

A.F.R.



2026:AHC-LKO:20741

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - C No. - 596 of 2026**

Smt. Vandana Singh

.....Petitioner(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Housing and Urban Planning Lko.  
and 4 others

.....Respondent(s)

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Counsel for Petitioner(s)	: Rakesh Chandra Tewari,
Counsel for Respondent(s)	: C.S.C., Mohammad Aslam Khan

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**Court No. - 14**

**HON'BLE SUBHASH VIDYARTHI, J.**

1. Heard Sri Rakesh Chandra Tewari, Advocate the learned counsel for the petitioner, Sri Rahul Shukla, Advocate, the learned Additional Chief Standing Counsel appearing on behalf of the State, Sri Mohd. Arif Khan, Senior Advocate, assisted by Sri Mohd. Aslam Khan, Advocate, the learned counsel for the opposite parties no.4 and 5 and perused the records.

2. By means of the instant petition filed under Article 226 of the Constitution of India the petitioner has challenged the validity of an office memorandum dated 24.12.2025, issued by the Prescribed Authority, Regulated Area/Sub Divisional Magistrate, Sadar, Pratapgarh, to the extent that it declares continuance of proceedings only under Section 10 of the Regulation of Building Operations Act, 1958 (hereinafter referred to as the RBO Act) in respect of certain

constructions raised by the opposite party nos. 4 and 5 and not under Section 7-A of the RBO Act.

3. By way of an amendment made in the Writ Petition, the petitioner has challenged another office memorandum dated 20.01.2026, issued by the Prescribed Authority canceling a notice under Section 7-A of the RBO Act, 1958 issued to the opposite party no.4 and stating that the proceedings under Section 10 of RBO Act only will continue against her.

4. Briefly stated, the facts of the case are that the erstwhile landlord Raja Ajit Pratap Singh had executed a lease deed dated 28.05.1993 in favour of the opposite party no.5 Sri Mujeeb Ahmad and his two brothers, leasing one seventh portion of the land bearing Gata No.796, measuring one bigha, situated in Belha Ghat, Pratapgarh for a period of 30 years and the share of leased land which came to the opposite party no.5 was 1,295 square feet. The opposite party no.5 obtained sanction of building plan no.544 on 20.01.2005 for raising some commercial and residential constructions upon a plot of land measuring 4187.79 square feet forming a part of the land bearing Gata No.796 on the strength of the aforesaid lease deed dated 28.05.1993.

5. Thereafter, Raja Abhay Pratap Singh, son of Late Raja Ajit Pratap Singh executed a sale deed dated 24.12.2012 in favour of the opposite party no.4 Smt. Sabira Khatoon wife of Sri Mujeeb Ahmad in respect of 275.931 square meter land forming a part of land bearing Gata No.796. The sale deed mentions the boundaries of the land sold to the opposite party no. 4 as follows: -

*“East- Part of land bearing Gata No.796*

*West- 8 feet wide Kachcha passage;*

*North- House of Satish Sharma; and*

*South- Gallery.”*

6. The petitioner also purchased a plot of land measuring 945.81 square meter forming a part of land bearing Gata No.796 from Raja

Abhay Pratap Singh through a sale deed dated 26.12.2012. The land purchased by the petitioner is bounded as below: -

*"East- A shop constructed over a part of land bearing Gata No. 796 and thereafter State Bank of India;*

*West- Passage forming a part of Gata No.796;*

*North- Road leading from Chauk to Kachehri;*

*South- Part of land bearing Gata No.796."*

7. The opposite party no.4 submitted an application for getting a building plan sanctioned and in the affidavit filed in support of the application, a copy of which has been filed along with a supplementary affidavit filed by the petitioner, she stated that she had submitted a building plan for raising construction on the land owned by her, bearing Gata No.796, the boundaries whereof as per the registry are as follows: -

*"East-House of Majid Ahmed;*

*West-12 feet wide passage;*

*North- 43 feet wide road;*

*South- Naazma Begum."*

8. The same boundaries were shown in the map also. The map was sanctioned on 23.03.2017 without verifying the boundaries of the land mentioned in the sale deed. The opposite party no.4 had submitted two other applications for sanction of building plans for raising constructions on the property and those building plans were also sanctioned on 20.01.2005 and 18.05.2022.

9. The contention of the petitioner is that the opposite party no.4 has mentioned false boundaries of the property in her application for sanction of building plan and in the affidavit filed in support thereof and she has obtained the sanction by playing a fraud upon the authority.

10. When the opposite party no.4 started raising constructions, the petitioner filed an application stating that the construction was being raised in violation of the sanction plan. The construction was stopped and a notice under Section 10 of RBO Act was issued to the opposite party no. 4.

11. The petitioner filed Writ-C No. 1726 of 2024, which was disposed off by means of an order dated 21.02.2024 passed by a coordinate bench of this court, directing the Prescribed Authority to conclude the proceedings initiated by him by issuance of notice under Section 10 expeditiously in accordance with law.

12. The petitioner submitted a representation dated 04.10.2024 to the State Government for instituting an inquiry and the Chief Secretary, Government of U.P., passed an order dated 01.12.2024 directing the Chief Town and Country Planner, U.P., to submit a report. A two-member committee, consisting of the Assistant Town Planner, Prayagraj Division, Prayagraj and Associate Town Planner, Lucknow Division, Lucknow, submitted a report dated 05.12.2024 stating that a building plan no.544 was sanctioned on 20.01.2005 in respect of 4187.79 square feet land. There was no provision for parking in the plan sanctioned for commercial/residential use. The plan does not show front setback. The plan shows a 12-foot wide private passage towards the right-hand side of the building, but no such passage is in existence. Regarding building plan no. 29 sanctioned on 23.03.2017, it was stated that the sanctioned plan shows a front setback of 1 meter width, whereas as per the Building and Development Bye-laws, 2008, front setback should be 1.2 meters wide. Regarding the third building plan no. 163, sanctioned on 18.05.2022, it was stated that the front setback shown in the plan is 1 meter wide, whereas it should be 4.5 meters wide as per the bye-laws. There is no provision for parking in the sanctioned plan, whereas in the residential building plan there should be place for at least one car parking and in building plans for commercial buildings there should be provision for one car parking for every 100 square meters of surface

area. The site plan of the sanctioned building plan shows a 6 feet wide private passage, whereas in the earlier sanctioned plan dated 20.01.2005 showed a 12 feet wide passage. However, no passage was found in existence. The inquiry committee also reported that constructions have been raised in deviation from the sanctioned plan.

13. Feeling aggrieved against the aforesaid inspection and inquiry, the opposite party no.4 gave a representation dated 04.08.2025 to the Joint Secretary, Awas Evam Shahari Vikas Niyojan Anubhag, Government of Uttar Pradesh stating that any action initiated on the complaint made by the petitioner be dropped. On the aforesaid representation filed by the opposite party no.4, Joint Secretary called for a report from the District Magistrate/Regulating Authority Regulated Area Pratapgarh.

14. The Regulating Authority obtained an opinion from the District Government Council (Civil) and thereafter a notice dated 09.12.2025 was issued to the opposite party no.4, under Section 7-A of the RBO Act directing the opposite party no.4 to appear on 17.12.2025 and present her case.

15. The petitioner submitted an application dated 15.12.2025 to the Prescribed Authority, stating that constructions had been raised by the opposite party no.4 and her husband, Shri Mujeeb Ahmad (the opposite party no.5) and, therefore, a notice under Section 7-A of the RBO Act should be issued to the opposite party no.5 also.

16. On 22.12.2025, the Prescribed Authority sent a letter to the Joint Secretary of the State Government, stating that a notice under Section 7-A of the RBO Act had already been issued to the opposite party no.4 on 09.12.2025 and it will be modified and a notice under section 7-A will be issued to the opposite party no.4 and opposite party no.5 also.

17. On 23.12.2025, the opposite party no.4 submitted an application to the Prescribed Authority stating that the petitioner and her husband,

Gyanendra Singh had previously filed Writ-C No.1726 of 2024, which was disposed of by means of an order dated 21.02.2024 with the consent of the learned counsel for the parties by issuing a direction to the Prescribed Authority to conclude the proceedings initiated by him by issuance of notice under Section 10 to the opposite party no.4, expeditiously in accordance with the law and, therefore, proceedings under Section 10 only can continue against her, and no proceedings can be undertaken under section 7-A of the RBO Act. It is upon this application that the Prescribed Authority has decided to continue proceedings under Section 10 RBO Act only and has dropped the proceedings under section 7-A of the Act.

18. The petitioner has challenged the dropping of the proceeding under Section 7-A by filing this petition.

19. The opposite party no.4 has filed a counter affidavit inter alia stating that proceedings under Section 10 of the Act are already going on against her. The District Magistrate had constituted a team for submitting a report regarding the dispute between the petitioner and the opposite party no.4 and in the report dated 06.02.2024 submitted by a Committee consisting of ADM Finance/Revenue Pratapgarh, Tahsildar Sadar Pratapgarh, and Junior Engineer Regulated Area Pratapgarh, it has been stated that the ground floor construction is about 15 years old. A building plan for raising construction on the first floor was sanctioned on 18.05.2022 against which objections were filed. Initially, a direction was issued to maintain status quo, but this order has been set aside. In case of any dispute regarding title, the parties may obtain relief from the competent court. No administrative action is required in the matter.

20. Sri. Rakesh Chandra Tewari, the learned counsel for the petitioner, has submitted that when it is apparent that the opposite party no.4 has obtained sanction of building plans by making false representations regarding boundaries of the land in question in her application for sanction of building plan and the affidavit filed in support thereof, the

sanction has been obtained by playing a fraud and therefore, the sanction ought to be canceled under Section 7-A of the RBO Act.

21. The learned counsel for the petitioner has placed reliance on a judgment rendered by a Coordinate bench of this court in **Mrs. G.S.J. Shapoorjee Vs. Allahabad Development Authority**: 2016 (11) ADJ 524 (DB) = 2016 SCC OnLine All 3088 and **D.B. Kausar Vs. State of U.P. and others**: 2023 SCC Online Allahabad 178. He has also placed reliance upon an interim order dated 07.05.2019 passed by this Court in Writ Petition No. 12962 (M/S) of 2019: **Smt. Suresh Kumari Jaiswal versus Prescribed Authority and others**, which was followed in the order dated 20.05.2019 passed in Writ Petition No. 14295 (M/S) of 2019: **Laxmi Chand Gupta versus Prescribed Authority**.

22. Sri. Mohd. Arif Khan, the learned Senior Advocate appearing for the opposite party nos.4 and 5, has submitted that earlier the petitioner and her husband had filed Writ-C No. 1726 of 2024 challenging an order dated 04.01.2024 and seeking a direction for decision on the application dated 01.02.2023 under Section 7-A read with Section 10 of RBO Act, which was disposed off by means of an order dated 21.02.2024, wherein it is recorded as follows: -

“....

*5. Learned counsel for the petitioner after arguing the matter up to some length has confined his relief only for suitable direction to the Prescribed Authority/Sub Divisional Magistrate, Sadar, Pratapgarh to pass necessary orders in accordance with law and conclude the proceedings initiated as per notice issued to respondent no. 4 on 02.01.2024.*

*6. Learned Senior Advocate appearing for respondent no. 4 on the other hand submits that even if after spot inspection some portion of the building was found to have exceeded the sanctioned map, then also there are sufficient powers of compounding such minor deviations from the sanctioned map and in this regard he has also given an application for compounding which is under consideration which would be considered by the competent authority.*

*7. With the consent of learned counsel for the parties present writ petition is disposed of with direction to the Prescribed Authority/Sub Divisional Magistrate, Sadar, Pratapgarh to conclude the proceedings initiated by him by issuance of notice under Section 10 to respondent no. 4 expeditiously in accordance with law. While hearing respondent no. 4 he shall also give opportunity of hearing to the petitioner and also consider the application for compounding submitted by respondent no. 4. In case no such application is filed by respondent no. 4 till date, liberty is granted to him to file the same within next ten days.*

*8. Let the proceedings be concluded expeditiously, say within six weeks from the date of production of certified copy of this order before the Prescribed Authority.”*

23. The learned Counsel for the opposite party nos. 4 and 5 has submitted that after the learned counsel for the petitioner had elected to seek a direction for conclusion of proceedings under Section 10 of the RBO Act and he had dropped the prayer for action under Section 7-A of RBO Act, no writ petition would lie for the same prayer again and the petitioner cannot press for action against the opposite party no.4 under Section 7-A of the Act.

24. The learned counsel for the opposite party no.4 has placed reliance on the judgments in the cases of **Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and others**: AIR 1974 Supreme Court 2105 = (1974) 2 SCC 706, **Commissioner of Endowments and Others Vs. Vittal Rao and Others**: (2005) 4 SCC 120 and **Sucha Singh Lodhi (dead) through LRs Vs. Baldev Raj Walia and another**: (2018) 6 SCC 733.

25. On the basis of written instructions provided by the Prescribed Authority, Regulated Area/SDM, Sadar Pratapgarh, Sri Rahul Shukla, the learned Additional Chief Standing Counsel appearing on behalf of the State of Uttar Pradesh has submitted that in the order dated 21.10.2024 passed by this court in Writ C-No.1726 of 2024 a direction was issued for concluding the proceedings under Section 10 of the RBO

Act only and the proceedings under section 7-A have been dropped for this reason.

26. Section 7-A of the RBO Act provides as follows: -

*“7-A. **Cancellation of permission obtained under fraud.**—If at any time after a permission has been granted under sub-section (2) of Section 7, the Prescribed Authority is satisfied that such Permission was granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, the Prescribed Authority may cancel such permission, for reasons to be recorded in writing and any work done there under shall be deemed to have been done without such permission.”*

27. Section 10 of the RBO Act provides as follows: -

*“10. **Order of demolition of buildings in certain cases.**— (1) Where the erection or re-erection of or material change in any building has been commenced or is being carried on or has been completed in contravention of any regulation made under this Act or without the permission referred to in Section 6 or in contravention of any condition subject to which such permission has been granted, the Prescribed Authority may, without prejudice to the provision of Section 9 make an order directing that such erection, re-erection or material change in shall be demolished by the owner thereof within such period not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order the Prescribed Authority may itself through the local authority concerned or through such other agency as it thinks fit cause the erection, re-erection or material change in to be demolished and the expenses of such demolition shall be recoverable from the owner in the same manner as an arrear of land revenue:*

*Provided that no such order shall be made unless the owner has been given an opportunity of being heard.*

*(2) If the prescribed authority is satisfied that the erection or re-erection of any building or the execution of any such work as is referred to in Section 6 has been unlawfully commenced or is being unlawfully carried on, it may by written notice require the person directing or carrying on such erection or re-erection or execution, to stop the same forthwith and on his failure to do so cause the carrying on of such erection or re-erection or execution to be*

*stopped and use or employ such reasonable force as may be necessary therefor."*

28. A bare perusal of the aforesaid statutory provisions makes it manifest that Section 7-A applies to cases where sanction of a building plan has been granted in consequence of any material misrepresentation made or any fraudulent statement or information furnished, whereas Section 10 operates where the construction has been raised in contravention of any regulation made under the RBO Act or without the permission referred to in Section 6 of the Act or in contravention of any condition subject to which such permission has been granted. Both the provisions apply to different situations. Both the aforesaid provisions are not mutually exclusive in the sense that institution of proceedings under one provision would bar institution or continuance of proceedings under the other provision.

29. In the present case, from the documents available before this court at this stage it appears that the sale deed obtained by the opposite party no.4 in respect of the property in question mentions the following boundaries of the land in question:

*"East - Part of land bearing Gata No.796*  
*West - 8 feet wide Kachcha passage;*  
*North - House of Satish Sharma; and*  
*South - Gallery."*

30. However, in the application for sanction of a building plan the opposite party no. 4 has stated that the boundaries of the property mentioned in the registered sale deed are as follows: -

*"East - House of Majid Ahmed;*  
*West - 12 feet wide passage;*  
*North - 43 feet wide road;*

*South - Naazma Begum. "*

31. The aforesaid statement made by the opposite party no.4 in the application for sanction of a building plan and the affidavit filed in support thereof is false. This prima facie indicates that the sanction of building plans have been granted to the opposite party no. 4 in consequence of a material misrepresentation made regarding boundaries of the land on which the construction was sanctioned.

32. In the inspection report dated 05.12.2024, submitted by the two-member committee, it has come to light that in the application dated 04.10.2024 the width of the passage was stated to be six feet and in the application dated 22.07.2024 the width of the passage is mentioned to be 12 feet whereas there is no passage in existence. This also prima facie establishes that the building plan was sanctioned in consequence of a material misrepresentation made or a fraudulent statement or information furnished by the opposite party no. 4, which would warrant initiation of proceedings under Section 7-A against her.

33. Moreover, the inquiry report has revealed that the building plan submitted by the opposite party no. 4 showed that the minimum prescribed set-backs were not there in the proposed building plan and yet the building plans were sanctioned in violation of the provisions of the building bye-laws, which prima facie shows an illegality committed by the officials in connivance with the opposite party no. 4 and which would amount to playing a fraud upon the authority.

34. In **Mrs. G.S.J. Shapoorjee Vs. Allahabad Development Authority**: 2016 (11) ADJ 524 (DB) = 2016 SCC OnLine All 3088, a Division Bench of this Court held that: -

*"49. Fraud vitiates everything. If orders obtained by petitioners are result of a fraud or misrepresentation and this Court finds so, it is bound to set at naught the effect of such orders which are result of a fraud and misrepresentation of a party, otherwise this Court shall*

*be failing in its duty of judicial review giving substantial justice to the parties.*

*\* \* \**

*75. This Court finds no provision under the Act, 1973 which entitles the Authority to go for profiteering on an illegal act of encroachment or unauthorized construction in the name of compounding. The compounding contemplated in section 32 is in respect of offences punishable under the Act. It nowhere provides that once an offence is compounded, an act, which is in violation of Plan, shall also stand regularized or become valid. The effect of compounding is provided in sub-section (2) of section 32 that an offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect to the "offence" compounded. This is with regard to the criminal liability fastened upon the person for committing an offence under the Act, 1973. But the prohibition contained in the Act and statutory obligation upon Authorities to set right a person who has faulted/breached such provision by taking appropriate action, e.g. demolition of building by exercising power under section 27 has not been made inoperated when an offence is compounded. The proceeding prevented as a result of compounding an "offence" relates to offence and illegality/irregularity so prohibited/controlled is under another provision. It may also be noticed that by Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 (Act No. 3 of 1997) (hereinafter referred to as "Act, 1997"), certain other offences have been provided vide sections 26-D and 28-A. However, removal of any raised construction in contravention of Plan and removal of encroachment etc. are governed by a different procedure and steps which would remain unaffected by such compounding. In other words, the compounding under the Act, 1973 is to avoid the criminal liability and punishment on conviction but not to regularize a construction prohibited under the Act for which no relaxation is permissible except when the plan is amended in accordance with section 13 of the Act.*

*76. We are informed that ADA has passed a resolution to allow unauthorized construction to continue after payment of some amount called as "compounding fee" and the same has been decided by some resolution passed by the said Authority.*

*77. We are of the view that in the garb of compounding, a resolution of authority or Development Authority itself will not cure the patent defect going to the root of the matter and an illegality will not stand cured and legal with the consent of ADA, since, the statute provides*

*a particular procedure and nothing can be done in a manner other than the procedure prescribed in the statute.*

*78. When law requires something to be done in a particular manner, things done otherwise are prohibited. This principle was recognized in Nazir Ahmad v. King-Emperor: AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments, which I do not propose to refer all but would like to refer a few recent one.*

\* \* \*

*87. This Court is of the view that a perusal of Act, 1973 shows that except those cases which are covered by proviso to section 16, there is a complete embargo against deviation from a plan. The use of land or building which is not in conformity with such plan is totally prohibited. It is also a criminal offence under section 26 of Act, 1973. In fact when there is a case of unlawful encroachment or obstruction, even those who are responsible for preventing such encroachment or obstruction, if failed to do so, are also liable for criminal prosecution and punishment under section 26D of Act, 1973. Section 32 providing composition of offences is only in respect to criminal liability but not to retain contravention of plan which is prohibited by section 16. That contravention if continues will have to face legal consequences. The only saving clause one can read is section 13 whereby a change in plan can be approved by State Government and if that has been done the situation may be different, otherwise the embargo is complete.”*

35. The aforesaid judgment has been followed in **D.B. Kausar Vs. State of U.P. and others**: 2023 SCC Online Allahabad 178.

36. The learned Counsel for the opposite party no. 4 has objected against the locus standi of the petitioner to object against the constructions raised by the opposite party no. 4. Replying to this objection, the learned Counsel for the petitioner has relied upon an interim order dated 07.05.2019 passed by this Court in Writ Petition No. 12962 (M/S) of 2019: **Smt. Suresh Kumari Jaiswal versus Prescribed Authority and others**, which was followed in the order dated 20.05.2019 passed in Writ Petition No. 14295 (M/S) of 2019: **Laxmi**

**Chand Gupta versus Prescribed Authority**, wherein this Court has observed that: -

*“On the question of locus, this court is of the view that if there is transgression of the Act 1958 and illegal construction has been made contrary to the map sanctioned under section 6 read with section 7, then any resident of the area can be a person aggrieved and is entitled to approach the authorities informing them about the illegal construction(s).”*

37. I am also of the considered view that obtaining sanction of building bye-laws in violation of building bye-laws, by making false representations relating to material particulars and by playing fraud, would adversely affect the planned development of the locality and it would affect the public at large. If such fraudulent acts come to the knowledge of the authorities, they cannot refuse to take appropriate action in accordance with law on the pretext that the petitioner had earlier not pressed the demand of action under the law. Moreover, when such a conduct comes to knowledge of the Courts, the Courts cannot shut their eyes and choose to ignore the illegalities. The Courts' role is larger than mere protection of the rights of the parties. The Courts have to act as guardian of the Rule of Law. Therefore, I find no force in the objection raised by the learned Counsel for the opposite party no. 4 regarding locus of the petitioner.

38. In **Babubhai Muljibhai Patel** (supra) the Hon'ble Supreme Court has upheld the view taken by the High Court to refrain from deciding the disputed questions of facts. I do not propose to record my findings of any disputed question of fact and I am only examining the correctness of the decision dropping proceedings under Section 7-A of the RBO Act on the sole ground that in the order 21.02.2024 passed in dated Writ-C No. 1726 of 2024, this Court has directed to conclude the proceedings under Section 10 of the RBO Act only. I am examining the legality of this ground only, leaving the questions of facts to be decided by the Prescribed Authority.

39. In **Sucha Singh Lodhi (dead) through LRs Vs. Baldev Raj Walia and another**: (2018) 6 SCC 733, the Hon'ble Supreme Court held that: -

*“24. It is clear from the reading of Order 2 Rule 2(1) of the Code that whenever the plaintiff files a suit on the basis of a cause of action pleaded in the plaint, he is under a legal obligation to include and claim all the reliefs against the defendant, which have accrued to him on the cause of action pleaded by him in his plaint. In other words, if on the basis of cause of action pleaded by the plaintiff in the plaint, he is entitled to claim two reliefs, namely, 'A' and 'B' against the defendant(s), then he is under an obligation to claim both 'A' and 'B' reliefs together in the suit. Order 2 Rule 2(1) of the Code enables the plaintiff to relinquish any portion of his relief with a view to bring the suit within the jurisdiction of any court.*

*25. Order 2 Rule 2(2) of the Code, however, provides that where a plaintiff omits to sue or intentionally relinquishes, any portion of his claim/relief in his suit, then in such event, he shall not be allowed afterwards to sue in respect of the claim/relief so omitted or/and relinquished by him in his suit. In other words Rule 2(2) does not permit the plaintiff to file second suit to claim the omitted or/and relinquished relief.*

*26. In our opinion, the sine qua non for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff.”*

40. Here the question involved is not limited to enforcement of any legal right of the petitioner, the question is regarding legality of the dropping of the proceedings under Section 7-A of the RBO Act when the record prima facie indicates that the said proceedings are warranted. Therefore, Order II Rule 2, C.P.C. would not come into play in the facts and circumstances of the present case.

41. In **Commissioner of Endowments and Others Vs. Vittal Rao and Others**: (2005) 4 SCC 120, the Hon'ble Supreme Court has held as under:

*“17. The High Court while exercising jurisdiction under Article 226 of the Constitution has jurisdiction to pass appropriate orders. Such power can neither be controlled nor affected by the provisions of Order 23 Rule 3 CPC. It would not be correct to say that the terms of Order 23 Rule 3 should be mandatorily complied with while exercising jurisdiction under Article 226 of the Constitution. Otherwise an anomalous situation would arise such as before disposing of the writ petition, issue should be framed or evidence should be recorded, etc. Proceedings under Article 226 of the Constitution stand on a different footing when compared to the proceedings in suits or appeals arising therefrom.”*

The aforesaid proposition of law does not apply to the controversy being adjudicated by this order.

42. The only ground pressed for dropping the proceedings under Section 7-A of the RBO Act is that in the order dated 21.02.2024, this Court had directed for conclusion of proceedings under Section 10 only and, therefore, the proceedings under Section 7-A cannot be taken against the opposite party no.4. I am unable to accept this ground for dropping the proceedings under Section 7-A, firstly, on the ground that the petitioner had not surrendered or foregone her claim for action under Section 7-A of the Act against the opposite party no.4. The petitioner had sought a direction for conclusion of proceedings initiated by a notice dated 02.01.2024. The notice dated 02.01.2024 is not available on the record and it cannot be ascertained that the said notice did not make a mention of Section 7-A of the Act. Therefore, the doctrine of election does not apply to the present case. Secondly, the order dated 21.02.2024 does not record that this court had prohibited action under Section 7-A of the RBO Act or had condoned the fraud played by the opposite party no. 4, if any, while submitting the applications for sanction of the building plans. Therefore, the order dated 21.02.2024 does not amount to a direction for closure of proceedings against the opposite party no.4 under Section 7-A of the Act. Thirdly, even if the petitioner has no right to demand initiation of proceedings under Section 7-A of the RBO Act against the opposite party no. 4, the initiation of such proceedings is not

dependent upon the petitioner's right to claim initiation of the proceedings.

43. When the inquiry report dated 06.02.2024 prima facie indicates that the sanction for building has been obtained by making a false statement and misrepresentation regarding boundaries of the land, which amounts to playing a fraud upon the authority, proceedings under Section 7-A of the RBO Act have to be initiated irrespective of the fact whether the petitioner has a right to press for initiation of the proceedings or not. Therefore, the order dropping proceedings under Section 7-A of the Act is unsustainable in law and the same is liable to be set aside.

44. In view of the foregoing discussion, the writ petition is *allowed*. The office memorandum dated 20.01.2026, issued by the Prescribed Authority, Regulated Area/Sub Divisional Magistrate, Sadar, Pratapgarh, canceling the notice under Section 7-A of the RBO Act, 1958 against the opposite party no.4 and stating that the proceedings under Section 10 of RBO Act only will continue against her, is quashed. The opposite party no. 2/Prescribed Authority is directed to conclude the proceedings instituted against the opposite party no. 4 under Section 7-A of the RBO Act, as also the proceedings under Section 10 of the RBO Act, expeditiously, in accordance of the law.

**Subhash Vidyarthi,J.)**

**March 23, 2026**

Ram.