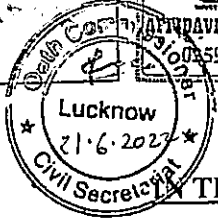


IN THE SUPREME COURT OF INDIA

IA No. 85381/2022 & 85414/2022

in

W.P CrI. No. 162/2022



THE MATTER OF:

Jamiat Ulama I Hind

...Petitioner

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT IN REPLY TO THE APPLICATIONS ON

BEHALF OF THE STATE OF UTTAR PRADESH,

RESPONDENT NO. 3 HEREIN

I, Rakesh Kumar Malpani, son of Shri R.S. Malpani aged about 53 years, presently posted as Special Secretary, Home Department, Government of Uttar Pradesh do hereby solemnly affirm and state as follows:

1. That I am posted as Special Secretary, Home Department, Government of Uttar Pradesh and am well conversant with the facts and circumstances of the matter and am duly authorized to swear this affidavit on behalf of State of Uttar Pradesh. Hence I am competent to swear this affidavit.
2. That this Hon'ble Court had been pleased to issue notice to the State of Uttar Pradesh in the above captioned applications in order to satisfy itself as to whether earlier proceedings in respect of the demolitions referred to in the said IAs had been undertaken prior to the riots in accordance with the relevant Act and Rules. That accordingly, the present composite Affidavit in Reply is being filed to bring on record the proceedings followed prior to the demolitions referred to in the said captioned IAs.
3. It is submitted that the demolitions referred to in the said IAs have been carried out by the Kanpur Development Authority and

(Signature)




the Prayagraj Development Authority respectively strictly in accordance with the Uttar Pradesh Urban Planning and Development Act, 1973 ("the said Act"). It is imperative to note that the said Development Authorities are autonomous statutory bodies established under the said Act that carry out enforcement proceedings independently on the facts of each case in accordance with the provisions of the said Act. The Development Authorities are empowered under Section 27 (1) of the said Act to order demolition of unauthorised / illegal constructions and encroachments. Under Section 43, notices can be served by affixation upon the property in case service is refused. True Copy of the relevant provisions of the Uttar Pradesh Urban Planning and Development Act, 1973 is annexed as **Annexure R-1**.

Demolitions that are subject matter of IA No. 85381/2022

4. It is submitted that the Petitioner has cherry picked two demolition actions of illegal constructions in the properties of one Mr. Ishtiaq Ahmad and one Mr. Riyaz Ahmed that took place in Kanpur on 11.06.2022 in an attempt to falsely link the same to the rioting; however, it has failed to note that in both cases, certain portions of the two illegal/ non-compliant structures in question took place; that both buildings were under construction and not in conformity with the permission granted; and that most importantly, proceedings under the Urban Planning Act against the two buildings had been initiated by the Kanpur Development Authority long before the incidents of rioting that took place in June 2022 – in one case way back in August 2020 itself, while in the other, in February 2022. The details of the same are as follows:





A. Mr Ishtiaq Ahmad had undertaken unauthorised construction on Plot No.01 Part 112/08, Benajhabar, Kanpur Nagar without taking approval under Section 14 of the Act. There was commercial construction work being undertaken on the basment, ground, first, second and third floor of the building in a residential area of about 130 square meters contrary to the plan that was sanctioned for the building on 06.07.2016. Thus he was issued a show cause notice dt. 17.08.2020 under Section 27 and 28 (2) of the Act to immediately stop the said construction and appear for a personal hearing on 28.8.2020 to show cause as to why demolition order should not be passed. Neither the noticee nor his representative appeared for the hearing on 28.08.2020. Thereafter, several notices were sent and the property was sealed – but the seal was broken, hence FIR No. 37/2021 dt. 19.3.2021 was registered at PS Swarup Nagar, Kanpur Nagar against Shri Ishtiaq Ahmad under Sections 188, 447 and 448 IPC. The construction of basement, ground floor, first floor, second floor and third floor was made on the site in contravention of the approved double-storey residential building map by the builder. Commercial construction was also done against the approved residential map and the projections were made in the side street by completely covering all the setbacks. Thus, a Demolition Notice/Order dt. 19.04.2022 was passed under Section 27(1) of the Act, giving the noticee 15 days' time to demolish the unauthorised construction himself, failing which, the same would be demolished by the Authority. Since the noticee failed to comply, on 11/6/2022, certain portions of the construction covering the setbacks at the site were demolished. 



Thereafter, on 17.06.2022, Sh. Iftikar Ahmad, son of the noticee Sh. Ishtiaq Ahmad, submitted an application for compounding along with an affidavit dt. 17.06.2022, in which it was deposed:

“Construction on building/plot No. 112/8A has been mistakenly made by the Deponent by deviating from the map approved by the Authority. Notice has been issued against the Deponent by the Authority and enforcement action has also been taken. The Compounding map of the construction is being submitted by the Deponent to the Authority, which may kindly be compounded as per rules. The non-compoundable part of the construction will be demolished by the Deponent himself.”

Thus, the offense of illegal construction has been admitted by the builder himself.

True translated copy of Section 27(1) and 28(2) Show Cause Notice dt. 17.08.2020 is annexed as Annexure R-2. True translated copy of Demolition Notice dt. 19.04.2022 is annexed as Annexure R-3.

B. Mr. Riyaz Ahmed had been undertaking unauthorised development work for establishing a petrol pump on plot No. 729, Singhpur Zone -1 Kanpur, without any sanction or approval from the Authority. In view thereof, a Stop Development Notice under Section 28(1) of the Act was issued on 18.02.2022. Upon failure of the noticee to comply, show cause notice under Section 27(1) was issued on 23.02.2022 in which the noticee was granted a personal hearing on 08.03.2022. Since the neither noticee nor his representative appeared on the said date, the premises were ordered to be sealed under Section 28A(1) on 02.04.2022, and



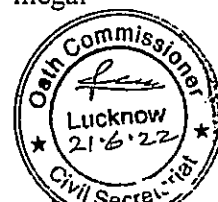
Demolition order was passed on 20.04.2022. One portion of the under construction boundary wall at the disputed site was removed by the Authority on 11.6.2022 but since an application was submitted by the builder on the spot, seeking compounding of the construction, no further action was taken. Thereafter, Shri Riyaz Ahmad has moved an application for compounding of the construction on 17.06.2022 along with an Affidavit, wherein the illegality and irregularity in the building has been admitted by the owner. In the affidavit, he has deposed:

"The Deponent wants to get the compounding map approved for the said plot/land. The Kanpur Development Authority has issued notice regarding the said plot/land and enforcement action has also been taken. The compounding map of the said construction is being submitted by the deponent with the request that the construction may kindly be compounded as per the rules. The non-compoundable portion of the construction will be demolished by the deponent on his own. The deponent is ready to deposit the prescribed compounding fee in respect of the said construction."

True translated copy of Notice dt. 18.02.2022 is annexed as **Annexure R-4**. True translated copy of Show Cause Notice dt. 23.02.2022 is annexed as **Annexure R-5**. True translated copy of Sealing Order dt. 02.04.2022 is annexed as **Annexure R-6**. True translated copy of Demolition Notice dt. 20.04.2022 is annexed as **Annexure R-7**.

5. Thus, a perusal of the aforesaid facts reveal that two instances of removal of unauthorised illegal constructions in Kanpur by the Kanpur Development Authority on 11.06.2022 were part of the ongoing demolition drive against encroachments and illegal

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constructions and had no relation to the riots as falsely alleged by the Petitioner. The Petitioner has deliberately obfuscated the true facts to paint a nefarious picture of alleged mala fides on the part of the Administration, and that too, without stating any facts on affidavit. The IA merit to be dismissed with costs on this ground alone.

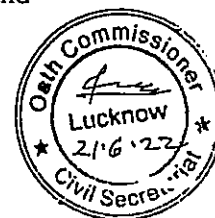
Demolition that is subject matter of IA No. 85414/2022

6. It is submitted that the Petitioner which seeking generic relief, has cherry picked one instance of demolition in city of Prayagraj in respect of the demolition of the house of one *Javed Mohammed* on 12.06.2022. The Petitioner has failed to disclose the fact that the proceedings under the 1973 Act and Rules by the Prayagraj Development Authority against said person for illegal construction without any sanction at all, unauthorised use of residential land as an office, had been initiated much prior to incidents of rioting. The true facts of the said demolition are as follows:

(i) The case pertains to Building No. 39C/2A/1, Karaili, J.K. Ashiana, PS Karaili Prayagraj, wherein a two storey building was occupied by one Mr. Javed Mohammed, son of Mr. Mohammed Azhar. A name plate made of marble was installed on the boundary wall of the building, on which "Javed M" was written and above the boundary there was a signboard showing "Welfare Party of India" on which the name of Mr. Javed Mohammad, State General Secretary was written. A true copy of the photograph of the signboard, is annexed as **Annexure R-8**.

(ii) That several complaints were received by the Prayagraj Development Authority (PDA) from the residents of Kairaili, JK Ashiana Colony, Prayagraj, in respect of the unauthorised office use in a residential area as well as illegal constructions and





encroachments qua the said property. In Complaint dt. 04.05.2022, it was stated that the construction was done without getting the building plan/map approved from the Development Authority and that the premises was being commercially used by the "Welfare Party of India" in contravention of land use norms; that people kept coming and going at all times of the day and night and park their vehicles on the road, creating a constant problem in commuting. True translated copy of Complaint dt. 04.05.2022 is annexed as **Annexure R-9**.

(iii) That accordingly, a Show Cause notice under Section 27(1) dt. 10.05.2022 was issued to Mr. Javed Mohammed by the Prayagraj Development Authority, granting a personal hearing to show cause in relation to the unauthorised construction on 24.05.2022 at 11:00 am. The notice was attempted to be delivered in person at the premises; however, the server informed that though the family members were present at the site, they refused to take the notice. Thus, the notice was served in accordance with Section 43(1)(d)(ii) of the Act, by pasting on the wall of the building. True translated copy of Show Cause Notice dt. 10.05.2022 is annexed as **Annexure R-10**. True copy of the photograph of the notice pasted on the wall of the building on 10.05.2022 along with true translated copy of the note of the server st. 10.05.2022 is annexed as **Annexure R-11**.

(iv) Thereafter, another complaint dt. 19.05.2022 was received from the residents of the JK Ashiana Colony that no action had been taken by the administration despite the earlier complaint dt. 04.05.2022. True translated copy of Complaint dt. 19.05.2022 is annexed as **Annexure R-12**.

(v) On the date granted for personal hearing, i.e. 24.05.2022, neither Mr. Javed Mohammed, nor his representative appeared to show cause against demolition of the unauthorised/illegal

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construction and its non conforming use. Thus, the Demolition Order No. 01/Zone-2/UP-2B/Vi.Pra./2022-23 dt. 25.05.2022 was passed and notice dt. 25.05.2022 was issued informing of the same to the noticee Mr. Javed Mohammed. Vide the said notice, the noticee was directed to demolish the unauthorised construction himself within 15 days, i.e. by 09.06.2022 at the latest, failing which, the removal of the same would be done by the Authority. The notice along with demolition order was attempted to be delivered in person at the premises; however, the server informed that though the family members were present at the site, they refused to take the notice. Thus, the notice was served in accordance with Section 43(1)(d)(ii) of the Act, by pasting on the wall of the building. True translated copy of the Demolition Order dt. 25.05.2022 and notice dt. 25.05.2022 communicating the same is annexed as **Annexure R-13**. True copy of the photograph of the notice pasted on the wall of the building on 25.05.2022 along with true translated copy of the note of the server dt. 25.05.2022 is annexed as **Annexure R-14**.


(vi) Since the Noticee failed to comply with the Demolition Notice/Order dt. 25.05.2022 and remove the unauthorised construction himself, vide Notice dt. 10.06.2022, the noticee was directed to vacate the premises by 11:00 am on 12.06.2022, so that the demolition of the building could be carried out. The said notice was attempted to be delivered by hand at the premises on 11.06.2022, but as noted by the process server, when he went to the premises on 11.06.2022 with police force, the family members present at the site refused to take the notice. Thus, the notice was served in accordance with Section 43(1)(d)(ii) of the Act, by pasting on the wall of the building. True Translated Copy of the Vacating Notice dt. 10.06.2022 is annexed as **Annexure R-15**. True copy of the Notice dt. 10.06.2022 pasted on the wall



of the building on 11.06.2022 along with true translated copy of the note of the server dt. 11.06.2022 is annexed as Annexure R-16.

7. It was only after due service and providing adequate opportunity under Section 27 of the Act that the illegal construction was demolished by the Prayagraj Development Authority on 12.06.2022 after following due process of law and the same had no relation to the incident of rioting.

Reply on merits:

8. The Petitioner herein has attempted to give a mala fide colour to lawful action taken by the local development authorities as per procedure established by law by cherry picking one sided media reporting of a few incidents and extrapolating sweeping allegations from the same against the State. The same, it is submitted, is completely false and misleading. It is submitted that the said demolitions referred to in the IAs have been carried out by the Local Development Authorities, which are statutory autonomous bodies, independent of the State administration, as per law as part of their routine effort against unauthorised/illegal constructions and encroachments, in accordance with the UP Urban Planning and Development Act, 1972.
9. The Petitioner has failed to place on record above facts duly supported by affidavits and has merely hand picks certain media reporting to make unfounded allegations against the State machinery and its officers, and seeks sweeping omnibus reliefs unfounded in either law or fact.
10. It is humbly submitted that in so far as taking action against the persons accused in rioting, the State Government is taking stringent steps against them in accordance with completely different set of statutes, namely: 



- (i) Cr.P.C & The Indian Penal Code;
- (ii) U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 and Rules, 2021;
- (iii) Prevention of Public Property Damages Act; and
- (iv) Uttar Pradesh Recovery of Damages to Public and Private Property Act, 2020 and Rules 2021.

11. Moreover, the aforesaid interim applications seek an omnibus relief which final relief has been claimed in the Writ Petition itself and hence there is no occasion to invoke the extraordinary jurisdiction of this Hon'ble Court in the present applications.

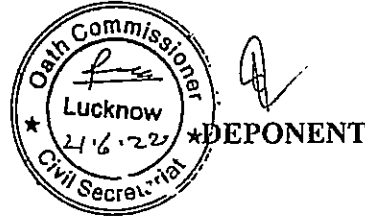
12. In fact, as seen above, the factum of the constructions being illegal, has also been admitted by the two builders in Kanpur. Pertinently, none of the actual affected parties, if any, have approached this Hon'ble Court in relation to the lawful demolition actions. This Hon'ble Court in a recent Writ Petition ((Dy No. 14488/2022) filed by a political party with respect to alleged demolitions in Shaheen Bagh, noted that only the affected party and not political parties should come forward, and allowed withdrawal of the petition, with liberty to approach the High Court. A true copy of Order dt. 09.05.2022 passed in Dy No. 14488/2022 "CPI (M) v. SDMC & Ors.) is annexed hereto as Annexure R-17.

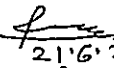
13. Furthermore, it is submitted that even if any such alleged demolition action is to be challenged, the same is to be done by the affected party before the High Court, and not this Hon'ble Court. In this very present Writ Petition, two earlier applications IA no. 72359/2022 and IA No. 72360/2022 were filed for impleadment and directions on behalf of Gujarat shopkeepers whose shops were going to be demolished; however, vide Order dt. 09.05.2022 the same were allowed to be withdrawn with liberty to approach the Hon'ble High Court. True Copy of Order dt. 09.05.2022 passed by this Hon'ble Court in I.A. No.



72359/2022 & 72360/2022 in WP CrI. No. 162/2022 is annexed herewith as Annexure R-18.

14. The answering respondent takes strong exception to the attempt by the Petitioner to name the highest constitutional functionaries of the State and falsely colour the local development Authority's lawful actions strictly complying with the UP Urban Planning and Development Act, 1973, as "extra legal punitive measures" against accused persons, targeting any particular religious community. All such allegations are absolutely false and are vehemently denied. It is prayed that this Hon'ble Court may also hold the Petitioner to terms for the said false allegations without basis before this Hon'ble Court. The applications merit to be dismissed with costs.
15. The averments made in the present short Reply are based on official records, no part of it is false, and nothing material has been concealed therefrom. The answering respondent seeks liberty of this Hon'ble Court to file a detailed para wise affidavit as per directions of this Hon'ble Court.
16. The Annexures annexed with the present Reply Affidavit are true/translated copies of their respective originals.




21.6.2022
(आर० सी० वर्मा)
अनुभाग अधिकारी एवं शपथ आयुक्त
न्याय अनुभाग-3 (लेखा)
उत्तर प्रदेश शासन