2026, a criminal case was registered against one Aafan Khan, S/o. Ainuddin @ Maulana Khan, a relative of the Petitioners, who is a resident of Kamlesh Tiraha, Kasba and Thana Sumerpur, District Hamirpur. The details of the FIR is already given in paragraph 5 *supra*. Upon the registration of the aforementioned FIR against the accused, who is not sharing the same roof with the Petitioners, and neither has he any concern in the business interests of the Petitioners in the commercial establishments in question, the Respondent authorities are threatening to demolish the residential house of the Petitioners and have already sealed the ‘Indian Lodge’ and the ‘Saw Mill’. The Ld. Counsel for the Petitioners has placed reliance on the judgment of the Supreme Court in **Re; Directions in the Matter of Demolition of Structures (Writ C No. 295 of 2022, reported in 2025 5 SCC 1)** to canvas the proposition that the action of the Respondent authorities violate the rule of law and the doctrine of ‘Separation of Powers’ as the Petitioners have been condemned by the executive without recourse to the prescribed procedure.

THE RESPONDENT'S CASE

13. Mr. Anoop Trivedi, Ld. Additional Advocate General has submitted that the State has not yet sealed the residential house of the Petitioners nor their commercial establishment operating under the name and style of the “Indian Lodge”. He has categorically stated that the demolition or sealing of the said two properties shall not take place without adherence to procedure established by law.
14. As regards the sealing of the sawmill, the Ld. Additional Advocate General has stated that the same was done at the behest of the Forest Department as wood (Neem and Dhaak) whose possession is prohibited under the law, was recovered from the premises of the Petitioner’s saw mill. In this regard, he has placed on record instructions dated 20/01/2026, received by his office from the Divisional Forest Officer, District Hamirpur, annexing the recovery memo and the seizure report disclosing that the saw mill which was licensed in the name of the Petitioner No. 2, was being operated even after the expiry of the license on 31/12/2025 and upon inspection, the prohibited wood mentioned hereinabove was recovered which resulted in the sealing of the saw mill and the issuance of a show cause notice dated 20/01/2026 to the Petitioner No. 2, which was not replied to till the date on which this case was being heard. He has also submitted that in the event the Petitioner No. 2 submits his reply, further

proceedings shall be undertaken as per Rule 8 of the Rules of 2018 after considering his reply.

15. The Ld. AAG has also brought on record, an FIR dated 18/01/2026 being Case Crime No. 22/2026, registered against the Petitioner No. 2 under sections 69, 41, 42 and 77 of the Indian Forest Act, 1927 and section 3, 28 of the UP Transit of Timber and Other Forest Produce Rules, 1978 (two days after the registration of the FIR against Aafan Khan, the nephew of the Petitioner No. 2 was registered on 16/01/2026).
16. For the sake of brevity, this Court is not diving deep into the intricate facts of the case for the same is not essential for a decision as, this case examines the province of 'Executive Discretion and Action' in the backdrop of the rights of citizen's protected under the Constitution.
17. In the bulldozer case, the focus of the Supreme Court was on the question if the dwelling place of a person accused of an offence or even convicted, could be razed without following the due process of law and how such individuals can be protected from arbitrary State action? (paragraph 15 and 16 of that judgement)
18. The Supreme Court also held that it was only the justice system that could adjudge the guilt of an accused and if so found guilty, punish him for the same (paragraph 19 of that judgement). It further emphasised the protection of human rights and dignity and the enforcement of the rule of law to

prevent the abuse of power (paragraph 22 of that judgment).

Supreme Court laid down that the rule of law is a safeguard against arbitrary State action and would ensure that governance is based upon established legal principles rather than arbitrary discretion (paragraph 32 of that judgement).

19. After emphasising the importance of governance by rule of law, the Supreme Court spoke about the separation of powers and referred to Indira Nehru Gandhi Vs. Raj Narain -1975 Supp SCC 1, and held that the separation of powers was a part of the basic structure of the Constitution (paragraph 40 of that judgement) and State actions causing loss are actionable under public law with the Courts as protectors of civil liberties would safeguard the public from the devastating result of State action (paragraph 51 of that judgment). The Supreme Court emphasised the importance of the “principles of public accountability” and held that the said principle is applicable on the government officials and that every officer in the hierarchy of the State being a public officer or a public servant is accountable to the State and the public and the same should be applied in the larger public interest for proper governance (paragraph 52 of that judgment).

20. The Supreme Court went on to hold that an accused or the convict also have certain rights and safeguards and the destruction of their house would be an act contrary to the principles of the rule of law and the State acting as Judge,

would be violative of the concept of separation of powers and those who take the law into their own hands must suffer the just desserts for their actions (paragraph 56 of that judgement). It also held that the accused have certain legal and constitutional safeguards and that the State and its servants cannot act arbitrarily against accused or convicts without following the due process sanctioned by law and where, the right of the accused or the convict has been violated on account of illegal or arbitrary exercise of State authority, compensation would be due to the affected person and the public servant responsible shall be taken to task for his indiscretion (paragraph 65 of that judgement).

21. As per the Supreme Court, the executive has no right to declare a person guilty of an offence as that was only through a process of judicial scrutiny, and therefore it cannot demolish the property of an accused as a punishment without following the due process of law. (paragraph 74 of that judgement). Would this mean that a person accused of crime or convicted of a crime could have his house demolished immediately after he was made an accused in a criminal case only because the procedure established by law was followed? The Supreme Court has in places said that the house cannot be demolished if the intention was punitive and at places stated that it cannot be demolished unless the due process of law was adhered to. However, what the Supreme Court has not taken into consideration in the bulldozer case is that

demolishment of the house of the convict is not a prescribed punishment under the Bharatiya Nyaya Sanhita. The demolition of a dwelling place is governed by municipal laws, building code violations, unauthorised constructions, structures declared as dangerous to human habitation and violation of urban planning statutes. The Supreme Court posed a question to itself if the house of a person accused or convicted of a crime can be inflicted the punishment of demolition of his house and holds that “The answer is an emphatic “No”” (paragraph 78 of that judgement). However, two paragraphs before, the Supreme Court holds that in the case of a person accused or convicted of an offence, his property/properties cannot be demolished without following the due process of law prescribed by law (paragraph 76). This is open to interpretation by the executive to mean that it has the right to demolish the property belonging to an accused or a convict after complying with the due process of law.

22. The bulldozer judgment also holds that right to shelter as one of the facets of Article 21. The State argued that in all the cases where removal of illegal construction was ordered, it was merely a coincidence that one of the members living in the house to be demolished was an accused in a criminal case. Whereas the Petitioners argued that the proximity between the offence and the proceedings for demolitions were so short that the State action betrayed the motive as punitive. Supreme Court considered the conflicting arguments of the

State and the Petitioners and held that at times it maybe a coincidence as stated by the State. But, when a structure is chosen suddenly for demolition while the rest of the structures in the vicinity or the same neighbourhood are untouched, *mala fide* could loom large and a presumption could be drawn that the apparent reason could be the removal of illegal construction while the actual reason could be to punish the accused (paragraphs 79, 81-82, 84 of that judgement).

THE INTERPLAY BETWEEN RIGHT TO LIFE, LIVELIHOOD AND SHELTER

23. The fountainhead case examining the interplay between the right to life and livelihood is the Constitution Bench judgement of the Supreme Court in **Olga Tellis Vs. Bombay Municipal Corporation**⁵. The pavement and slum dwellers of Mumbai approached the Supreme Court against the action of the Bombay Municipal Corporation (hereinafter referred to as the “BMC”). In that case, the Petitioner did not contend that they have a right to live on the pavements but that they had a right to live which would be illusory if they did not have a right to livelihood. It was non-availability of the means of employment at the place where they originally hailed from that compelled them to flock to Mumbai, and that this right can only be curtailed or taken away by a procedure established by law that was “fair and reasonable and not

⁵ (1985) 3 SCC 545

fanciful or arbitrary such as prescribed by the Bombay Municipal Corporation Act and the Bombay Police Act” (paragraph 2). In *Olga Tellis*, the Petitioners had challenged the proposed act of the Respondents to demolish the huts of the Petitioners (paragraph 9). The argument of the Petitioners was that their eviction from the pavements and slums will lead to a vicious circle of deprivation of employment, livelihood and therefore life itself (paragraph 21).

24. A contention was raised by the Respondents (in *Olga Tellis*) that the Petitioners be estopped from projecting their fundamental rights as a defence to the demolition of their huts, to which the constitution Bench responded by holding that **“There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose”**⁶. Poignant and powerful words from the Supreme Court which are ever more relevant today than ever before when houses are demolished across India, even after the judgement of the Supreme Court in the bulldozer case.
25. The flagship argument of the Petitioners in *Olga Tellis* was that the right to life protected by Article 21 is meaningless if the right to livelihood is not read into it. They submitted that they would be deprived of their livelihood if they are evicted from their slum and pavement dwellings as they cannot find

⁶ *Olga Tellis Vs. Bombay Municipal Corporation* – (1985) 3 SCC 545 – paragraph 28 at page 569

meaningful work for themselves if they do not have a home to live in, irrespective of the condition that it is in. The Constitution Bench held **“Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.**

Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood”⁷. The observations of the Supreme Court establish as an indelible proposition that right to life includes the right to livelihood and that the suspension of the right to livelihood even for a single day, without any compelling cause would be a violation of the affected person’s right to life itself.

26. Further, in the same judgement, the Supreme Court analyses Art. 39(a), a Directive Principle of State Policy and reiterates that the policy of the State shall be directed in securing its citizens and adequate means of livelihood and within the financial limitations of the State, endeavour for securing the right to work of those who are unemployed, a required of the State in Art 41. The Supreme Court held “.....**That If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the**

⁷ *Olga Tellis Vs. Bombay Municipal Corporation* – (1985) 3 SCC 545 – Paragraph 32 at page 571

content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21”⁸.

27. Interestingly, in the year 1985, when the judgement in *Olga Tellis* was passed by the Supreme Court, the total population of India was 772,648,000⁹ or seven hundred and seventy two million and six hundred and forty-eight thousand, or seventy seven crores twenty six lakhs and forty eight thousand. Strangely, the State, for some inexplicable and convoluted reasoning, takes pride in confessing that it today feeds, free of charge, more than 800,000,000, eight hundred million or more than eighty crore citizens each month, which is more than the entire population of India as it stood in the year 1985, and more than 50% of its entire population today which is approximately 1400,000,000 one thousand four hundred million or one hundred and forty crores or one billion and four hundred million people, who would otherwise perish from starvation, being incapable of generating sufficient wealth to afford two square meals a day.

⁸ *Olga Tellis Vs. Bombay Municipal Corporation* – (1985) 3 SCC 545 – Paragraph 33 at page 572

⁹ <https://www.populationpyramid.net/india/1985/>

28. There is a nexus between poverty, unemployment and migration of citizens from rural areas and semi urban areas of the country to the larger cities which leads to creation of unauthorised colonies and ghettos which get marked for demolition one fine day after decades of their existence. This problem was red flagged by the Constitution Bench of the Supreme Court in *Olga Tellis*, forty-six years ago, at paragraph 32 of that judgment.
29. The increasing population of the country is directly proportional to the reduction of resources with the most valuable resource being **land**. The area of land that India had in the year 1985 is the same area that it has in 2026. However, the population which requires land for habitation has increased about 100% in these forty-six years. The density of population in the State of Uttar Pradesh is 829/sqkm (eight hundred and twenty nine persons per square kilometre) as per the census of 2011 which is more than double the national average of 364/sqkm (three hundred and sixty four persons per square kilometre) thus, land is a premium commodity and compels those who cannot afford legitimate housing to move to areas where housing is cheaper but its legitimacy is dubious. The residents of these unauthorised colonies are the *les miserables* of our people, poor, lower middle class and at some places, the middle class. This is not to say that the rich in India live in houses and gated communities that are fully legitimate, but they remain largely untouchable on

account of their influence through wealth and/or bureaucratic and political patronage and the ubiquitous and all pervasive culture of corruption that has been normalised and institutionalised in India.

30. Generation of wealth in any society is by way of employment (by self-employment or working for another or a company).

In an article published in an online magazine “Mint”¹⁰ on 27/03/2024, drawing data from the “Indian Employment Report 2024”, jointly published by the International Labour Organisation and the Institute of Human Development. It reflects that the percentage of youth possessing at least a secondary education amongst the total unemployed youth doubled from 35.2% in 2000 to 65.7 percent to 2022. This coupled with India’s GDP per capita for the year 2025 was \$2523.4¹¹ which roughly translates to ₹ 2,41,422.29. Which amounts to a little more than ₹ 20,000/month. The per capita income in the State of Uttar Pradesh for the year 2024-2025 was ₹ 1,09,000/- (rupees one lakh and nine thousand) which is about ₹ 9083/- (rupees nine thousand and eighty three) per month, which is less than 50% of the national average, making the State, the second poorest State in India after Bihar¹².

31. Human experience of the ground reality which this Court must draw upon, is that it is almost impossible for a person

¹⁰ <https://www.livemint.com/news/india/unemployment-crisis-83-of-jobless-indians-are-youth-says-international-labour-organisation-report-11711517084127.html>

¹¹ <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=IN>

¹² <https://statisticstimes.com/economy/india/uttar-pradesh-economy.php>

earning just about ₹ 9,083/month to own a dwelling place in a gated community, built on a land acquired legitimately with all State clearances. Thus, while the constitution law acknowledges the right to shelter as a fundamental right of even a person who earns only ₹ 9,083/- a month, he falls foul of the municipal laws while fulfilling his fundamental right as he is unable to possess a home that is compliant of the intricate requirement of the municipal laws because of his pathetic financial condition, thus making his home a vulnerable target for demolition, maybe decades later.

32. The irony of this picture is that while the Constitution Courts acknowledge that a citizen's right to shelter is a fundamental right, it can still be demolished for being violative of the municipal laws. There however is a limitation upon all fundamental rights which the Courts have consistently held as reasonable for rights are not absolute and can be curtailed or extinguished as per procedure established by law. Thus, the fundamental right to shelter can be trumped (no pun intended) if the property is not compliant of the municipal laws.
33. The Supreme Court held that right to life includes the right to livelihood and that if the pavement dwellers were evicted, they will be deprived of their right to livelihood. Thereafter, it held that the constitution does not put an absolute restriction on the deprivation of life which is in accordance with procedure established by law (paragraph 37 of Olga

Tellis). But it also held that the procedure prescribed by law for depriving a person of his fundamental right must conform to the broad principles of justice and fair play as procedure that is unjust or unfair would be unreasonable thereby vitiating the law and the action taken under it. It held **“Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards : the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it”**¹³.

34. While in *Olga Tellis*, the Supreme Court examined the intersection between the right to life and right to livelihood and how the right to life can be rendered meaningless without acknowledging the right to livelihood and laid down how a dwelling place, be it on a pavement or in a slum, was an integral part of the right to livelihood of a citizen.

35. As regards the **right to shelter**, the Supreme Court in **Chameli Singh Vs. State of U.P** held that **“...Shelter for a human being, therefore, is not a mere protection of his life and limb.**

¹³ *Olga Tellis Vs. Bombay Municipal Corporation* – (1985) 3 SCC 545 – Paragraph 40 at page 577

It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been **guaranteed as a fundamental right**¹⁴. The Supreme Court has clearly emphasised and laid down that the right to life does not mean the right to live an animal existence but includes the right to shelter which is essential for the overall and wholesome development of the human being as a human being. In **Shiv Sagar Tiwari Vs. Union of India**, the Supreme Court took cognizance of its earlier judgement in *Olga Tellis* and held **“May we also observe that life, livelihood and shelter are so mixed, mingled and fused that it is difficult to separate them. To take away life, it would be enough to take away livelihood; and to earn livelihood, which in urban areas is ordinarily at places away from one's own home and hearth, shelter would be necessary — be it a house or even a pavement”**¹⁵.

¹⁴ *Chameli Singh Vs. State of U.P* – (1996) 2 SCC 549 – Paragraph 8 at page 555

¹⁵ *Shiv Sagar Tiwari Vs. Union of India* – (1997) 1 SCC 444 – paragraph 3 at page 447

36. Most recently, the Supreme Court in **Mansi Brar Fernandes Vs. Shubha Sharma** observed that “This Court has, in a catena of decisions, consistently held and reaffirmed that the Right to Shelter is an integral part of the right to life under Article 21 of the Constitution. This recognition casts a corresponding duty on the State to ensure access to adequate housing, particularly for weaker sections”¹⁶.
37. Likewise, the Supreme Court in **Zulfikar Haider and Another Vs. State of Uttar Pradesh and Ors.**,¹⁷ while examining a case where the property of the Petitioners were razed to the ground without adhering to the procedure mandated by the Supreme Court in the bulldozer case, the Supreme Court expressed its angst on the manner in which the demolitions were undertaken by observing that “these cases shock our conscience” (paragraph 3) as the demolition was carried out close on the heels of the judgment of the Supreme Court in the bulldozer case. As regards the right to shelter being a right to life, the Supreme Court held “The authorities, especially the development authority, must remember that the right to shelter is also an integral part of Article 21 of the Constitution of India. This right can be taken away only by following due process of law. Moreover, our country is governed by the rule of law, which is an integral part of the basic structure of the Constitution. The residential

¹⁶ **Mansi Brar Fernandes Vs. Shubha Sharma** – (2026) 4 SCC 1972 – paragraph 54 at page 304

¹⁷ 2025 SCC OnLine 766

structures of citizens cannot be demolished in such a summary manner without following the principles of natural justice...”¹⁸. The Supreme Court was sensitive to the loss of the Petitioners in that case and awarded a compensation of ₹ 10,00,000/- to each of the Petitioners.

38. Thus, the discussion on the judgements hereinabove, is merely an elucidation of the law laid down over decades of judicial pronouncements that the right to life, include the right to livelihood and the right to shelter without which, the right to life itself would be rendered meaningless and animalistic. However, these judgements of the Supreme Court notwithstanding, the demolitions continue with impunity as though these judgments do not exist, or the State is certain that the defiance towards the law laid down by the highest Court of the land shall not visit them with any adverse consequences.

39. In an article by the online site sabrangindia.in titled **“When the Rule of the Bulldozer Outpaces the Rule of Law: One year after this landmark judgment”**¹⁹, where instances of bulldozing dwelling places without complying with the procedure given in the bulldozer case, have been documented, and the first case mentioned in the article was of the March 2025 from Prayagraj in Uttar Pradesh, where the Supreme Court awarded compensation of ₹ 10,00,000/-

¹⁸ **Zulfiqar Haider and Another Vs. State of Uttar Pradesh and Ors.**, - 2025 SCC OnLine 766 – paragraph 12

¹⁹ <https://sabrangindia.in/when-the-rule-of-the-bulldozer-outpaces-the-rule-of-law-one-year-after-this-landmark-judgment/>

to each of the six Petitioners in that case²⁰. Therefore, the question arises with regard to the cause for such demolitions by the State, which already as stated by this Court in paragraph 2 *supra*, is an act by the State under the perception that it is satiating the bloodlust of a society that is intolerant to due process of law or the procedure established by law and wants immediate redressal of grievance by bulldozing the house of the accused even before the criminal justice system has found the accused guilty as charged. The State is certain that that the society suffers from collective schadenfreude and shall applaud the State for dispensing vigilante style summary justice, without adhering to the procedure established by law and secures pleasure from the misfortune of the other person suffering loss. In such a situation, it is for the Constitution Courts to evolve a jurisprudence that is Constitutionally and legally valid.

RETRIBUTIVE EXERCISE OF EXECUTIVE DISCRETION: THE PRESSING NEED TO CARVE A NEW SPECIE FROM THE GENUS OF COLOURABLE EXERCISE OF EXECUTIVE DISCRETION.

40. Colourable Exercise of Executive Discretion can render an otherwise lawful act, unlawful. Simply stated, it means that where the entrusted power or authority is exercised for a reason other than which the power was intended, and the resultant effect is adverse upon another, that action, though otherwise legitimate under the law, is rendered unlawful on account of malice in law.

²⁰ **Zulfiqar Haider and Another Vs. State of Uttar Pradesh and Ors., - 2025 SCC OnLine 766**

41. The continuation of the bulldozer actions by the State as is attempted in the case of the Petitioners herein, has compelled this Court to carve out a Specie of **Retributive Exercise of Executive Discretion** as the Vilest Specie of the Genus Colourable Exercise of Executive Discretion. In bulldozing the house of a person accused of an offence, the State is not acting with the avowed aims of enforcing the Statement of Objects and Reasons of the municipal laws but to punish the accused and his entire family staying in that house, while projecting the action as one of removing an illegal construction.
42. A dilemma that has dogged the courts since time immemorial is the choice between enforcing the legislative will as it is or doing justice. Though they are cognate concepts the distinction between them is real and palpable. While Laws generally, are the enforceable will of the sovereign and in a democracy like ours, the will of “we the people of India”, enacted through the legislature by elected representatives, resulting in codified rights and liabilities. Justice on the other hand, is the enforcement of constitutional rights of citizens by the courts with the preamble as its north star, while adhering to constitutional values and imperatives for the fulfilment of the constitutional ideal of securing a welfare state and enforcing the rule of law.
43. The vexatious question before this court in such cases is whether the will of the legislature should be enforced as it is

without any consideration for the consequences that may follow for the citizen? The legislature being elected by the people, unquestionably legislates for the larger good of the society. It is also undeniable that the legislature acts in good faith and that must always be the presumption. However, the operation of the laws may not have the effect desired by the legislature, for at times the road to hell is paved with good intentions.

44. The enforcement of the statute ‘as it is’, can at times result in grave injustice. Illustratively, the courts have seen at times the injustice resulting from the application of the provisions of the POCSO where minors from the rural landscape, economically backward, Illiterate or semi-literate, elope, stay together, work as manual labourers, get married and have children and upon their return to their village, the husband is arrested, tried and convicted and imprisoned for a minimum of ten years only because of his wife being a minor on the date on which they eloped. Courts have grappled with the question as to how is justice served by imprisoning the husband, the sole bread winner and exposing the wife and children to destitution as they find no support from their respective families? So is the case with the enforcement of municipal laws which at times is not for the bonafide purpose of securing the ends of the municipal laws, but to punish the accused and his entire family which includes women, the old and children, by demolishing his house for an offence he is

alleged to have committed, resulting in them be rendered homeless overnight and suffer destitution till they find an alternate shelter.

45. In the context of the present case under judgment, the chapter on directive principles of State policy, is the conscience governing State action. It amplifies the desire of the constitution to secure a welfare state with prevalence of the rule of law and making the state aware that its actions must be towards that end alone. Though well settled it is, that this chapter is non justiciable, yet the same remains a guide to the State while it performs its executive functions, and the judiciary to examine if State action, though legal under statute, is just?

46. Thus, where the motive behind a state action, apparent or actual, is for purposes other than the Statement of Objects and Reasons of the municipal laws, then it would be reasonable to infer malice on the part of the State for acting in contravention of Art. 39(a) by creating a circumstance where the right to livelihood of the citizen is put to sword while Art. 39(a) of the Constitution demands that State policy must be directed to create livelihood for the citizen. Therefore, where the State, instead of creating an environment where the citizen can fulfil his right to livelihood, acts in contravention to the Statement of Objects and Reasons of the municipal laws and extinguishes the right to livelihood of a citizen by violating his right to shelter, the

Courts may infer malice in law, as the act would a Retributive Exercise of Executive Discretion.

47. In the present era, where there is rampant violations of building norms and it is also a well-known fact that most of the buildings, including at times build by the development authority itself, is not complying with the norms; and as such one sided action to correct the measures, by way of the retributive exercise of the executive discretion, has also to be dealt with; or else this Court will be failing in its constitutional obligation itself. The Court must adapt to the changing times and understand the dynamics of the times and accordingly mould the law in order to fit the times without doing violence to the *just scriptum*. In the words of the eminent jurist and constitutionalist V. Sudhish Pai **“The Need for adapting the law to meet the new urges in society, i.e., demanded the readjustment of legal norms by a changed social context in a changing society, brings home the truth of the Holmesian aphorism that the life of the law has not been logic, but experience and that law is forever adopting new principles from life at one end and sloughing off old ones at the other. As in life, so in law, things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, which indeed it should, must adapt itself to cope with new situations. The Court must understand the**

purpose of law in society and help law to achieve that purpose. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality”²¹.

48. In the case of **K. Ramadas Shenoy v. Town Municipal Council, Udipi**²², the Apex Court observed that when the municipality acts in excess of the powers conferred by the Act or abuses the powers, then in those cases as a matter of fact it is usurping powers which it does not possess; and if under pretext of any authority, which the law does not give to the municipality, it goes beyond the limits of its authority, and infringes or violates the rights of others, it becomes like all other individuals, amenable to the jurisdiction of the court.

49. This however is not to mean that the citizen has a right to shelter by violating the municipal laws, but only states that where such violation occurs, the endeavour of the State must be to assist the citizen by rectifying the wrong through compounding where possible, else assist him by giving him reasonable time to resettle himself and thereafter demolish the offending structure. But a pedantic application of the municipal law and running through its requirements within three to six months and thereafter demolish his dwelling where he may have been residing for decades, would not be the hallmark of a welfare State. It has to be borne in mind by

²¹ V. Sudhish Pai - Constitutional Supremacy – A Revisit – Page 26

²² 1974 2 SCC 506

the State, that the Supreme Court in the bulldozer case has mandated that the final order of demolition of a dwelling place shall mandatorily spell out whether the violation of municipal law was compoundable and if not, the reasons why it cannot be compounded and the extreme step of demolition is the only available option²³. The spirit of the Supreme Court judgment is that the option of demolishing a dwelling place should be the last and the State must explore options of avoiding such an eventuality, and where there is no option other than demolishing it entirely, cogent reasons have to be recorded disclosing why the State has no option but to demolish the entire structure as regularisation/compounding was an impossibility. If the State order does not disclose this in the order of demolishment, and the Structure is demolished, the State would be in gross contempt of the Supreme Court order, and now of this Court, it having adopted the same by this judgement.

50. Though, the state action may seem to be in consonance with the municipal laws as far as fairness of procedure is concerned, the action would still be ultra vires of the statute on account of the contrived motive behind the State action. Whether the motive was in accordance with the statute or the same was malicious, can reasonable be inferred from the attending circumstances specific to every case which may

²³ (2025) 5 SCC 1 – paragraph 94.10 (b, c and d)

suggest that the state action is bad on account of malice in law.

51. In this regard, it would be relevant to refer to the objects behind “Uttar Pradesh Urban Planning and Development Act, 1973”; which is to provide for the development of certain areas of Uttar Pradesh, according to plan and for matters ancillary thereto. Under Chapter II of the Act, 1973, the objects of the development authority have been clearly spelled out. For ready reference Section 7 of the Act, 1973 is reproduced below:

“7. Objects of the Authority - The objects of the [local development authority]¹ shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto Provided that save as provided in this Act nothing contained in this Act shall be construed as authorizing the disregard by the Authority of any law for the time being in force”.

52. Thereafter Chapter III of the Act, 1973 deals with the Master Plan and Zonal Development Plan; and lays down the procedure to be followed in the preparation and approval of

the plan; and thereafter under Chapter V, Section 16 of the Act, 1973, provides that no person shall use or permit to use any land or building in the zone, otherwise than in conformity with the Master Plan/Zonal Plan. For ready reference, Section 16 of the Act, 1973 is reproduced below:

“16. Uses of land and buildings in contravention of plans - After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan :

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by bye-laws made in that behalf, any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force”.

53. The State cannot be compelled to fulfil its obligations under Part IV, but acting contrary to the same and thereby violating any right in Part III, would raise a reasonable presumption that such State action is motivated by malice.
54. Part IV of the constitution is not a garnishing on the surface of a dish to make it presentable, but an important ingredient that makes the dish itself edible and palatable. It is what the State must strive for to justify its existence by establishing a welfare state, run in accordance with the rule of law, guided by the preamble to secure for its citizens *inter alia*, Justice.
55. Article 39(a) particularly obliges the State to direct its policies to secure adequate means of livelihood for its

citizens within its financial limitations. The right to livelihood and shelter have been equated with right to life itself in the light of judicial pronouncements discussed herein above. Thus, where the State uses the municipal laws to punish an accused for an offence by demolishing his house in order to satiate the collective schadenfreude of the people, that the State has taken vengeance on their behalf, the same would be a Retributive Exercise of Executive Discretion and an act most viciously malicious in law which ought to be prevented by the Courts from taking place or compensation in favour of the affected can be ordered, where the impugned action has already taken place, as was done by the Supreme Court in **Zulfiqar Haider's** case at paragraph 38 *supra*.

56. During arguments, it was submitted on behalf of the Respondent State that the petition be dismissed as it is premature. As per Respondent, the State has only issued notice to the Petitioners and that they have the right to place their case before the Respondent authority and if after hearing the Petitioners, any order of demolition was passed against the properties of the Petitioners, they could have then approached this Court under Art. 226 of the Constitution. The question raised by the said argument was as to when was the right stage for the Petitioners to have approached this Court to protect their right under Art. 21?

57. This issue is no longer *res integra* and has been settled by the Supreme Court in **S.M.D. Kiran Pasha Vs. Government of**

A.P²⁴ where the Supreme Court held “..... Article 21 giving protection of life and personal liberty provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. For enforcement of one's right to life and personal liberty resort to Article 226(1) has thus been provided for..... The right to life and personal liberty has been guaranteed as a fundamental right and for its enforcement one could resort to Article 226 of the Constitution for issuance of appropriate writ, order or direction. Precisely at what stage resort to Article 226 has been envisaged in the Constitution? When a right is so guaranteed, it has to be understood in relation to its orbit and its infringement..... The question is at what stage the right can be enforced? Does a citizen have to wait till the right is infringed? Is there no way of enforcement of the right before it is actually infringed? Can the obligation or compulsion on the part of the State to observe the right be made effective only after the right is violated or in other words can there be enforcement of a right to life and personal liberty before it is actually infringed? What remedy will be left to a person when his right to life is violated? When a right is yet to be violated, but is threatened with violation can the citizen move the court for protection of the right? The protection of the right is to be distinguished from its restoration or remedy after violation. When right to personal liberty is guaranteed

²⁴ S.M.D. Kiran Pasha Vs. Government of A.P – (1990) 1 SCC 328

and the rest of the society, including the State, is compelled or obligated not to violate that right, and if someone has threatened to violate it or its violation is imminent, and the person whose right is so threatened or its violation so imminent resorts to Article 226 of the Constitution, could not the court protect observance of his right by restraining those who threatened to violate it until the court examines the legality of the action? Resort to Article 226 after the right to personal liberty is already violated is different from the pre-violation protection. Post-violation resort to Article 226 is for remedy against violation and for restoration of the right, while pre-violation protection is by compelling observance of the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled..... The question may arise what precisely may amount to threat or imminence of violation. Law surely cannot take action for internal thoughts but can act only after overt acts. If overt acts towards violation have already been done and the same has come to the knowledge of the person threatened with that violation and he approaches the court under Article 226 giving sufficient particulars of proximate actions as would imminently lead to violation of right, should not the court call upon those alleged to have taken those steps to appear and show cause why they should not be restrained from violating that right? Instead of doing so would it be the proper course to be adopted to tell the petitioner that the court cannot

take any action towards preventive justice until his right is actually violated..... If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right”²⁵.

58. When the aforementioned judgement is seen in the context of the facts and circumstances of the present case, it is undisputed that the notice has been issued to the Petitioners with regards to their structures. This coupled with the past actions of the Government of Uttar Pradesh in demolishing dwelling places without being sensitive to the human cost of the actions, the apprehension of the Petitioners in this case is reasonable that the Sword of Damocles hangs heavy over their heads and that their dwelling places may fall to the bulldozers after the State runs through the formality of procedural compliance. Also, the fact that previous actions of the State in targeting largely the houses of muslims accused of offence, there is reasonable apprehension that the Petitioners are next.

59. Selective outrage results in selective injustice. The Ld. Solicitor General who argued on behalf of the UOI in the bulldozer case submitted before the Supreme Court that the houses that were being demolished were found to be in

²⁵ S.M.D. Kiran Pasha Vs. Government of A.P – (1990) 1 SCC 328 – paragraph 14 at page 337

violation of the municipal laws or the panchayat laws governing them and in some cases, it may have been sheer coincidence that properties which were in breach of municipal laws may have been owned by persons accused of an offence²⁶. This postulate put forth by the Ld. Solicitor General was disputed by the Petitioner side which disclosed that the proximity between the alleged offence being committed and the razing of the accused's house was so short that the inference of the house being razed to the ground on account of the allegation against the accused person, was not merely apparent but glaringly evident²⁷.

60. The Supreme Court, analysing the arguments of both the sides very rightly held **“when a particular structure is chosen all of a sudden for demolition and the rest of the similarly situated structures in the same vicinity are not even being touched, *mala fide* may loom large. In such cases, where the authorities indulge into arbitrary pick and choose of the structures and it is established that soon before initiation of such an action an occupant of the structure was found to be involved in a criminal case, a presumption could be drawn that the real motive for such demolition proceedings was not the illegal structure but an action of penalising the accused without even trying him before the court of law”**²⁸. Thus, the

²⁶ (2025) 5 SCC 1 – paragraph 82 and 83 on page 47

²⁷ (2025) 5 SCC 1 – paragraph 84 on page 47

²⁸ (2025) 5 SCC 1 – paragraph 85 on page 47

devil is in the details. If the intention of the State is to remove illegal construction, it cannot be restricted only to a single house but to all those houses which are in the vicinity and are also violative of the municipal or panchayat laws. Selectively demolishing a house belonging to an accused immediately after the registration of the FIR, is downright malicious.

61. Selective action against dwelling premises is gaining currency in other parts of the country also with which, this Court is however not concerned as it lacks the jurisdiction. However, in order to illustrate similar selective action which led to selective discrimination and injustice, this Court refers to an interim order passed by the Ld. Single Bench of the High Court of Jammu and Kashmir and Ladakh at Jammu, in **OWP No. 122/2002 – Adm. Jammu Municipality and Anr Vs. Surat Singh and Anr.**²⁹, took cognizance of the discrimination against the Respondent No. 1 (owner of a commercial property) who was being subjected to a “... **discriminatory exercise of statutory powers**” by the municipal authorities while other similarly situated hotels, banquet halls, coaching centres and other commercial establishments, suffering the same identical defects as that of the Respondent No. 1’s property or even more serious, continued to operate without any meaningful action against them. Wherever the law is applied selectively and

²⁹ <https://www.livelaw.in/high-court/jammu-kashmir/jammu-and-kashmir-high-court-orders-jmc-to-survey-hotels-coaching-centres-commercial-establishments-for-building-parking-fire-safety-violations-539910>

discriminatively, without any intelligible differentia, it results in injustice. Denying the existence of selective outrage resulting in selective bulldozer action, is to applaud the emperor's new clothes.

DWELLING PLACES IN CONFLICT WITH MUNICIPAL LAWS

62. The bulldozer judgement was followed by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others**³⁰. In that case, the Respondent No. 5 was the original allottee of the land sold by the Respondent No.1. Respondent No. 1 carried out construction contrary to the norms, terms and conditions and sold it to the Petitioner before the Supreme Court. Respondent No.1's case is that it gave several notices to the Respondent No.5 to compound the defects or remove the same. As it got no response from the Respondent No.5, and as the police was not giving the Respondent No.1 any protection to carry out the demolition and so, the Respondent No.1 approached this Court in a Writ Petition and sought police protection to demolish the structure of the Respondent No.5. The Petitioner (before the Supreme Court) was not a party before this Court. This Court directed the police to assist the Respondent No.1 to carry out the demolition. The Supreme Court dismisses the appeal and gives further directions to supplement the directions given earlier in the bulldozer case.

³⁰ 2024 SCC OnLine SC 3767

63. In Rajendra Kumar Barjatya's case, the Supreme Court recognised the power of the State to remove illegal construction, the long occupancy by the affected party notwithstanding. Referring to precedents, the Supreme Court held that unauthorised construction cannot be perpetuated and if the construction made was contrary to the rules it would be illegal and amenable to be demolished. Inaction by the officers of the State is no protection for illegal construction (paragraph 19). There is no difficulty with the observation of the Supreme Court and indeed, illegal construction must not be condoned and where necessary, must be brought down.
64. The law has traditionally always held in favour of the larger public good as opposed to the rights of the individual, which must give way to the comfort of the majority. Thus, demolition of dwelling places for the purpose of widening the road or reclaiming State land for development purposes has been given impetus to by the courts which in such circumstances have held against the individual. This is more so in cases where the structure is unauthorised. Though there is no official data as to what percentage of dwelling places are unauthorised in India, but it would be reasonable to find that a sizable number of the houses in India may be falling foul of the municipal laws. By no stretch of imagination can protection be accorded to such construction and they must be removed if the need occurred and the Supreme Court is right

when it holds that prolonged stay does not perfect a right. But the question is whether it would be just and proper to bear in mind the right to shelter of the person living in such a dwelling place, only for the limited purpose of giving him reasonable and sufficient time to resettle himself and his family elsewhere, rather than be forced on to the pavement in the dead of night or go to a night shelter.

65. The Constitution also stands by the rights of the “little man” of this country who may have no prominence in society on account of his minimal financial status and not being a person of means. In removing dwelling places found non-compliant with the municipal laws, the Benthamite utilitarian approach of summarily evicting the few for the larger good of the many, would be a square peg in a round hole in the Indian context. The Constitution is an inorganic being with its life infused by the aspirations of the people it serves. Such aspirations change with time which the constitution accommodates without doing violence to its basic structure. So the question is in what manner should this Gordian knot of balancing equities of the State on one hand and that of the individual be managed?

66. No dwelling place comes up overnight. The authorities who have the duty to ensure that such structures do not come up, close their eyes deliberately on account of political or bureaucratic support that the builder has or out of dishonesty.

67. Over decades, the average Indian has normalised corruption. It is no longer wrong as long as one does not get caught. Even in the rankings of Transparency International 2025 report, India ranks at 91 amongst 182 nations, but even that does not shame us. The recent controversy relating to the theft of donations at the Ram Temple is the proverbial last straw on the camel's back. Nothing can shame a people who remain unfazed by the theft at the Ram Temple which epitomises the nadir of the Indian's integrity. The collective absence of integrity affects every institution including the municipal authorities and other such authorities whose dishonesty enabled the individual to construct a house which was non-compliant, inter alia of the municipal laws. This was facilitated by those who take bribes from builders and close their eyes to the illegalities and violations being committed by the builders who sell it off to the buyer who then suffers the enforcement of the law a couple of decades later and finds himself on the streets within six months of the start of the eviction procedure and his house razed to the ground. Rampant corruption in the country would lead to the illicit concentration of wealth in the hand of a few widening the chasm between the haves and the have nots and lays down the script for a civil unrest in days to come. If the State is serious, actually serious, about curtailing corruption and retrieving India from the abject morass of dishonesty and complete lack of integrity, it should consider amending the

Prevention of Corruption Act, 1988 to include the death penalty for those convicted of corruption.

68. This Court has already held hereinabove that it is not in favour of persons violating buildings regulations but it is also imperative that while undoing the mischief, which would require demolition of the unauthorized constructions, the delinquent officers are also to be punished in accordance with law; and this Court's view is also fortified by a decision of the Apex Court in the **G.N. Khajuria Vs. D.D.A**³¹

69. In a meaningful democracy, the right of the individual must be protected, if the need arises, from the might of the State. A former President of the Supreme Court of Israel observed **“Democracy is not satisfied merely by abiding by proper elections and legislative supremacy. Democracy has its own internal morality based on the dignity and equality of all human beings. Thus, in addition to formal requirements (elections and the rule of the majority), there are also substantive requirements. These are reflected in the supremacy of such underlying democratic values and principles as separation of powers, the rule of law, and independence of the judiciary. They are based on such fundamental values as tolerance, good faith, justice, reasonableness, and public order. Above all, democracy cannot exist without the protection of individual human**

³¹ 1995 5 SCC 762

rights-rights so essential that they must be insulated from the power of the majority³² (emphasis added).

70. V. Sudhish Pai, wrote that “...The Constitution, apart from being a legal document is also, and even more, a political and social testament created to secure the goals set out in the Preamble-justice, liberty, equality, and fraternity. The individual lies at the core of the constitutional focus and the ideals envisioned in the Preamble animate the vision of securing a dignified existence to the individual”³³ (emphasis added).

71. When the opinion of the two jurists are juxtaposed with the facts of the case, it is seen that the person, whose dwelling place is to be demolished, and who has been in occupation of the same for decades, but never had a clear right to the land on which the house stood, also must be given a reasonable time, with the assistance of the State to resettle him elsewhere, as the State was just as complicit through its corrupt agents (the bureaucracy) in the illegal occupation of the land by the proposed evictee. Though the occupation of State land by the evictee cannot be clothed with legality, at the same time, the dishonesty of the State must not be condoned either.

³² The Judge in a Democracy – Aharon Barak – page 33

³³ Constitutional Supremacy-A Revisit – V. Sudhish Pai – page 25

DIRECTIONS

72. This Court adopts the directions given in paragraphs 94, 94.1 to 94.15 and 95 to 97, by the Supreme Court ***In re, Directions in the Matter of Demolition of Structures – (2025) 5 SCC 1.***
73. This Court also adopts the direction given in paragraph 21 by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others – 2024 SCC OnLine 3767.**
74. As it has been held by this Court that rushing to demolish the dwelling place of a person accused of an offence under the garb of the same being violative of municipal laws, is impermissible the same being a retributive exercise of executive discretion and so, no action may be taken to demolish his house for a period of two years from the date of registration of the FIR and during the hiatus of two years, as the immediate action, rather than to reclaim State land, is to satiate the presumable public anger immediately following the offence which would dissipate with the passage of time, and the State may no longer feel the necessity to destroy the property. After two years, the State can examine, as the Supreme Court has mandated in the bulldozer case, that the final order must reflect the reasons whether compounding of the deviations is possible the property and if compounding is not possible, then it shall abide by the direction of the Supreme Court in the bulldozer case which has been adopted by this Court as part of this order at paragraph 73 *supra*.

75. If however, the removal is necessary for reclaiming the land for public purpose and such action it is not restricted to the house of accused alone, then it is permissible, subject to compliance with direction given by the Supreme Court in the bulldozer case (paragraph 73 *supra*), to move for demolition in accordance with law, in which case the hiatus of two years before taking action, shall not be binding.
76. As regards removal of dwelling places which are illegal constructions, the State shall follow the direction of the Supreme Court in the bulldozer case in paragraph 67 *supra* with one additional condition – that where the violater has stayed in the illegal structure for three years or more, the authority shall intimate the violater one year before the initiation of procedure under the municipal law and the dispatch of intimation through notice shall be as directed by the Supreme Court in the bulldozer case. This is essential so as to give reasonable notice of intent on the part of the State so as to enable the violater a full one year to resettle himself elsewhere, however, the prior intimation of one year's notice before initiating procedure under the municipal law may be waived where there is "compelling urgency" of larger public need to be justified by the State. This is necessary as the State is *particeps criminis* by assisting the violater through "connivance" (as has been held by the Supreme Court in the two judgments mentioned hereinabove which is a euphemism for blatant corruption) to build the offending

structure, give electricity and water supply which even today is largely a sovereign function.

77. Additionally, In case notices are issued for the violation of the construction norms, the same shall only be valid if simultaneous proceedings are also initiated against the erring officers *inter alia* under the relevant provisions of the Prevention of Corruption Act, 1988. The disciplinary action against the erring officer shall also be initiated and the same shall also be required to brought to its logical end, adhering to the procedures prescribed within a reasonable time and in any case not later than 6 months, from the date of initiation of the proceedings/issuance of notice for the violation of the construction norms; needless to say that for demolishing the construction, it shall abide by the directions of the Apex Court in the Bulldozer case, which this Court has also adopted, as part of this order at Paragraph No.73 (supra).
78. The action of the development authority, shall not reflect in any manner that it is only against an individual, while ignoring a similar violation in the vicinity, with respect to the other constructions; and if such will be the case, the aggrieved person, shall be at liberty to approach this Court, alleging ‘retributive exercise of executive discretion’ and violation of the fundamental rights
79. As regards the Petitioners in the present case, proceedings for demolition of their Residence and Lodge stand quashed as the said proceedings are hit by retributive

exercise of executive discretion, and no proceedings shall be initiated for two years from the date of registration of the FIR relevant in this case. In the event, there is need for removing these structures before two years for proved public purpose (not beyond reasonable doubt, but on the basis of documents and affidavits), then the same may be done by complying with the directions in paragraph 75 *supra*.

80. As regards the proceedings against the Petitioners under the Forest Act in relation to the sealing of their saw mill on account of recovering wood of protected trees, the same shall continue unaffected by this order.
81. This order shall be communicated to the Chief Secretary of the State for onward dispatch to all the relevant offices in the districts for strict compliance.
82. Any violation of the direction herein, would result in contempt proceedings against the officer concerned which may be filed before this Court.
83. Accordingly, the writ petition is disposed of.

(Siddharth Nandan,J.)

(Atul Sreedharan,J.)

July 20, 2026

Noman



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 2229 of 2026

Faimuddeen and 2 others

.....Petitioner(s)

Versus

State of U.P. and 7 others

.....Respondent(s)

Counsel for Petitioner(s)	: Shamsuddin Khan, Syed Ahmed Faizan, Zaheer Asghar
Counsel for Respondent(s)	: C.S.C., Dileep Kumar Srivastava, Sant Ram Sharma

Reserved

In Chamber

HON'BLE ATUL SREEDHARAN,J.
HON'BLE SIDDHARTH NANDAN,J.

(Per : Siddharth Nandan,J.)

1. I have had the privilege and benefit of reading the erudite judgment of my esteemed Brother Hon'ble Atul Sreedharan,J.; but I am unable to subscribe entirely to the view expressed by him and most respectfully dissent, to the extent stated herein below.

2. Petitioners in the present case seek constitutional protection of their rights under Article 300A of the Constitution of India and alleges infringement of their fundamental rights as guaranteed under Article 14, 19(1)(g) and 21 of the Constitution of India.

FACTS AS AVERRED BY PETITIONERS

3. Petitioners submitted that without any show cause notice or opportunity of hearing or any reasoned order being passed on their representation, which was submitted by petitioners, along with their sale-deeds, before the authorities to demonstrate that the accused in Case Crime No.20 of 2026 under Sections 64(1), 62/351(3), 61(2) BNS,

Section 67 of I.T. Act, Section 3/4 of POCSO Act and Section 3/5(1) of the U.P. Prohibition of Unlawful Religious Conversion Act i.e. Shri Aafan Khan, who is a relative of the petitioners but has no title or ownership in the properties in question which are residential, as well as, commercial establishment situated within District Hamirpur, Uttar Pradesh.

4. It was further alleged that the Saw Mill and the commercial Lodge, known as “Indian Lodge” are being run with all the necessary licence; and as such it has been averred that without notice of any nature, subsequent to the lodging of the FIR, the petitioners are victim of collective punitive action, in the nature of mob lynching, which is politically protected on the basis of the aforesaid allegations petitioners seek protection of law laid down **In Re: Directions in the Matters of Demolition of Structures reported in (2025) 5 SCC 1**, as well as, **the judgment in Julfikar Haidar vs. State of U.P. (2025) INSC 480**, and seeks following prayers:-

“ i) To issue a writ, order or direction in the nature of mandamus, commanding the respondents not to undertake any demolition, dispossession, sealing or coercive action against the Petitioners properties except strictly in accordance with law, after following due process, as mandated by the Hon'ble Supreme Court in **In Re: Directions in the matter of Demolition of Structures (W.P. No. 295 of 2022)**).

(ii) To issue a writ of Mandamus to pass appropriate orders upon the application dated 16.01.2026 (Annexure 2) to this petition.

(iii) To issue a writ, order or direction directing the respondents to forthwith de-seal the Petitioners properties and restore peaceful possession and business operations, as the Petitioners are neither accused nor proceeded against under any law.

(iv) To issue a writ, order or direction to declare that the impugned actions of the police and district administration amount to colourable exercise of power, collective punishment and abuse of executive authority, and are therefore unconstitutional and void.

(v) To issue a writ, order or direction directing an independent, impartial and time-bound inquiry by a senior officer not below the rank of Divisional Commissioner or Inspector General of Police, or by any other independent authority as this Hon'ble Court may deem fit, into (i) the illegal and unauthorized sealing of the Petitioners' residential and commercial properties, (ii) the role, conduct and decision making

process of the concerned police officials and district administration and (iii) the influence of political, extraneous or mala fide considerations, if any, in the said actions, and further to direct fixation of personal accountability of the erring officers and initiation of appropriate action against them in accordance with law.”

FACTS AVERRED BY RESPONDENTS

5. Ms. Priyanka Middha, Additional Chief Standing Counsel on the basis of the counter affidavit filed on behalf of the respondents-State, has submitted that the petition was filed with material concealment of fact, to the effect that in the Public Interest Litigation No.627 of 2021 which was filed by one Shyam Babu, this Court vide order dated 09.07.2021, had directed the District Magistrate, Hamirpur to remove such illegal encroachments, which may be in conflict with the norms of the Municipalities Act; and when the said order was not complied in letter and spirit, the Contempt Petition No.5658 of 2021 came to be filed before this Court in which vide order dated 12.04.2022, after considering the compliance affidavit, eventually since notices have been issued to the encroachers, the contempt petition was consigned to record.

6. She submits that the “India Lodge” has been constructed on the land of the Irrigation Department and therefore, in view of the directions of this Court, with respect to removal of illegal encroachment of the land, the proceedings was being initiated; and in order to circumvent the said proceedings and give it a colour, the present writ petition has been filed; though Shri Anoop Trivedi, Additional Advocate General also appearing in the matter submits that at present there are no proceedings against the petitioners, while as far as the “Saw Mill” is concerned, its license has expired and apart from that, certain prohibited woods was found at the premises; and therefore proceedings under the Forest Act is being initiated; but nonetheless, apprehension that has been expressed in the writ petition is absolutely baseless; and no action is either proposed at this time nor is being taken, against the Petitioner; and whatever shall be done will be as per law.

7. In para-13 of the counter affidavit dated 09.02.2026 certain additional fact relating to the concealment has been made, which is reproduced below:

“13. That apart from the said fact, the concealment of the it has also petitioner is also writ large, inasmuch as been concealed in the present writ petition that the petitioners have put their own locks on the said house and have been absconding from their own premises which itself shows the sinister motives of the petitioner to approach this Hon'ble Court by means of the present writ petition and seek direction under the garb of mingling separate legal issues, which are enumerated as under:

a. It is extremely pertinent to submit before this Hon'ble Court that 'Indian lodge' situated at Ward No.16, Vivekanand Nagar, House No.64 main Bus Stand, Kanpur Sagar Road, Bharuwa Sumerpur, District Harnirpur and is the place of crime as described in the First Information Report dated 15.1.2026 being FIR No.0017 of 2026 which has been filed under section 64(1), 62, 351(3), 61(2), 67A of B.N.S.S. 2023 read with section 3/4 of POCSO Act 2012 alongwith Section 3 and 5(1) of the U.P. the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021. The accused Ayan Khan is said to have raped and made objectionable videos of a 16 year old girl and circulated them on social media from this lodge known as Indian Lodge' which belonged to the petitioners.

The said FIR purposely has not been appended to the present writ petition. The said confusion has purposely been created to dissuade this Hon'ble Court and not bring proper and clear facts before this Hon'ble Court. As a part of investigation the said Indian Lodge was only inspected by the police authorities/Investigating Officer and no sealing process was ever carried out at the said Indian Lodge.”

8. On behalf of respondent nos. 5 and 6, who are the police authorities, counter affidavit dated 25.02.2026 was also filed. The details of the crime by Shri Afaan Khan has been given therein and allegations has been made against the petitioner for pressurizing the victim to convert her religion, and it has been further submitted that initially the FIR was lodged against Shri Afaan Khan but subsequently complicity of, son of petitioner no.2, has also been found in Case Crime No.17 of 2026 under Section 64(1), 62, 351(3), 61(2) BNS and Section 67A of I.T. Act along with Section 3/4 of POCSO Act and Section 3/5(1) of U.P. Prohibition of Unlawful Conversion of Religion Act, 1921. The details of the

investigation has been stated in para-7 of the affidavit dated 21.02.2026, which is reproduced below:

“That during the investigation the statement of the victim was recorded under Section 180 and Section 183 of the B.N.S.S, 2023 and in the said statement the victim clearly stated that sometime in the month of July 2025 on the social media platform namely snapchat the victim met the accused who impersonated himself as one Ankit and sent a request of friendship to the victim on the said platform. Though the victim was in reality, the accused Afaan Khan son of Ainuddin alias Mulana Khan thinking him to be a boy named Ankit, the victim started talking to the accused and the accused forced the victim to meet him. On 05.08.2025 at Hamirpur, the accused took the victim and went around with her for a drive in his car. He thereafter took her to the Hotel and after he made her have some food and then he took her to a hotel room. It is further stated in the statement by the victim that once in the hotel room she was intoxicated and she had lost her conscious and it was in that situation that the accused forced herself upon her, raped her and made objectionable videos of her. Thereafter the accused left her back at Sumerpur. The victim further states that she came back home and slept. When she got up she saw that the accused sent her the video he made of her and specifically threatened the victim that if she did not meet him in the lodge then he would make the video viral. The victim thereafter met the accused twice and on both the two occasions the accused again forced himself upon the victim. Pursuant to the said incident when the accused called her again, the victim refused and upon her refusal he threatened her thereafter revealed his real name as Afaan Khan. He then further threatened her to marry him and change her religion. When the victim was being threatened by the accused repeatedly, she then chose to tell her family members about the blackmailing being done by the Afaan Khan. The victim's father then spoke to the father of the Afaan Khan, Mr. Ainuddin alias Mulana Khan, Lal Chacha, Afaan and Rehan and they collectively put pressure to change the victim's religion and to marry the accused otherwise her video would be made viral. When the father of the Afaan Khan assertively refused to get her married to the accused they posted the video online. A copy of the statement of the victim recorded under Section 183 B.N.S.S. 2023 is being filed herewith and marked as Annexure - CA "1" to the present counter affidavit.”

9. It has also been stated that during investigation, the name of petitioner no.1 – Faimuddin @ Lala son of Moinuddin and one Rehan son of Naimuddin also came out; and thereafter Afaan Khan son of Ainuddin @ Maunala Khan was arrested on 15.01.2026 and his father was also arrested on 16.01.2026; and as far as the petitioner no.1, who was

accused of pressurizing the victim to convert her religion and who had also posted her video online, was arrested on 05.02.2026; and sent under judicial custody to jail, Hamirpur.

10. As far as the proceedings in relation to the accused running the “Saw Mill” is concerned at Police Station Sumerpur, Case Crime No.22 of 2026 has been registered, against Lallu son of Imamiddin based on a complaint by Forest Range Officer, Forest Division, Hamirpur under Sections 69, 45 and 77 of India Forest Act and 3/28 of U.P. Timber and Forest Produce Transit Rule, 1978.

11. The third counter affidavit has been filed on behalf of respondent no.7, who is the Divisional Forest Officer of Forest Department, wherein also giving details of the proceedings under the Forest Act, has been given, which is not disputed by the parties.

12. The fourth counter affidavit has been filed on behalf of respondent no.8, who is the Executive Officer of Municipal Board, Hamirpur through Shri Dilip Kumar Srivastava, Advocate. The said affidavit give details of the Public Interest Litigation No.627 of 2021 (Shyam Babu vs. State of U.P. and 3 others).

RESPONSE BY THE PETITIONERS

13. In reply to the counter affidavit filed on behalf of respondent nos.5 and 6, petitioners have filed their rejoinder affidavit dated 26.02.2026. Petitioners have asserted that after filing of the Case Crime No.17 of 2026 at Police Station Sumerpur, certain hooligans and miscreants, which is also evident from the FIR lodged as Case Crime No. 44 of 2026 on 11.02.2026, committed burglary and theft at the house of the petitioners; and had also given an explanation regarding the directions in Public Interest Litigation No.627 of 2021, but does not dispute the said directions against encroachment, by this Court; and only alleges that the directions in the said Public Interest Litigation are being taken shelter of, by way of a design, to create sensation before the Hon'ble Court.

14. A rejoinder affidavit has also been filed to the counter affidavit, on behalf of respondent no.7 dated 26.02.2026, and alleges that the Crime

No.22 of 2026 in pursuance of the FIR dated 18.1.2026, has only been filed in consequence to the chain of events from 06.01.2026; and alleges prejudice and malice at the behest of political mechanism; thereafter nothing further substantial has been stated in the said rejoinder affidavit.

15. The petitioners in their rejoinder affidavit to the counter affidavit filed on behalf of respondent no.8 dated 27.02.2026, reiterates their reply in the previous affidavits; and states that in case the Municipal Body has any grievance, they could have filed their own FIR; and again nothing substantial has been stated in the said rejoinder affidavit.

16. The petitioners have also filed the supplementary affidavit dated 17.01.2026, bringing on record certain photographs of unauthorized sealing of the petitioners' "Saw Mill" and have reasserted that the residential house has absolutely no nexus, connection or concern whatsoever with the accused persons in Case Crime No.17 of 2026; and maintains that the petitioners residential or commercial properties were not in any manner used, connected, facilitated or derived from the alleged offence, forming subject matter of Case Crime No.17 of 2026 and Case Crime No.20 of 2026.

17. Petitioners also mentioned in the affidavit that the action of the administration; and the place where the crime was allegedly committed (Indian Lodge) being sealed along with the business establishment i.e. the "Saw Mill" is in violative of the fundamental rights of the petitioners; and further that the administrative action against the residential property also is in violation of the directions of the Apex Court.

18. Another supplementary affidavit dated 07.02.2026 was filed and the pasting of the notice dated 16.01.2026 by the Municipal Board on the gates of the sealed premises, wherein, it was alleged that the building situated at Ward No.16, House No. New 16/1039 (Old No.642) has been constructed without approval of the sanctioned building plan, states that if suitable reply along with documents and approved map is not made available within 7 days action shall be taken.

19. He further submits in his affidavit that the said action can be remedied, and the petitioner is ready and willing to deposit the compounding fees, as may be directed by the competent authority. Petitioner no.2 also stated that the property is already recorded in the municipal records and house tax has been assessed; and now without any prior notice regarding map approval, in the past; now the action is only been taken, since the FIR has been registered, which is malicious.

20. It has also been asserted in the said affidavit that similarly situated neighbouring properties, have not been issued any such notice and accordingly targeting the petitioner infraction to the municipal laws, the same is based on pick and choose basis and completely discriminatory.

21. In the said affidavit allegations has also been made against the Station House Officer, P.S. Sumerpur, Hamirpur.

Discussion

22. As far as the implications with respect to the non-compliance of the judgment of the Supreme Court in *In Re: Directions in the Matter of Demolition of Structures* (supra), is concerned the same has been dealt by my brother Hon'ble Atul Sreedharan,J., and the same has also been adopted in the directions contained in Para-73 and 74, to which I respectfully agree with; but however, as far as the directions contained in para-75, 76, 77 and 80 is concerned, I am unable to concur with the said directions, in my humble opinion. As far as the additional directions contained in paras-78, 79 and 81, the same has been mutually incorporated and as such I am in respectful agreement to the said directions as well.

23. In view of the aforesaid, the directions which has been mutually agreed are as follows:

“73. This Court adopts the directions given in paragraphs 94, 94.1 to 94.15 and 95 to 97, by the Supreme Court **In Re: Directions in the Matter of Demolition of Structures - (2025) 5 SCC 1.**

74. This Court also adopts the direction given in paragraph 21 by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others - 2024 SCC OnLine 3767.**

78. Additionally, In case notices are issued for the violation of the construction norms, the same shall only be valid if simultaneous proceedings are also initiated against the erring officers inter alia under the relevant provisions of the Prevention of Corruption Act, 1988. The disciplinary action against the erring officer shall also be initiated and the same shall also be required to brought to its logical end, adhering to the procedures prescribed within a reasonable time and in any case not later than 6 months, from the date of initiation of the proceedings/issuance of notice for the violation of the construction norms; needless to say that for demolishing the construction, it shall abide by the directions of the Apex Court in the Bulldozer case, which this Court has also adopted, as part of this order at Paragraph No.73 (supra).

79. The action of the development authority, shall not reflect in any manner that it is only against an individual, while ignoring a similar violation in the vicinity, with respect to the other constructions; and if such will be the case, the aggrieved person, shall be at liberty to approach this Court, alleging 'retributive exercise of executive discretion' and violation of the fundamental rights.

81. As regards the proceedings against the Petitioners under the Forest Act in relation to the sealing of their saw mill on account of recovering wood of protected trees, the same shall continue unaffected by this order.”

24. However, before my reasons for disagreement with the directions contained in paras-75, 76, 77 and 80, the same are reproduced below:-

“75. As it has been held by this Court that rushing to demolish the dwelling place of a person accused of an offence under the garb of the same being violative of municipal laws, is impermissible the same being a retributive exercise of executive discretion and so, no action may be taken to demolish his house ‘for a period of two years’ from the date of registration of the FIR and during the hiatus of two years, as the immediate action, rather than to **reclaim State land**, is to satiate the presumable public anger immediately following the offence which would dissipate with the passage of time, and the State may no longer feel the necessity destroy the property. After two years, the State can examine, as the Supreme Court has mandated in the bulldozer case, that the final order must reflect the reasons whether compounding of the deviations is possible the property and if compounding is not possible, then it shall abide by the direction of the Supreme Court in the bulldozer case which has been adopted by this Court as part of this order at paragraph 73 supra.

76. If however, the removal is necessary for reclaiming the land for public purpose and such action it is not restricted to the house of accused alone, then it permissible, subject to compliance with direction given by the Supreme Court in the bulldozer case (paragraph 73 supra),

in which case the hiatus of two years before taking action, shall not be binding.

77. As regards removal of dwelling places which are illegal constructions, the State shall follow the direction of the Supreme Court in the bulldozer case in paragraph 67 supra **with one additional condition** - that where the violater has stayed in the illegal structure for three years or more, the authority shall intimate the violater one year before the initiation of procedure under the municipal law and the dispatch of intimation through notice shall be as directed by the Supreme Court in the bulldozer case. This is essential so as to give reasonable notice of intent on the part of the State so as to enable the violater a full one year to resettle himself elsewhere, however, the prior intimation of one year's notice before initiating procedure under the municipal law may be waived where there is "compelling urgency" of larger public need to be justified by the State. This is necessary as the State is particeps criminis by assisting the violater through "connivance" (as has been held by the Supreme Court in the two judgments mentioned hereinabove which is a euphemism for blatant corruption) to build the offending structure, give electricity and water supply which even today is largely a sovereign function.

80. As regards the Petitioners in the present case, proceedings for demolition of their Residence and Lodge stand quashed as the said proceedings are hit by retributive exercise of executive discretion, and no proceedings shall be initiated for two years from the date of registration of the FIR relevant in this case. In the event, there is need for removing these structures before two years for proved public purpose (not beyond reasonable doubt, but on the basis of documents and affidavits), then the same may be done by complying with the directions in paragraph 75 supra."

25. Before proceeding further, we think it appropriate to refer to the objects behind "Uttar Pradesh Urban Planning and Development Act, 1973"; which is to provide for the development of certain areas of Uttar Pradesh, according to plan and for matters ancillary thereto. Under Chapter II of the Act, 1973, the objects of the development authority have been clearly spelled out. For ready reference Section 7 of the Act, 1973 is reproduced below:

"7. Objects of the Authority

The objects of the [local development authority]¹ shall be to promote and secure the development of the development area according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining

and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto Provided that save as provided in this Act nothing contained in this Act shall be construed as authorizing the disregard by the Authority of any law for the time being in force.”

26. Thereafter Chapter III of the Act, 1973 deals with the Master Plan and Zonal Development Plan; and lays down the procedure to be followed in the preparation and approval of the plan; and thereafter under Chapter V, Section 16 of the Act, 1973, it has been provided that no person shall use or permit to use any land or building in the zone, otherwise than in conformity with the Master Plan/Zonal Plan. For ready reference, Section 16 of the Act, 1973 is reproduced below:

“16. Uses of land and buildings in contravention of plans

After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan :

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by bye-laws made in that behalf, any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.”

27. Order of demolition of building

Where any development has been commenced or is being carried on or has been completed

*** in contravention of the master plan or zonal development plan or**

*** without the permission, approval or sanction referred to in section 14 or**

*** in contravention of any conditions subject to which such permission, approval or sanction has been granted, in relation to the development area,**

then, without prejudice to the provisions of section 26, the Vice Chairman of the concerned Local Development Authority may make an order directing that such development shall be removed by demolition, felling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period **not being less than fifteen days and more than forty days from the date on which a copy of the order of removal with a brief statement of the reasons therefore has**

been delivered to the owner or that person as may be specified in the order.

Failure to comply with the order such officer may remove or cause to be removed the development and the expenses of such removal shall be recoverable from the owner or the person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such expenses :

No such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

28. Power to stop development

Where any development in a development area has been commenced or continued

*** in contravention of the master plan or zonal development plan or**

*** without the permission, approval or sanction referred to in section 14 or**

*** in contravention of any conditions subject to which such permission, approval or**

sanction has been granted

then, without prejudice to the provisions of sections 26 and 27, the Vice Chairman of the

concerned Local Development Authority may make an order requiring the development to be discontinued on and from the date of the service of the order and such order shall be complied with accordingly.

28-A Power to seal un-authorized development

It shall be lawful for the Vice Chairman of the concerned Local Development Authority at any time before or after making an order for the removal or discontinuation of any development under section 27 of section 28 to make any order directing the sealing of such development in a development area in such manner as may be prescribed for the purposes of carrying out the provisions of this Act.

PROVISIONS REGARDING NOTICES

43. Services of notices, etc.

(1) All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall save as otherwise provided in this Act or such rule or regulation be deemed to be duly served—

(a) where the person to be served is a company, if the document is addressed to the secretary of the company at its registered officer or at its principal office or place of business and is either—

(i) sent by registered post; or

(ii) delivered at the registered office or at the principal office or place of business of the company;

(b) where the person to be served is a firm, if the document is addressed to the firm at its principal place of business, identifying it by the name or style under which its business is carried on and is either—

(i) sent by registered post; or

(ii) delivered at the said place of business;

(c) where the person to be served is a **public body or a corporation or society or other body**, if the document is addressed to the secretary, treasurer or other chief officer of that body, corporation or society at its principal office, and is either –

(i) sent by registered post; or

(ii) delivered at that office;

(d) in any other case, if the document is addressed to the person to be served; and—

(i) is given or tendered to him; or

(ii) if such person cannot be found is affixed on some conspicuous part of his last known place of residence or business, if within the development area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of land or building to which it relates;

or

(iii) is sent by registered post to that person.

(2) Any document which is required or authorized to be served on the owner or occupier of any land or building may be addressed “the owner” or “the occupier”, as the case may be of that land or building (naming that land or building) without further name or description and shall be deemed to be duly served –

(a) if the document so addressed is sent or delivered in accordance with clause (d) of sub-section (1); or

(b) if the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or where there is no person on the land or building to whom it can be delivered is affixed to some conspicuous part of the land or building.

(3) Where a document is served on a firm in accordance with clause (b) of sub section (1), the document shall be deemed to be served on each partner of that firm.

(4) For the purpose of enabling any document to be served on the owner of any property the secretary to the Authority may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family be deemed to be service upon the minor.

(6) A servant is not a member of the family within the meaning of this section.

44. Public notice how to be made known

Every public notice given under this Act shall be in writing over the signature of the Secretary to the Authority and shall be widely made known in the locality to be affected thereby affixing copies thereof in conspicuous public places within the said locality or by publishing the same by beat of drum or by advertisement in a newspaper having circulation in the locality or by two or more of these means and by any other means that the Secretary may think fit.

45. Notices etc. to fix reasonable time

Where any notice, order or other document issued or made under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed in this Act or regulation, the notice, order or other document shall specify a reasonable time for doing the same.

27. The most relevant paragraphs from In Re: Directions in the Matter of Demolition of Structures, 2024 SCC OnLine SC 3291 / 2024 INSC 866 (13 November 2024) are:

Paragraph No.	Principle laid down
¶ 74–75	Executive cannot punish a person by demolishing property; demolition as punishment without due process violates the rule of law.
¶ 76–78	Right to shelter is part of Article 21; innocent family members cannot be deprived of shelter arbitrarily.
¶ 82	If only the property of an accused is singled out while similarly situated structures are left untouched, mala fides may be inferred; the authority must rebut the presumption of punitive action.
¶ 83	Municipal authorities must consider compounding or demolition of only the offending part; total demolition may be disproportionate.
¶ 84–86	Applies the doctrine of proportionality; demolition should be the last resort and only when no lesser measure is available.
¶ 88–89	Demolition merely because one family member is an accused amounts to collective punishment, which is impermissible.
¶ 90	Introduces the need for pan-India directions under Article 142; affected persons must have time to challenge the demolition order or vacate.

¶ 91	Specifies the exceptions: the directions do not apply to encroachments on public roads, footpaths, railway land, water bodies, or demolitions ordered by a court.
¶ 91(A) (Directions A)	Notice requirements: prior show-cause notice, minimum 15 days, service by registered post, affixation, email to DM, contents of notice, digital portal.
¶ 91(B)	Personal hearing is mandatory; minutes of hearing must be recorded.
¶ 91(C)	Reasoned final order: deal with the noticee's contentions, compounding, partial demolition, and explain why demolition is the only option.
¶ 91(D)	Appellate/judicial scrutiny: demolition order cannot be implemented for 15 days; owner gets time to remove the unauthorized portion; only non-compoundable unauthorized construction may be demolished.
¶ 91(E)	Videography and demolition report: demolition must be videographed and a report prepared and preserved.
¶ 92–94	Mandatory compliance; violation may result in contempt, prosecution, and personal liability of officials, including restitution and damages.

28. In the case of **Mrs. G.S.J. Shapoorjee Vs. Allahabad Development Authority, Allahabad and Others; reported in (2016) 119 ALR 162**, this Court has held that where there is any violation of Master Plan, then it is the constitutional obligation and duty of the officers of the statutory body to consider it and take appropriate steps in this regard and if there was violation of sanctioned plan, the same shall not only attract criminal liability but also civil consequences; and as such the perusal of the Act, 1973 shows that, except those who are covered by proviso to Section 16, there is a complete embargo against deviation from a plan (*Ref: Krishak/Mazdoor Evam Pashupalak Vikas Sewa Samiti, K.N. & Another Vs. State of U.P. and Others, 2019 6 ADJ 201 DB*).

29. In the background of the aforesaid, I proceed now to examine that, inspite of the aforesaid constitutional obligation on the Officers of the development authority, in case there is instance of violation of the statutory norms, then whether it is only the violator who is responsible for the same or the officers of the development authority.

30. In a landmark decision in the case of **Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors. reported in 2021 10 SCC 1**, the Apex Court considered the said aspect, and while upholding the directions of the Allahabad High Court, for sanctioning prosecution under Section 49 of the Act, 1973 against the officials of the developer and officers of the development authority, observed that the nexus between the violator and the development authority leads to serious consequences of environmental hazards and violations of fundamental rights. However, it did consider that the cases of professional builders, stand on a different footing, from an individual, who deviates from the standard norms; but however, nonetheless it was pertinently concluded, that the case under consideration reveal a nefarious complicity of the planning authority, in the violation by the developer of the provision of law; and held that the High Court has correctly come to the conclusion that there was collusion between the developer and the development authority. For ready reference Para- 159, 160 and 161 of the aforesaid judgment is reproduced below:

“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.

161. The judgments of this Court spanning the last four decades emphasise the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye- laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

162. In *K. Ramadas Shenoy v. Town Municipal Council, Udipi*¹, A.N. Ray, C.J. speaking for a two-Judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held: (SCC p. 513, para 27)

"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.18)."

This 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"

31. This Court is conscious of the fact that the rapid increase in the unauthorized constructions, is partly also attributable to the increase in the population and consequentially the land available in the urban area, is no longer sufficient to meet out the exodus from the rural area towards the urban area; but the same cannot justify the illegal constructions coming up. It can only mean that the aforementioned constitutional liabilities on the development authorities are increasing day by day and the worst can be seen, if the officials of the development authority, not only fails to discharge their constitutional liability but also colludes with the violator.

32. This Court and the Apex Court is constantly flooded with the writs, seeking protection from demolition, though in most of the cases, the admitted case of the petitioners', has been that they are in fact in violation of the norms but only seeks protection for a limited period, so that they can find an alternative accommodation or a shelter which is their basic need.

33. In the case of **K. Ramadas Shenoy v. Town Municipal Council, Udipi**; reported in 1974 2 SCC 506., the Apex Court observed that when the municipality acts in excess of the powers conferred by the Act or abuses of the powers, then in those cases as a matter of fact it is usurping powers which it does not possess; and if under pretext of any authority, which the law does not give to the municipality, it goes beyond the limits of it's authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the court.

34. In the present era, where there is a rampant violations of the norms and it is also a well known fact that most of the buildings, including at

times the ones built by the development authority itself, is not complying with the norms; and as such one sided action to correct the measures, by way of the retributive exercise of the executive discretion, has also to be dealt with; or else this Court will be failing in its constitutional obligation itself.

35. Though not a new agenda, but still we feel it obligated to address the issue once again, as to whether the individual who has violated the norms of construction, is alone to be blamed or the officers who permitted the said construction under their watch, are also to be made accountable?

36. We have already held herein above that under no circumstances, the Court is in favour of the persons who have blatantly violated the buildings regulations but it is also imperative that while undoing the mischief, which would require demolition of the unauthorized constructions, the delinquent officers are also to be punished in accordance with law; and our view is also fortified by a decision of the Apex Court in the **G.N. Khajuria Vs. D.D.A 1995 5 SCC 762**.

37. In the case of **Priyanka Estates International (P) Limited Vs. State of Assam; reported in 2010 2 SCC 27**, the Apex Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers, with building regulations; but however, the unauthorized constructions itself destroy the very concept of a planned development; and this issue was once again brought to the forefront by the Apex Court in the judgment of **Esha Ekta Apartments Cooperative, Houseing Society Ltd. Vs. Municipal Corporation, of Mumbai, reported in 2013 5 SCC 357**. For ready reference, the relevant extract at Pg. 363, Part 1 of the judgment in the case of **Esha Ekta Apartments (supra)**, is reproduced below:

“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 regularization of illegal constructions by way of compounding and otherwise."

38. However, the time has come that this Court take cognizance of the inaction on part of the officers of the development Authority and not merely leave it to the individual who are in conflict of law. For the aforesaid reasons, following directions, are to be considered, at the time of final hearing; and the same is being reproduced here with reasons, for a better clarity on the issue, which would be formed after the opinion, on the issue, which is sought to be referred eventually, by this order:-

Directions

(I). This Court adopts the directions given in paragraphs 94, 94.1 to 94.15 and 95 to 97, by the Supreme Court **In re, Directions in the Matter of Demolition of Structures- (2025) 5 SCC 1.**

(II). This Court also adopts the direction given in paragraph 21 by the Supreme Court in **Rajendra Kumar Barjatya and Another Vs. U.P. Avas Evam Vikas Parishad and Others- 2024 SCC OnLine 3767.**

(III). As it has been held by this Court that the proximity in timing, with the lodging of a criminal prosecution and the notices for demolition, for violation of the municipal law, reflects, "retributive exercise of executive discretion"; and as such, in exercise of the extraordinary power under Article 226 of the Constitution, we issue the following directions:-

(i) Unless, the notices have been issued within a period of 40 days, prior to the proposed demolition, the development authority shall be required to issue a fresh notice with a brief statement of the reasons and only, after adhering to the procedure prescribed under the Act, 1973, shall proceed with the demolition; and any notices not acted upon within a preceding period of 40 days, shall not be the cause of action, to proceed with the demolition of any property. (Refer: Section 27 of the Act, 1973)

(ii) In case notices are issued for the violation of the construction norms, the same shall only be valid, if simultaneous proceedings are also initiated against the erring officers and the same shall also be required to brought to its logical end, adhering to the procedures prescribed within a reasonable time and in any case not later than 6 months, from the date of initiation of the proceedings/issuance of notice for the violation of the construction norms; needless to say that for demolishing the construction, it shall abide by the directions of the Apex Court in the Bulldozer case, which this Court has also adopted, as part of this order at Paragraph no.47 (supra).

(iii) The action of the development authority, shall not reflect in any manner that it is only against an individual, while ignoring a similar violation in the vicinity, with respect to the other constructions; and if such will be the case, the aggrieved person, shall be at liberty to approach this Court, alleging 'retributive exercise of executive discretion' and violation of the fundamental rights.

(iv) However, if the removal is necessary in the public interest and for a public purpose, by reclaiming a public land, such action may be permitted, by way of an exception, subject to compliance of the directions given by the Supreme Court in the Bulldozer case. (Paragraph-67 (supra)).

(v) In case the violator has stayed in the illegal constructions for three year or more, the authorities shall give a reasonable time in the notice, to allow him to either comply with the municipal norms within the said period and only under "compelling urgency" of larger public need, justifiable by the State, the said action for demolition may be proceeded with.

This is necessary as the State is *particeps criminis*, for permitting such a construction, and the said residence in a structure violating the norms, could not have been without the electricity and water supply, which even today is largely a sovereign one.

(IV). The Registrar (**Compliance**) is directed to communicate this order to the Chief Secretary of the State of U.P., for onward dispatch to all the Development Authorities/Officers in the districts, for strict compliance

(V). In order to ensure that the rule of law prevails, and the directions of this Court are strictly adhered to, needless to say that any violations of the directions herein, would result in contempt proceedings against the Officers concerned and the judgment shall operate in rem.

Conclusion

39. Having noted the aforesaid precedents and directions contained **In Re: Directions in the Matters of Demolition of Structures (supra)** and **Rajendra Kumar Bhartajya (supra)**; and in the facts of the case the directions as contained in paras-75, 76, 77 and 80 in the order of Hon'ble Atul Sreedharan,J.; wherein, even in instances where “retributive exercise of executive discretion” is writ large, I am unable to subscribe to an embargo being put on the demolition of the house “for a period of 2 years” from the date of registration of the FIR; and though I am conscious of the fact that during the hiatus of 2 years, in certain contingencies, for example in case there is imminent public urgency to reclaim State land and if the action is not restricted to the house of the accused alone, my esteemed brother had carved out an exception and made it permissible, subject to the compliance with directions given by the Supreme Court in the **Buldozar's** case; but in my humble opinion no fixed time period can be put, for as a matter of fact, it would result in keeping the operation of an enactment in abeyance, for the said period.

40. This may have other repercussions also, for e.g. in order to avoid legal proceedings, there may be instances of creating a frivolous prosecution and lodging of FIRs, where after the protection of 2 years shall be claimed, to avoid the proceedings, under the relevant provisions; and not only that we may dwell into the realm of the legislature, by introducing a period, which otherwise, has not been inserted by the Parliament or the legislature, and as such shall be beyond the jurisdiction

of this Court and a direction of the like nature cannot be given *in rem*, in my humble opinion.

41. This may also create a situation, where we may be guilty of travelling beyond the pleadings, on issuing such a direction; and an instance of un-warranted judicial activism.

42. In my humble opinion, the functions of the Courts and the exercise of powers under Article 226 of the Constitution of India, is not unbridled power; and is to be exercised by self restraint; and only in extra-ordinary circumstances, such a discretion has to be exercised.

43. In the facts of the present case, there is an occurrence of a crime of a serious nature, in a property known as “Indian Lodge” and admittedly petitioners are owners of the property and on account of occurrence of the said offence, it is a case property now; and it has to be dealt with as per the provisions of the BNSS.

44. As far as the residential house of the petitioners are concerned, there is a clear statement on behalf of the Government, that there are no proceedings against the residential house in question and in case required, during the investigation of the offence, if there is any evidence of its involvement in the crime in question; then also there is a presumption that the Government shall only proceed, in accordance with law and adhering to the principles of natural justice.

45. However, in a given instances, in the opinion of the Court, if the instance of mala fide, is attributable; and it leads to an inference of “retributive exercise of executive discretion” and violation of fundamental right, it is always open to such a victim or aggrieved persons, to approach this Court under Article 226 of the Constitution of India.

46. However, to say that “for a period of 2 years” from the date of registration of the FIR, no action can be taken, though qualified by certain exceptions, in my humble opinion such a direction cannot be given *in rem*.

47. Similarly the additional condition in para-77 of the directions contained in the order of Hon'ble Atul Sreedharan,J, also may be in excess of the jurisdiction, since giving another timeline of "1 year" before an authority initiates the procedure under the Municipal Law, also can be an instances of encroaching upon the jurisdiction of legislature and un-warranted judicial activism. The Legislature has already prescribed a procedure for notice and its service on the owner or occupier of any land or building, it even makes provisions for public notice, which in my humble opinion safeguards the interest of such owners.

48. There is no provision in the Act to give a 'notice of intent' to initiate proceedings prior to '1 year' of actual initiation of such a procedure; whereas what is provided is a notice for violations; and the procedure prescribed, appears to be in adherence to the principles of natural justice as well; and as such in my humble opinion a '1 year notice' to show the intent, for initiating the process, also cannot be given.

49. In view of the aforesaid, since there is disagreement between 2 Judges in the Division Bench, the "case" is to be referred to the 3rd Judge or other Judges, for their opinion on the following issue:-

- (i) whether in exercise of powers under Article 226 of the Constitution of India can a direction be issued *in rem*, for a period of 2 years or likewise, where the State may be restrained to take any action under the U.P. Urban Planning and Development Act, 1973, though subject to some exceptions; and
- (ii) whether before initiating a procedure under the Municipal Laws, can a direction be given to the authorities to give a 'notice of intent'; 1 year prior to the initiation of the said procedure, for the alleged violation of the statutory norm?.

50. The records of the present case be placed before Hon'ble the Chief Justice, for nominating the case to one or more of the other Judges, to answer the aforesaid question of law/points, in terms of Chapter VIII Rule 3 of the Allahabad High Court Rules.

(Siddharth Nandan,J.) (Atul Sreedharan,J.)

July 20, 2026/S. Prakash/Sumit.K