

SUPREME COURT GUIDELINES SET TO HOLD RESPONSIBLE OFFICERS ACCOUNTABLE IN ILLEGAL CONSTRUCTION.

The **Supreme Court** bench of **Justices J.B. Pardiwala and R. Mahadevan** in ***Rajendra Kumar Barjatya Vs U.P. Avas Evam Vikas Parishad***¹ has held that illegal constructions must be strictly dealt with and stern actions must be taken against officials who allow such illegalities to be perpetrated.

Introduction

While cautioning the responsible officers, the court said that *“unless the administration is streamlined and the persons entrusted with the implementation of the act are held accountable for their failure in performing statutory obligations, violations of this nature would go unchecked and become more rampant. If the officials are let scot-free, they will be emboldened and would continue to turn a nelson’s eye to all the illegalities resulting in derailment of all planned projects and pollution, disorderly traffic, security risks, etc”*

The court issued the following binding directions:

- Builders and applicants must provide an undertaking that possession of the buildings shall be handed over to the beneficiaries or owners only after obtaining a completion/occupation certificate from the appropriate authorities.
- The approved building plans must be displayed at the construction site throughout the construction period so that the authorities could conduct a periodic inspection and maintain records.
- Occupation/completion certificate can only be issued after verifying compliance with the approved plans. Issuance of the certificate must be postponed if deviations are noticed in the construction.
- Utilities like electricity, water and sewerage connections should be provided only upon presentation of the completion certificate.
- If any violation to the planning permission is brought to the notice of the authority after issuance of the certificate, strict action should be taken against all the stakeholders and responsible officers must be proceeded with departmentally.

- Permission must not be given by the local authorities to conduct trade/business in the illegally constructed buildings.
- The development should be in conformity with the zonal plan and usage. Rules in place and larger public interest must be taken into consideration while modifying such zonal plan and usage.
- When any assistance is sought by the respective authority under planning department/local body from another department to take action against any unauthorised construction, immediate assistance should be provided. If no timely assistance is provided, strict action should be taken against erring officials.
- Applications, Appeals and Revisions filed by the owner or builder against non-issuance of the completion certificate or for regularisation of the unauthorised construction or rectification of deviation must be disposed of within 90 days.
- States/Union Territories must circulate these directions with a warning that any deviation will be taken seriously and departmental action will be taken against the erring officials as per law.
- Banks and Financial Institutions should sanction loans against any building as a security only when a completion certificate is shown.
- Lastly, any action in contravention of the above directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.

Brief Facts

The present appeal was filed against an order passed by the Allahabad High Court in a writ petition. By the impugned order, the court directed the demolition of the unauthorised commercial constructions on residential plots. The court also ordered criminal and departmental actions to be taken against the responsible officers of Awas Evam Vikas Parishad (Respondent No. 1), as well as Respondent Nos. 4 and 5, who facilitated the illegal constructions.

The subject property was allotted to the Respondent No. 5, Veer Singh for residential purpose. However, he along with his attorney started illegal commercial construction on the land without taking any approval from the authority. Multiple notices were sent but no response was received which led to the demolition order being passed by the authority. The Allahabad High Court was approached by filing a writ petition seeking the demolition of the unauthorised constructions due to non-cooperation shown by the local authorities.

The appellants while making their common submissions argued that shops on the subject property have existed for over 24 years and the Respondent No. 1 converted the property

from the leasehold to freehold on an "as is where is" basis through a registered deed dated 06.10.2004 thereby acknowledged constructions. They also contended that the demolition proceedings were initiated without issuing a notice under section 82 of the U.P. Avas Evam Vikas Parishad Adhinyam, 1965 therefore violated the principle of natural justice as no opportunity of being heard was given. They further submitted that the impugned order failed to consider the regularisation of the shops instead ordered direct demolition of the construction. It is also their case that the action of the authority was arbitrary as other shops in the area which were also illegally constructed had not been chosen for the demolition.

Per contra, the Respondent argued that the subject property fell under the Shastri Nagar Yojna No.7 where residential plot allotted could be used for the residential purpose only. It also argued that the allottee raised illegal constructions without obtaining proper sanctions from the competent authority. It was further submitted that several notices were issued to regularise the shops but no reply was given. Raising illegal construction was in teeth of the statutory provisions applicable therefore the High Court rightly allowed the shops to be demolished.

Observations

The court after going through the facts of the present case noted that from 1990 onwards, though the Respondent No.1 had periodically issued notices for removal of unauthorized constructions, it did not lead to actual removal/demolition. Despite sufficient opportunities being granted to Respondent Nos.5 and 6 they did not utilize the same and continued the illegality. Such parties cannot plead estoppel. Even otherwise, we are of the view that there cannot be any estoppel against law.

The court also observed that lackadaisical attitude on the part of the officers in stopping the unauthorised construction cannot be used as an excuse to commit illegality.

It was held that *"the lapses on the part of the authorities will not vest any person with a right to put up construction without planning approval and in violation of the conditions regarding usage. However, the fact that the notices issued by the authorities between 1990 to 2013 did not culminate into demolition, would speak volumes about the lackadaisical attitude of the authorities and that also smacks of collusion with the violators. Therefore, the fact that the building has stood over 24 years will not clothe the appellants with any right in law and hence we do not find any force in the contentions of the counsel for the appellants alleging delay and latches."*

The court was not persuaded by the argument of the appellants that they did not aware of the fact that the shops they purchased were illegal constructed. The court was surprised that they did not make reasonable inquiry before purchasing the subject property. Had they made a reasonable inquiry, they would have come to know the fact that the subject property allotted to the respondent no. 5 was to be used for the residential purpose only.

In this context, the court referred to the doctrine of caveat emptor which mandates the buyer to make a reasonable inquiry before purchasing the property so as to find out a defect in the title of the seller.

It was held that *“section 55(1) (a) of the Transfer of Property Act makes it clear when the buyer with ordinary care is not able to ascertain the material defect in the property or in the seller’s title, it becomes the duty of the seller to disclose the same though it is the primary responsibility is on the buyer to ascertain the defects in the property and the title.”*

It further noted that the notices were also issued to the appellants as well after they occupied the premises therefore the plea of natural justice being violated was rejected.

The court while rejecting the argument that the freehold right was given by the Respondent no. 1 to the Respondent no. 5 through a deed thereby acknowledging their title, observed that the said grant cannot be treated as a license to construct the shops without any approval and sanctions.

“That apart, the registration of the property would not in any way amount to regularizing the unauthorized construction. The power to take action against an unauthorized construction is independent and not in any way connected to the Registration Act.” the court added.

The court also opined that illegal constructions cannot be allowed and such illegality must be dealt with an iron hand. Shops constructed illegally cannot be allowed to exist on the ground that a significant time has elapsed since the construction or a huge amount was invested.

Way Forward

This judgment comes at a time when planning norms are flagrantly being violated. The court’s emphasis on obstacles created by illegal constructions in a planned development of a particular area is laudable. Additionally, the importance of this judgment can be gauged from the fact that it has cautioned responsible officers, who collude with builders in raising unauthorised constructions, that strict action will be taken against them if they do not ensure compliance with rules and regulations.

This judgment assumes significance, as not much has changed since the Supreme Court delivered its judgment in *Supertech Limited Versus Emerald Court Owner Resident Welfare Association & Ors*² in which the court ordered the demolition of Supertech Towers, which were constructed on a green park area for which no permission was given. It shows that authorities have failed miserably in curbing the menace of illegal constructions.

Grave concerns raised in this judgment gain further importance when viewed alongside a recent ruling titled *Mirza Abid Beg Vs. State Of UP & Ors*³, wherein the Supreme Court highlighted the issue of illegal constructions being erected over water bodies after filling them with garbage and waste materials. The court directed the state of Uttar Pradesh

constitute a Committee of senior officials including the officials of the Revenue Department, Environment Department and the State Pollution Control Board while putting emphasis on the constitutional duty of the State to maintain natural resources and restore illegally filled ponds, lakes and water bodies .

The court in *In Re: Directions in the matter of demolition of structures*⁴, while issuing directions as to when the house of an accused can be demolished, cautioned that directions issued in this case would not be applicable to any unauthorised constructions made on public roads which can be demolished by the authority as per the law. This shows that the court does not want the illegal constructions to go on under the guise of protection against illegal demolition.

Demolition of already constructed buildings leads to environmental degradation, sewer blockage and other issues. If responsible officers ensure that laws in place to tackle the scourge of illegal constructions are strictly implemented, hard earned money of purchasers of such buildings can be saved and consequently damage to the environment can also be mitigated.

¹ CIVIL APPEAL NO. 14604 OF 2024

² 2021 SCC Online SC 648

³ Civil Appeal No(s). 1904/2020

⁴ 2024 SCC Online SC 3291