

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT PORT BLAIR
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 82 OF 2026
With
CAN No. 1 of 2026

Dr. R. Thulasidasan
vs.
Shri M. Sethu & Ors.

For the Appellant : Mr. Surajit Samanta, Adv.
Mr. Balailal Sahoo, Adv.
Ms. Sohini Samanta, Adv.
Mr. Subhasis Maity, Adv.
Mr. Roop Shankar Roy, Adv.

For the Respondent No. 1 Mr. Arul Prasanth, Adv.

For the Respondent Nos. 2 & 3 Mr. Rakesh Kumar, Adv.

Judgment reserved on : 18.08.2026

Judgment pronounced on : 28.08.2026

Judgment uploaded on : 28.08.2026.

Shampa Sarkar, J.

1. Affidavit-in-opposition on behalf of the Sri Vijay Puram Municipal Council and the Andaman and Nicobar Administration and the supplementary affidavit filed by the appellant were taken on record on August 18, 2026. The appeal arises out of a judgment and order dated July 31, 2026

passed in WPA No. 79 of 2026. By the order impugned, the learned court directed Sri Vijay Puram Municipal Council (hereinafter referred to as the Municipal Council) to seal the hotel in question and implement the earlier order of demolition in accordance with law, in the event the illegal construction by the appellant had not been regularized. Liberty was granted to the Tehsildar, Port Blair and the Municipal Council to enter into the constructed area of the appellant and reclaim and restore to themselves the encroached portions of the respective properties. The learned Single Judge directed that urgent and immediate steps should be taken on the basis of His Lordship's order.

2. Mr. Surajit Samanta, learned Advocate for the appellant submitted that, the land on which the alleged construction was made had been converted to commercial use by the administration. The Hotel De Marina had been registered as a residential hotel under the Andaman and Nicobar Islands Shops and Establishments Regulation, 2004 on April 19, 2022, for the period from April 20, 2024 to April 20, 2025. It was further submitted that the holding register maintained by the office of the Tehsildar Sri Vijay Puram recorded that the licence was issued in the year 1989 upon regularization of pre 1978 encroachments. An area of 200 sq.m. was diverted into commercial use vide SDO RC No. 279/02/SDO(SA) and order of the SDO dated August 27, 2008. As such, the direction of His Lordship to allow the Tehsildar as also the other authorities to enter into the land in question and reclaim the encroached portion upon demolition of the structure, was erroneous. Further, the direction of His Lordship to seal the hotel on the ground that the same was not being run with

sanction from the authorities was also erroneous. Upon conversion of the land for commercial use the hotel was being operated from a part of the building.

3. Mr. Samanta relied on the supplementary affidavit in support of his contention that, only the third floor was illegal and the government had decided to regularize all unauthorized constructions up to the third floor. The decision was pending. Reliance was placed on the affidavit-in-opposition of the Municipal Council in support of such contention. Our attention was drawn to the minutes of the meeting dated January 21, 2016, held in the Conference Hall of the Secretariat, Andaman administration being pages 16 and 17 Annexure R7 to the affidavit-in-opposition of the Municipal Council. The relevant portions relied upon by Mr. Samanta are quoted below:-

“After detailed deliberations with the members Principal Secretary (UD) has observed the following:-

1. In regularizing unauthorized construction, are specific proposals considering the congestion, terrain (like Hoddo, Diary Farm) where the buildings are constructed without leaving setback over plot of irregular shape sizes undulating terrains/topography of area 25.00 m², 35.00 m², 45.00 m², 50.00 m² with G+1 to G+3, should be considered.

2. **Height:** Building constructed upto 12.5 m height could be considered for regularization.

3. **FAR:** FAR could be increased to 250.

4. **Side setback:** Atleast 0.05 m of side setback should be available to consider, regularizing the building.

There are buildings which are constructed on excess/Govt./encroached land contiguous to the allotted land. These cases could be considered for regularization, only after a policy of land regularization by the Administration.”

4. Mr. Samanta submitted that 228 test cases were studied by the committee which resolved to regularize unauthorized buildings by relaxing the parameters such as, plot coverage, FAR, set back over plot

and height. The same was decided to be a onetime measure. While working out the extent of violations, the locations and area of the buildings were required to be considered in view of the irregular terrain and congestion. On the basis of such suggestions and resolutions adopted at the meeting, the Andaman and Nicobar Secretariat had issued a notification dated January 21, 2020, Annexure R9 to the said affidavit-in-opposition. The said notification was published by the Administration, under order of the Lieutenant Governor.

5. Thus, it was contended by Mr. Samanta that a fresh exercise should be undertaken by the Municipality as also the Administration to reconsider the issue of regularization of the construction of the appellant, and pass necessary orders on the basis of the policy/notification. Mr. Samanta further submitted that the writ petitioner did not have any locus to approach the High Court under Article 226 of the Constitution of India, seeking implementation of the demolition order dated February 24, 2011, passed by the Secretary, Port Blair Municipal Council. The contention of the appellant was that the said order of demolition dated February 24, 2011 could not be implemented in 2026 as the Administration and the Municipal Council in the meantime had adopted a scheme for regularization. The writ petitioner was not affected by the construction. The appellant had not acted in a manner prejudicial to the interest of the writ petitioner, by raising such construction. No vested or legal right had been created in favour of the writ petitioner to seek demolition. The matter should be reopened by the Municipality upon direction of the Court and the impugned order should be set aside. On the locus of the

writ petitioner to move the High Court under Article 226 of the Constitution of India, it was further submitted that the writ petitioner was a meddlesome interloper, who had no connection with the land in question. It was up to the Municipal Council as to whether further steps should be taken on the basis of the demolition order, or whether regularization could be granted as a one-time measure.

6. Reference was made to the submissions of the learned Advocate for the Municipality before His Lordship. The municipality had accepted the fact that, positive steps had been taken to regularize various unauthorized constructions. Many such unauthorized constructions of G+3 storeyed buildings had been allowed to remain in the islands, and as such, the construction of the appellant should not be singled out and demolished. While deliberating upon the issue of regularization, the authorities had resolved to take into consideration specific proposals, the congestion in the area, the irregular terrain, traffic situation etc. The buildings which were constructed without leaving set back over plots of irregular shapes and sizes, were specifically being considered for regularization, in view of such topography.

7. Relying on the supplementary affidavit, Mr. Samanta submitted that, the fourth floor was an open terrace with a temporary G.I. sheet roof. The same was a temporary construction. Neither any walls nor any other kind of construction had been made on the said terrace. The staircase stopped at the third floor slab. The parapet was only 3 ft. Thus, the said third floor construction could be regularized under the resolution adopted by the administration in its meeting held on January 21, 2016.

8. Mr. Rakesh Kumar, learned advocate for the Municipal Council and the Administration relied upon the affidavits-in-opposition and submitted that, at the meeting held on January 21, 2016, in the Mini Conference Hall of the Secretariat of the Andaman and Nicobar Administration, the Principle Secretary (UD) had observed that regularization of unauthorized construction with specific proposals, especially considering the undulating terrains and the topography of the areas/locations, would be taken into consideration with regard to G+1 to G+3 buildings, that is, buildings constructed up to the height of 12.5 metres.
9. The said proposal had not been finally accepted and in the meetings of the council held on February 8, 2016 similar issues for relaxation of building norms as a onetime measure to regulate unauthorized constructions, had been proposed and discussed. The proposals were ultimately considered by the Secretariat and the said policy in a draft form had found its expression in the notification dated January 21, 2020, which was in the nature of a modification of the master plan issued under Section 9 (4) of the Andaman and Nicobar Islands Town and Country Planning Regulation, 1994.
10. It was submitted that the nature of the violation and/or the extent of the unauthorized construction as detected by the Municipal Council in case of the appellant's construction was much beyond the acceptable parameters for regularization under the notification dated January 21, 2020. It was further submitted that, additional floors could not be regularized as per the notification. Moreover, the approved floor area for construction was 293.49 sq.m. whereas, the site/construction covers a

floor area of 1156.50 sq.m. The violation at the site was more than 863.01 sq.m.

11. Mr. Kumar relied on paragraph 7 of the affidavit in opposition filed by the Administration and submitted that in view of the major violations such as extra unauthorized floors, illegal conversion of the construction to a commercial building and encroachment of public land, the structure was required to be demolished. There was no scope to regularize the same.
12. Mr. Prashant, learned Advocate for the writ petitioner submitted that, any public spirited citizen could bring it to the notice of the Municipal Council that the rules and regulations for construction had not been followed by the person responsible for such construction. The writ petitioner approached the court, seeking mandamus upon the Municipal Council to implement its own order of demolition.
13. The Andaman Administration by a newspaper publication had urged the citizens to report to the authorities about illegal constructions and encroachments. The writ petitioner had filed a written complaint before the concerned authorities for implementation of the order of demolition passed against the Municipal Council in 2011. It was alleged that, the sanctioned building plan permitted plot coverage of 90.03 sq.m. and total floor area of 293.48 sq.m, but the appellant had made a construction beyond the permitted limit.
14. Referring to a representation of the appellant, made before the Municipal Council and the Administration dated November 15, 2024, Mr. Prashant submitted that the appellant had admitted to have constructed

a built up area 1129 sq.m, out of which 490 sq.m. was residential and 639 sq.m. was commercial. It was further contended that the affidavits filed by the Municipal Council and the Administration would clearly indicate that the unauthorized construction of the appellant did not come within the purview of the regularization scheme. Hence, the learned judge did not commit any error in directing demolition of the unauthorized portions.

15. It is the case of the municipality, as well as, the writ petitioner that the permission for construction of a residential house was given by the Council. There was no permission for construction of a commercial building or change of use of part of the premises to a hotel.

16. We find that there is a pre-existing order of demolition in respect of the subject construction, arising out of a proceeding of 2011. The writ petitioner responded to the advertisement/appeal of the Administration seeking information with regard to unauthorized constructions and illegal encroachments. The Administration had undertaken a drive to reclaim encroached lands, by way of an eviction drive. Secondly, in ***Deepak Kumar Mukherjee Vs. Kolkata Municipal Corporation*** reported in ***(2013) 5 SCC 336***, it was held that the objection on locus was not relevant in case of unauthorized constructions. The specific paragraph is quoted below:-

“10. The appellant is an enlightened resident of Kolkata. He succeeded in convincing the learned Single Judge of the Calcutta High Court to order demolition of unauthorized construction of multi-storeyed building by Respondent No.7, M/s Unique Construction on the plot owned by Respondent 8, Sarjun Prasad Shaw but could not persuade

the Division Bench to affirm the order of the learned Single Judge and this is the reason why he has approached this Court.”

17. The Hon’ble Apex Court held that, a public spirited citizen can always approach the regulatory and the permission granting authority to seek intervention and action, in order to ensure that the citizens abide by the building rules and the relevant laws while making constructions.
18. The writ petitioner had the locus to lodge a complaint before the Municipal Council and the Administration, thereby, bringing to their notice the manner in which the appellant had raised a construction beyond the permissible limit and had continued to enjoy such construction both for residential and commercial purpose for years together, despite there being an order of demolition passed in 2011. Rampant unauthorized construction in urban areas is a burden on the civic amenities. It is also a safety hazard. Such constructions deny other citizens a dignified living by causing risks, inconveniences and hardships. In cases where the public at large are likely to be affected by any infraction of law at the instance of a citizen and the authority is complacent and fails to ensure demolition of such unauthorized constructions, the attention of the writ court can be drawn in respect of the alleged inaction and failure of the authority. A writ petition was maintainable at the instance of such third party.
19. In the event an authority fails to take note of the complaints filed by a citizen, the person who had lodged the complaint can approach the writ court for necessary directions and orders upon the statutory authority. The intention of the legislature in framing laws which regulate

constructions and allied activities, is to ensure a planned and systematic development of the Island. Unauthorized construction destroys the concept of such planned development.

20. With regard to the factual aspects, there is no doubt that the construction of the third floor is unauthorized as per the appellant's version. According to the Municipal Council the construction is of G+4. The fourth floor was also unauthorized. The extent of deviations found by the authorities, are quoted below:-

Sl. No.	Description	Approved Area	As built at site	Violation committed at site
1	Ground Floor	90.03 sq.m (R)	234.03 sq.m (R)	144.0 sq.m
2	First Floor	203.46 sq.m (R)	255.96. sq.m (R)	321.40 sq.m
3	Second Floor		268.90 sq.m (C)	
4	Third Floor	Nil	268.90 sq.m (C)	268.90 sq.m
5	Fourth Floor	Nil	128.71 sq.m (C)	128.71 sq.m
6	Total Floor Area	293.49 sq.m	1156.50 sq.m (C)	863.01 sq.m

21. The construction deviates in setback, plot coverage, FAR & height.

They are non-compoundable violations as per the building byelaws of 1999.

22. The Municipal Council has specifically stated that the extent of unauthorized construction is not covered by the notification i.e. modification to the master plan of January 21, 2020. As such, regularization in terms of the said modified master plan or modified proposed master plan is not permissible, in the opinion of the Council. Similar stand has been taken by the Administration. The authorities are the best judge to understand the extent and nature of violation and it is

not for the writ court, especially in an intra-court appeal, to venture into a further probe on such factual aspects.

23. The relevant paragraphs of the affidavit-in-opposition filed by the Municipal Council are quoted below:-

“2. That your respondents states that on inspection, it is noticed that Dr R. Thulasidasan had violated the sanctioned plan, as such the council had issued stay order & notice bearing Nos. 5758 dt: 09.12.2010 & 11-860/EB/MC/3204 dated 09.12.2010 with the direction to stop the construction work and to show cause the violation committed at site within a period of 15 days from the date of receipt of the notice, which was not complied.

Xerox copy of the stay order and notice is enclosed and marked as annexure R-1 & R-2

3. That your respondents states that due to non-compliance of the directions in the aforesaid notice, the council had issued Provisional order no. 6017 dated 28.12.2010 mentioning the violation is committed at site with the direction to demolish the violated portions of the building within 30 days and to show cause the violation committed at site.

Xerox copy of the provisional order no 6017 dated 28-12-2010 issued by the Municipal Council is enclosed and marked annexure R-3

4. That your respondents states that a Demolition order bearing no. 803 dated 24.02.2011 was served by the SVP MC to demolish the said violation committed at site within a period of 30 days from date of receipt of order.

Xerox copy of the demolition order no 803 dated 24-02-2011 issued by the Municipal Council is enclosed and marked as annexure R-4

5. That your respondents states that the file was forwarded to the then Chairperson, SVP MC under clause 32.14 of Municipal Building Bye Laws, 1999 to get necessary approval to execute the demolition order no. 803 dated 24.02.2011.

6. That your respondents states that the detailed measurement of the said building taken for revenue section, SVP MC and the violations committed at site is annexed below:

Sl. No.	Description	Approved Area	As built at site	Violation committed at site

1	Ground Floor	90.03 sq.m (R)	234.03 sq.m (R)	144.0 sq.m
2	First Floor	203.46 sq.m (R)	255.96. sq.m (R)	321.40 sq.m
3	Second Floor		268.90 sq.m (C)	
4	Third Floor	Nil	268.90 sq.m (C)	268.90 sq.m
5	Fourth Floor	Nil	128.71 sq.m (C)	128.71 sq.m
6	Total Floor Area	293.49 sq.m	1156.50 sq.m (C)	863.01 sq.m

The above said construction deviates in setback, plot coverage, FAR & height which comes under compoundable violations in nature as per the building byelaw 1999/non

7. That the Sri Vijaya Puram Municipal Council earlier known as Port Blair Municipal Council has put forth in its council meeting held at 18.04.2011, which were subsequently "as was" confirmed in special meeting held 17.06.2011 by the action taken report of the unauthorized constructions which were found under the non-compoundable violation which are liable to be demolished.

Xerox copy of the proceeding of the council meeting is enclosed and marked as annexure R-5

8. That a committee has been formulated by the Andaman and Nicobar Administration to examine the feasibility of regularization of buildings constructed in violations to the existing buildings.

Xerox copy of the committee order is enclosed and marked as annexure R-6

9. That the committee has conducted various meetings and on dated 26.02.2016 a sample study of 228 cases were taken up for the veracity of the unauthorized construction/deviation to the sanction building plan.

Xerox copy of the minutes of the meeting is enclosed and marked as annexure R-7

10. That the council has approved the proceedings of the council meeting which was cited in its special meeting "as was" on 30.03.2016 wherein the council proposes to relax the norms laid in the Master Plan 2030 of the Sri Vijaya Puram Planning Area and subsequent Building Bye Law.

Xerox copy of proceedings of the council meeting is enclosed and marked as annexure R-8

11. That the Town and Country Planning Unit, APWD, Port Blair has modified / relaxes the norms laid in the Master Plan 2030.

Xerox copy of the amendment in the master plan 2030 is enclosed and marked as annexure R-9

12. That the above enclosed data for the building in question does not satisfy with the modified norms of the master plan 2030 of the Sri Vijaya Puram Planning Area for regularization of the non-compoundable violations.”

24. There is no reason to disbelieve the authority, insofar as, the measurements stated in paragraph 6 of the affidavit-in-opposition of the Municipal Council. The appellant has not controverted these measurements. When the authority specifically contended that the extent of unauthorized construction could not be protected by regularization, even under the proposed modified master plan, the writ court cannot grant any equitable relief to the appellant, thereby, directing the authority to regularize an illegal action. Only because there are other similar unauthorized constructions which have not been demolished or no orders of demolition in respect thereof, have been passed, the appellant cannot seek protection of his unauthorized construction.

25. The relevant portions of the affidavit-in-opposition filed by the Administration are quoted below:-

“6. That the resolution passed by of SVPBMC 2011 was consider by the A&N Administration by referring the issues to Town and planning unit they after considering the provisions of existing Building Bye Laws 1999 and various other factors modified norms of the master plan 2030 of the Sri Vijaya Puram Planning Area for regularization of the non-compoundable violations.

7. That A & N Administration of view that Major Violations, such as unauthorized extra floors, illegal commercial conversions, or encroachment on public land are required to be demolished without legalization options.”

26. Article 14 of the Constitution of India does not operate in the negative.

The concept of negative equality cannot be imported to save the illegal construction of the appellant. Unauthorized constructions not only destroy the planned development of a place, but they are a burden on the

basic amenities and facilities provided by the civic authorities. The constructions are also hazardous, as additional floors have been erected without necessary foundational work. In the decision of ***Kaniz Ahmed vs Sabuddin & Ors.*** reported in **2025 INSC 610**, the Hon'ble Apex Court held that each and every construction must scrupulously follow and adhere to the rules and regulations. In the event any violation is brought to the notice of the courts or authorities, the same should be dealt with iron hands and no leniency or mercy should be shown to the person guilty of unauthorized construction. Protection of such construction would indicate misplaced sympathy.

27. In ***Rajendra Kumar Bhajtiya & Anr., Vs. U.P. Avas Evam Vikas Parishad & Ors.*** reported in **2024 INSC 990**, the Hon'ble Apex Court had issued various directions. Thus, courts must adopt a strict approach in dealing with cases of illegal construction. The directions issued by the Hon'ble Apex Court are as follows:-

“(i) While issuing the building planning permission, an undertaking be obtained from the builder/applicant, as the case may be, to the effect that possession of the building will be entrusted and/or handed over to the owners/beneficiaries only after obtaining completion/occupation certificate from the authorities concerned.

(ii) The builder/developer/owner shall cause to be displayed at the construction site, a copy of the approved plan during the entire period of construction and the authorities concerned shall inspect the premises periodically and maintain a record of such inspection in their official records.

(iii) Upon conducting personal inspection and being satisfied that the building is constructed in accordance with the building planning permission given and there is no deviation in such construction in any manner, the completion/occupation certificate in respect of residential / commercial building, be issued by the authority concerned to the parties concerned, without causing undue delay. If any deviation is noticed, action must be taken in accordance with the Act and the process of issuance of completion/occupation certificate

should be deferred, unless and until the deviations pointed out are completely rectified.

(iv) All the necessary service connections, such as, Electricity, water supply, sewerage connection, etc., shall be given by the service provider / Board to the buildings only after the production of the completion/occupation certificate.

(v) Even after issuance of completion certificate, deviation / violation if any contrary to the planning permission brought to the notice of the authority immediate steps be taken by the said authority concerned, in accordance with law, against the builder / owner / occupant; and the official, who is responsible for issuance of wrongful completion /occupation certificate shall be proceeded departmentally forthwith.

(vi) No permission /licence to conduct any business/trade must be given by any authorities including local bodies of States/Union Territories in any unauthorized building irrespective of it being residential or commercial building.

(vii) The development must be in conformity with the zonal plan and usage. Any modification to such zonal plan and usage must be taken by strictly following the rules in place and in consideration of the larger public interest and the impact on the environment.

(viii) Whenever any request is made by the respective authority under the planning department/local body for co-operation from another department to take action against any unauthorized construction, the latter shall render immediate assistance and co-operation and any delay or dereliction would be viewed seriously. The States/UT must also take disciplinary action against the erring officials once it is brought to their knowledge.

(ix) In the event of any application / appeal / revision being filed by the owner or builder against the non-issuance of completion certificate or for regularisation of unauthorised construction or rectification of deviation etc., the same shall be disposed of by the authority concerned, including the pending appeals / revisions, as expeditiously as possible, in any event not later than 90 days as statutorily provided.

(x) If the authorities strictly adhere to the earlier directions issued by this court and those being passed today, they would have deterrent effect and the quantum of litigation before the Tribunal / Courts relating to house / building constructions would come down drastically. Hence, necessary instructions should be issued by all the State/UT Governments in the form of Circular to all concerned with a warning that all directions must be scrupulously followed and failure to do so will be viewed seriously, with departmental action being initiated against the erring officials as per law.

(xi) Banks / financial institutions shall sanction loan against any building as a security only after verifying the completion/occupation certificate issued to a building on production of the same by the parties concerned.

(xii) The violation of any of the directions would lead to initiation of contempt proceedings in addition to the prosecution under the respective laws.”

28. The courts should refrain from passing any empathetic and charitable orders in cases of violation of law, at the expense and the cost of the public. If the authorities are of the opinion that the construction of the appellant cannot be regularized under the scheme or the modified plan, the court cannot assume jurisdiction by engaging in judicial regularization of buildings erected without requisite permissions from the competent authority. The courts are duty bound to ensure adherence to law. In this case, we exercise our judicial restraint from directing the authorities to once again to revisit the issue. The authorities have clearly demonstrated their stand and findings with regard to the extent of the unauthorized construction and has specifically submitted that the nature and extent of unauthorized construction of the appellant cannot ever be regularized even under the proposed scheme. Regularization is not a matter of right, and as such, we are not in a position to allow the appeal on the grounds urged by Mr. Samanta.

29. Reference is made to the following authorities in support of our decision.

30. In the matter of ***Dipak Kumar Mukherjee v. Kolkata Municipal Corpn.*** reported ***in (2013) 5 SCC 336***, the Hon’ble Apex Court held as follows:-

“24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan

sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

25. Rule 25 of the Rules, on which reliance was placed by Respondent 7 for seeking regularisation of the illegal construction, reads as under:

‘25. Deviation during execution of works.—(1) No deviation from the sanctioned plan shall be made during erection or execution of any work.

(2) Notwithstanding anything contained in sub-rule (1), if during erection or execution of work any internal alterations or external additions which do not violate the provisions of the Act or these Rules is made, the Municipal Commissioner may without prejudice to any action that may be taken against the person at whose instance such alteration or additions have been made, allow the person referred to in sub-rule (1) of Rule 4 to submit, in accordance with the provisions of these Rules, a revised plan showing the deviation and may sanction such plan.

(3) Any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the provisions of the Act and these Rules and shall be dealt with accordingly.’

26. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revised plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down

that any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.

27. In our view, Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction.

28. Before parting with the case, we consider it necessary to observe that Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan.

29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.”

31. In the matter of **Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.**, reported in **(2021) 10 SCC 1**, the Hon’ble Apex Court held as follows:-

“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.”

32. In ***Friends Colony Development Committee v. State of***

Orissa reported in **(2004) 8 SCC 733**, the Hon’ ble Apex Court dealt

with a case where the builder had exceeded the permissible construction

under the sanctioned plan and had constructed an additional floor on the

building, which was unauthorised. The Apex Court held as follow:-

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.”

Noting that the private interest of landowners stand subordinate to the public good while enforcing building and municipal regulations, the Apex Court issued a caution against the tendency to compound violations of building regulations :

“25. ... The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

33. Unauthorised floors have been held to be a burden on general welfare and must be dealt with strictly.

34. In **Priyanka Estates International (P) Ltd. v. State of Assam** reported in **(2010) 2 SCC 27** the Hon’ble Apex Court, observed as follows:-

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

35. The Apex Court observed that, if unauthorised constructions were allowed to stand or were “given a seal of approval by Court”, it was bound to affect the public at large. In **EshaEkta Apartments Coop. Housing**

Society Ltd. v. Municipal Corpn.of Mumbai reported in **(2013) 5 SCC**

357, the Hon'ble Apex Court observed as follows:-

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

36. In the matter of **Supertech (Supra)**, the Hon'ble Apex Court discussed the duties of the civic bodies and lamented the sorry state of affairs as under:-

“167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgment with the following observations : (EshaEkta Apartments case [EshaEkta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC p. 363, para 1)

“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 regularisation of illegal constructions by way of compounding and otherwise.”

168. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held : (EshaEkta Apartments case [EshaEkta Apartments Coop. Housing Society

Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357 : (2013) 3 SCC (Civ) 89] , SCC pp. 394-95, para 56)

“56. ... We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

169. These concerns have been reiterated in the more recent decisions of this Court in Kerala State Coastal Zone Management Authority v. State of Kerala [Kerala State Coastal Zone Management Authority v. State of Kerala, (2019) 7 SCC 248] , Kerala State Coastal Zone Management Authority v. Maradu Municipality [Kerala State Coastal Zone Management Authority v. Maradu Municipality, (2021) 16 SCC 822 : 2018 SCC OnLine SC 3352] and Bikram Chatterji v. Union of India [Bikram Chatterji v. Union of India, (2019) 19 SCC 161] .”

37. In the same decision **Supertech (Supra)**, the Hon’ble Apex Court concluded as follows:-

“172. For the reasons which we have indicated above, we have come to the conclusion that:

172.1. The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

172.2. The work of demolition shall be carried out within a period of three months from the date of this judgment.

172.3. The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of Noida. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing buildings, Noida shall consult its own experts and experts from Central Building Research Institute Roorkee (“CBRI”).

172.4. The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by Noida.

172.5. The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant.

172.6. The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T-17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment.

172.7. The appellant shall pay to the RWA costs quantified at Rs 2 crores, to be paid in one month from the receipt of this judgment.”

38. His Lordship had directed demolition subject to any order or scheme of regularization. Thus, we direct implementation of the order of demolition, upon taking into consideration the modified scheme or the proposed scheme to the extent the same may be applicable to the construction of the appellant. With regard to the reclamation of the encroached portion of revenue land, we are of the view that the law will take its own course and the administration shall take steps in accordance with law. We extend the time for demolition by a further period of eight weeks from date of communication of this order.
39. The appeal and connected application are disposed of, with the above reasons.
40. Urgent Photostat certified copies of this judgment, if applied, for be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I agree

(Arjun Ray Mukherjee, J.)