



AFR



2026:AHC:147816-DB

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 2229 of 2026

Faimuddeen and 2 others

.....Petitioner(s)

Versus

State of U.P. and 7 others

.....Respondent(s)

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

Court No. - 42

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

(Per: Hon'ble Atul Sreedharan, J)

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

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

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

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

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

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

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

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

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

² (2025) 5 SCC 1

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

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

³ 2024 SCC OnLine 3767

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

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

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

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

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

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

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

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

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

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

THE PETITIONER’S CASE

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

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

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

THE RESPONDENT'S CASE

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

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

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

prevent the abuse of power (paragraph 22 of that judgment). Supreme Court laid down that the rule of law is a safeguard against arbitrary State action and would ensure that governance is based upon established legal principles rather than arbitrary discretion (paragraph 32 of that judgement).

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

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

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

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

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

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

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

THE INTERPLAY BETWEEN RIGHT TO LIFE, LIVELIHOOD AND SHELTER

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

⁵ (1985) 3 SCC 545

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁷ 2025 SCC OnLine 766

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²² 1974 2 SCC 506

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DWELLING PLACES IN CONFLICT WITH MUNICIPAL LAWS

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

³⁰ 2024 SCC OnLine SC 3767

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

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

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

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

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

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

68. This Court has already held hereinabove that it is not in favour of persons violating buildings regulations but it is also imperative that while undoing the mischief, which would require demolition of the unauthorized constructions, the delinquent officers are also to be punished in accordance with law; and this Court's view is also fortified by a decision of the Apex Court in the **G.N. Khajuria Vs. D.D.A**³¹
69. In a meaningful democracy, the right of the individual must be protected, if the need arises, from the might of the State. A former President of the Supreme Court of Israel observed **"Democracy is not satisfied merely by abiding by proper elections and legislative supremacy. Democracy has its own internal morality based on the dignity and equality of all human beings. Thus, in addition to formal requirements (elections and the rule of the majority), there are also substantive requirements. These are reflected in the supremacy of such underlying democratic values and principles as separation of powers, the rule of law, and independence of the judiciary. They are based on such fundamental values as tolerance, good faith, justice, reasonableness, and public order. Above all, democracy cannot exist without the protection of individual human**

³¹ 1995 5 SCC 762

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

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

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

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

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

DIRECTIONS

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

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

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

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

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

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

(Siddharth Nandan,J.)

(Atul Sreedharan,J.)

July 20, 2026

Noman