



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