

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF DECEMBER, 2021

**R**

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.20333 OF 2021 (LB-RES)

**BETWEEN:**

SRI K.S.ESHWARAPPA  
S/O SHIVALINGAPPA  
AGED ABOUT 53 YEARS,  
R/O NO.5<sup>TH</sup> MAIN ROAD,  
SIDDESHWARA NAGAR,  
SHIVAMOGGA - 577 203.

... PETITIONER

(BY SRI PRUTHVI WODEYAR, ADVOCATE (VIDEO CONFERENCING))

**AND:**

1. THE COMMISSIONER  
CITY CORPORATION,  
SHIVAMOGGA - 577 201.
2. THE ASSISTANT EXECUTIVE ENGINEER  
CITY CORPORATION,  
SHIVAMOGGA - 577 201.
3. ASSISTANT DIRECTOR  
DEPARTMENT OF LAND RECORDS  
OLD D.C.OFFICE, BALARAJ URS ROAD  
SHIVAMOGGA - 577 201.

... RESPONDENTS

(BY SRI ASHWIN S.HALADY, ADVOCATE FOR R1 AND R2 (PHYSICAL HEARING)  
SMT.PRATHIMA HONNAPURA, AGA FOR R3 (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 9.11.2021 VIDE ANNEXURE-H ISSUED BY R1; DIRECT THE RESPONDENTS TO HOLD THAT, THE LICENSE IS DEEMED TO HAVE GRANTED IN VIEW OF NOT PASSING ANY ORDERS ON THE APPLICATION FILED FOR LICENSE FOR CONSTRUCTING OF HOUSE ON 13.11.2020 VIDE ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.12.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court calling in question an order dated 09-11-2021, by which, the property of the petitioner is sought to be demolished invoking certain provisions of the Karnataka Municipal Corporations Act, 1976 ('the Act' for short) and has sought for a consequential direction by issuance of writ in the nature of *mandamus* to hold that the license for such construction is deemed to have granted by the Shimogga City Corporation ('the Corporation' for short) under the Act.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The petitioner is a resident of Shimogga and is in possession of a site bearing No.2150/3, PID No.32620, which is carved out of Sy.No.25/3 in Gurupura, Ward No.5 (Old Ward No.12), Shimogga, measuring 1680 sq.ft., which comes within the precincts of the Corporation. The petitioner comes in possession of the said property on purchasing the same in terms of a registered sale deed dated 11-07-2007. It is the claim of the petitioner that khata is changed in his name and he has been paying tax regularly on the property.

3. The petitioner intending to construct a house in the vacant site, makes an application and claims to have submitted all the relevant documents and a building plan for such construction on 13-11-2020. In terms of Section 313 of the Act, the application of the petitioner had to be processed within the time stipulated therein. That having not been done, the claim of the petitioner is that, a license for such building is deemed to have been granted under Section 315 of the Act. The petitioner laid the foundation for the house in the month of January, 2021.

Based upon a complaint registered against such construction, a notice was issued by the Corporation on 21-01-2021, directing the petitioner to stop all further construction, as the construction was in the buffer area adjacent to a *nala* running on the backside of the property. The petitioner submits his reply on 29-01-2021, requesting the Corporation to conduct a survey of the property and determine whether the construction is being undertaken by encroachment and then, further action be taken.

4. Without conducting a survey, one more notice was issued on 03-02-2021, directing the petitioner to stop further construction till survey report is obtained and further directed the petitioner to undertake construction only after necessary permission is granted. To this, again the petitioner submits a representation on 22-02-2021, before the Standing Committee of the Corporation. The Standing Committee also did not take any action.

5. The Corporation issued a provisional order under Sections 321(1)(a), 314 and 436A(1) of the Act, on 19-03-2021,

directing demolition of the construction on the ground that there is encroachment of Government land and he is an unauthorized occupant of the said property. The petitioner submits his reply to this notice on 29.03.2021, after which, there was no action taken by the Corporation. Eight months passed by and on 09-11-2021, exercising power under Sections 321(1)(i)(a), 314 and 436A(1) of the Act, the Corporation issued the impugned order directing its Officers for demolition of the construction undertaken by the petitioner, to be held on 19.11.2021. It is at that juncture, the petitioner knocked the doors of this Court challenging the said order.

6. Heard Sri Pruthvi Wadeyar, learned counsel for the petitioner, Sri Ashwin S. Halady, learned counsel for respondent Nos.1 and 2 and Smt. Prathima Honnapura, learned Additional Government Advocate for respondent No.3.

7. The learned counsel appearing for the petitioner would contend that the petitioner has on every occasion submitted application/replies to all the notices that are issued and the

Corporation did not pursue the application submitted for grant of building license and have now invoked wrong provisions for directing demolition of the construction without at the outset determining, whether the petitioner was an unauthorized occupant on the Government land as is alleged. He would submit that under Section 315 of the Act, if the Corporation would not pass any order on the application for building license within 14 days, it is deemed to have been granted. Therefore, no action can be taken against the petitioner for having constructed the house without even a building license.

7.1. On the other hand, the learned counsel, Sri Ashwin S. Halady, appearing for the respondent Nos.1 and 2/Corporation would vehemently refute the submissions and contends that the petitioner has not approached this Court with clean hands and has suppressed the notices issued by the Corporation and has unabashedly undertaken such construction, even without a license for such construction and as such, no fault can be found in the order that is impugned as the building of the petitioner is

now standing without any permission, whatsoever from the Corporation.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-narrated fact of construction undertaken by the petitioner is not in dispute. The petitioner applied for permission to construct a building, enclosing all the documents and a building plan on 13-11-2020. The said request that was made is yet to be considered but the petitioner began construction. A complaint was registered by one Smt. Choodamani Rao Pawar, a resident of the same area, before the Commissioner on 16-12-2020, stating that the petitioner is undertaking construction by encroaching *Raja Kaluve*, which was running behind her property. The complainant sought investigation into the matter and removal of that portion of encroachment. On receipt of the complaint, a notice was issued to the petitioner on 21-01-2021. This is received by the

petitioner on 22-01-2021. The notice clearly indicated that there is a complaint registered against the petitioner that the building is being constructed without any permission from the Corporation and desired that further construction of the building should be immediately stopped. The notice reads as follows:

"ವಿಷಯ: ಪರವಾನಿಗೆ ಪಡೆಯದೇ ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದನ್ನು ತಕ್ಷಣ ನಿಲ್ಲಿಸುವ ಬಗ್ಗೆ.  
ಉಲ್ಲೇಖ: 1. ಚುಂಡಾಮಣಿರಾವ್ ಪವಾರೆ ಗಾಂಧಿಬಜಾರ್‌ನವರ ದೂರು ಪತ್ರ  
ದಿನಾಂಕ:16/12/2020.

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ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖದ ಅರ್ಜಿದಾರರ ಮನವಿ ಬಗ್ಗೆ ಪರಿಶೀಲಿಸಲಾಗಿ ಶ್ರೀ ಕೆ ಎಸ್ ಈಶ್ವರಪ್ಪ ಬಿನ್ ಶಿವಲಿಂಗಪ್ಪ ಆದ ನೀವು ಶಿವಮೊಗ್ಗ ನಗರದ ವಾರ್ಡ್ ನಂ.05ರ ಗುರುಪುರ 5ನೇ ಮುಖ್ಯ ರಸ್ತೆ ಸವಿನಯ ಶಾಲೆ ಎದುರು ಸಿದ್ದೇಶ್ವರನಗರ ಶಿವಮೊಗ್ಗ ಖಾತೆ ಸಂಖ್ಯೆ:2150/3ರ ಸ್ಥಳದಲ್ಲಿ ಕಟ್ಟಡವನ್ನು ಪರವಾನಿಗೆ ಪಡೆಯದೇ ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದು ಹಾಗೂ ನಾಲಾ ಜಾಗವನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದಾಗಿ ಕಂಡು ಬಂದಿರುತ್ತದೆ.

ಅದರಿಂದ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಪಡೆಯದೆ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದು ಕರ್ನಾಟಕ ಪೌರನಿಗಮಗಳ ಅಧಿನಿಯಮ 1976ರ ಪ್ರಕಾರ ಸದರಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣವನ್ನು ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಮಾಡಿದ ನಿರ್ಮಾಣವೆಂದು ಪರಿಗಣಿಸಿ ಕಟ್ಟಡವನ್ನು ಕೆಡವಬಾರದಂಚು ದಕ್ಕೆ ಈ ನೋಟೀಸ್ ತಲುಪಿದ 7 ದಿನದೊಳಗೆ ಸೂಕ್ತ ಸಮಜಾಯಿಷಿಯನ್ನು ದಾಖಲಾತಿಗಳೊಂದಿಗೆ ಸಲ್ಲಿಸುವುದು ಮತ್ತು ತಕ್ಷಣದಿಂದ ಕಾಮಗಾರಿ ಕೆಲಸವನ್ನು ಸ್ಥಗಿತಗೊಳಿಸುವುದು ಹಾಗೂ ನಿಯಮಾನುಸಾರ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಪಡೆದು ನಾಲಾಗೆ ಸೇರಿದ ಬಫರ್ ಮೀಸಲು ಜಾಗವನ್ನು ಬಿಟ್ಟು ಕಾಮಗಾರಿ ಪ್ರಾರಂಭಿಸತಕ್ಕದ್ದು. ಇಲ್ಲದಿದ್ದಲ್ಲಿ ತಮ್ಮ ಹೇಳಿಕೆ / ಸಮಜಾಯಿಷಿ ಏನು ಇಲ್ಲವೆಂದು ಭಾವಿಸಿ ನಿಯಮಾನುಸಾರ ಮುಂದಿನ ಅಗತ್ಯ ಕ್ರಮ ವಹಿಸಲಾಗುವುದು ಎಂದು ತಿಳಿಯಪಡಿಸಿದೆ."

To this notice, the petitioner submits his reply on 29-01-2021, contending that on enquiry, he comes to know that the Nala belongs to the Irrigation Department and seeks survey to be



conducted by the Irrigation Department and then action to be taken, if he is wrong. Immediately thereafter, the Corporation makes a communication to the Assistant Director of Land Records to get a survey conducted of the area in which the property is situated, to determine encroachment by the petitioner over the *Raja Kaluve*. This was communicated to the petitioner on 03.02.2021 and directed that till such survey is conducted, the petitioner should not undertake any construction. The intimation letter dated 03-02-2021, reads as follows:

"ವಿಷಯ: ಪರವಾನಿಗೆ ಪಡೆಯದೇ ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದನ್ನು ತಕ್ಷಣ ನಿಲ್ಲಿಸುವ ಬಗ್ಗೆ.  
ಉಲ್ಲೇಖ: 1. ಈ ಕಛೇರಿ ಪತ್ರ ಸಂಖ್ಯೆ:ಶಿ.ಮ.ನ.ಪಾತಿ/ಕಾ.ವಿ(1)/ಸಕಾಅ/ಸಿ.ಆರ್/78/2020-21 ದಿನಾಂಕ:21/01/2021.  
2. ಶ್ರೀ ಕೆ.ಎಸ್.ಈಶ್ವರಪ್ಪ ಬಿನ್ ಶಿವಲಿಂಗಪ್ಪ ಇವರ ಪತ್ರ ದಿ:29.01.2021  
3. ಈ ಕಛೇರಿ ಪತ್ರ ಸಂಖ್ಯೆ:ಶಿ.ಮ.ನ.ಪಾತಿ/ಕಾ.ವಿ(1)/ಸಕಾಅ/ಸಿ.ಆರ್/2020- 21, ದಿನಾಂಕ:02.02.2021.

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ನೀವು ಶಿವಮೊಗ್ಗ ನಗರದ ವಾರ್ಡ್ ನಂ 05ರ ಗುರುಪುರ 5ನೇ ಮುಖ್ಯರಸ್ತೆ ಸವಿನಯ ಶಾಲೆ ಎದುರು ಸಿದ್ದೇಶ್ವರನಗರ ಶಿವಮೊಗ್ಗ ಖಾತೆ ಸಂಖ್ಯೆ:2150/3ರ ಸ್ವತ್ತಿನಲ್ಲಿ ಕಟ್ಟಡವನ್ನು ಪರವಾನಿಗೆ ಪಡೆಯದೇ ಅನಧಿಕೃತವಾಗಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ ಹಾಗೂ ಉಲ್ಲೇಖ (1)ರಲ್ಲಿ ಚೂಡಾಮಣಿರಾವ್ ಪವಾರೆ ರವರು ನಾಲಾ ಜಾಗವನ್ನು ಒತ್ತುವರಿ ಮಾಡಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದಾಗಿ ದೂರು ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಉಲ್ಲೇಖದ ಪತ್ರದಲ್ಲಿ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಪಡೆಯದೆ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದು ಕರ್ನಾಟಕ ಪೌರನಿಗಮಗಳ ಅಧಿನಿಯಮ 1976ರ ಪ್ರಕಾರ ಸದರಿ ಕಟ್ಟಡ

ನಿರ್ಮಾಣವನ್ನು ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಮಾಡಿದ ನಿರ್ಮಾಣವೆಂದು ಪರಿಗಣಿಸಿ ಕಟ್ಟಡವನ್ನು ಕೆಡವಬಾರದೆಂಬುದಕ್ಕೆ ನೋಟೀಸ್ ತಲುಪಿದ 7 ದಿನದೊಳಗೆ ಸೂಕ್ತ ಸಮಜಾಯಿಷಿಯನ್ನು ದಾಖಲಾತಿಗಳೊಂದಿಗೆ ಸಲ್ಲಿಸಲು ಹಾಗೂ ತಕ್ಷಣದಿಂದ ಕಾಮಗಾರಿ ಕೆಲಸವನ್ನು ಸ್ಥಗಿತಗೊಳಿಸಬೇಕೆಂದು ತಿಳುವಳಿಕೆ ಪತ್ರ ನೀಡಿದ್ದು, ಉಲ್ಲೇಖ (2) ರಲ್ಲಿ ತಾವು ಯಾವುದೇ ಜಾಗ ಒತ್ತುವರಿ ಮಾಡಿರುವುದಿಲ್ಲವೆಂದು ತಿಳಿಸಿ ತಮ್ಮ ಇಲಾಖೆಯಿಂದ ಸರ್ವೆ ಮಾಡಿಸಬಹುದೆಂದು ಹಾಗೇನಾದರೂ ಒತ್ತುವರಿಯಾಗಿದ್ದಲ್ಲಿ ಹಾಗೂ ಸದರಿ ಜಾಗದಲ್ಲಿ ಅನಧಿಕೃತ ಕಟ್ಟಡ ನಿರ್ಮಿಸಿದಲ್ಲಿ ತೆರವುಗೊಳಿಸುವುದಾಗಿ ಸದರಿ ಜಾಗವನ್ನು ಕೈಬಿಡುವುದಾಗಿ ಸಮಜಾಯಿಷಿ ಪತ್ರವನ್ನು ಈ ಕಛೇರಿಗೆ ಸಲ್ಲಿಸಿರುತ್ತೀರಿ ಹಾಗೂ ಸ್ಥಳದಲ್ಲಿ ಕಟ್ಟಡ ಕಾಮಗಾರಿಯು ಪ್ರಗತಿಯಲ್ಲಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ಉಲ್ಲೇಖ (3)ರಂತೆ ಸಹಾಯಕ ನಿರ್ದೇಶಕರು, ಭೂ ದಾಖಲೆಗಳ ಇಲಾಖೆ ಹಳೆ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳ ಕಛೇರಿ, ಬಾಲಗಾಜ್ ಅರಸ್ ರಸ್ತೆ, ಶಿವಮೊಗ್ಗರವರಿಗೆ ಸದರಿ ಸ್ಥಳದಲ್ಲಿ ಬರುವ ನಾಲಾದ ಮತ್ತು ನಾಲಾದ ಬಫರ್ ಜಾಗದ ಬಗ್ಗೆ ತುರ್ತಾಗಿ ಸರ್ವೆ ಮಾಡಿ ವರದಿ ಸಲ್ಲಿಸುವಂತೆ ಪ್ರ ಬರೆದಿದ್ದು ಸದರಿ ಇಲಾಖೆಯಿಂದ ಸದರಿ ಸ್ಥಳದ ಸರ್ವೆಮಾಡಿ ವರದಿ ನೀಡುವ ವರೆಗೂ ತಾವು ತಕ್ಷಣದಿಂದ ಕಾಮಗಾರಿ ಕೆಲಸವನ್ನು ಸ್ಥಗಿತಗೊಳಿಸುವುದು ಹಾಗೂ ನಿಯಮಾನುಸಾರ ಕಟ್ಟಡ ಪರವಾನಿಗೆ ಪಡೆದು ಕಾಮಗಾರಿ ಪ್ರಾರಂಭಿಸತಕ್ಕದ್ದು ಇಲ್ಲದಿದ್ದಲ್ಲಿ ಮುಂದಿನ ಅಗತ್ಯ ಕ್ರಮ ವಹಿಸಲಾಗುವುದು ಎಂದು ತಿಳಿಯಪಡಿಸಿದೆ."

The petitioner again replied on 22.02.2021, that survey is to be directed by a proper authority and sought permission to construct. This resulted in another notice being issued on 17-02-2021, directing that the petitioner should stop construction immediately as survey is yet to be conducted for encroachment of the Government land. At this stage, the construction was only at the stage of foundation and pillars had come up. This was also indicated in the notice. During these correspondences, the petitioner did not stop construction but goes ahead with the construction, which resulted in a notice being issued by the Corporation on 19-03-2021, under Sections 321(1)(a), 314 and

436A(1) of the Act, titling it as a provisional order. The said order reads as follows:

"ಶಿವಮೊಗ್ಗ ಮಹಾನಗರ ಪಾಲಿಕೆ, ಶಿವಮೊಗ್ಗ  
(1976 ರ ಕರ್ನಾಟಕ ಮುನಿಸಿಪಲ್ ಕಾರ್ಪೊರೇಷನ್ ಕಾಯಿದೆ ಕಲಂ 321(2) ರಡಿ ನಡವಳಿ)

ನಂ.ಕಾವಿ(1):ಸಿಆರ್:86/2020- 2021

ದಿನಾಂಕ:19.03.2020

ವಿಷಯ: ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಪರವಾನಿಗೆ ನಿಯಮಾವಳಿಯನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿ ಕಟ್ಟಡ ನಿರ್ಮಾಣ

ಮಾಡುತ್ತಿರುವುದನ್ನು ತೆರವುಗೊಳಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: 1. ಶ್ರೀ.ಚೂಡಾಮಣಿರಾವ್ ಪವಾರ್ ಗಾಂಧಿ ಬಜಾರ್‌ವರ ಪತ್ರ

ದಿನಾಂಕ:16.12.2020

2. ಈ ಕಛೇರಿ ತಿಳುವಳಿಕೆ ಪತ್ರದ ನಂ.:ಶಿಮನಪಾಇ/ಸಕಾಅ/ಸಿಆರ್/78/2020- 21

ದಿನಾಂಕ:21.01.2021

3. ಈ ಕಛೇರಿ ತಿಳುವಳಿಕೆ ಪತ್ರದ ನಂ.:ಶಿಮನಪಾಇ/ಸಕಾಅ/ಸಿಆರ್/80/2020- 21

ದಿನಾಂಕ:03.02.2021

4. ಈ ಕಛೇರಿ ತಿಳುವಳಿಕೆ ಪತ್ರದ ನಂ.:ಶಿಮನಪಾಇ/ಸಕಾಅ/ಸಿಆರ್/82/2020- 21

ದಿನಾಂಕ:17.02.2021

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಶ್ರೀ.ಕೆ.ಎಸ್.ಈಶ್ವರಪ್ಪ ಬಿನ್ ಶಿವಲಿಂಗಪ್ಪ ಆದ ತಾವು ಮಹಾನಗರಪಾಲಿಕೆ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ನಂ.05ರ 5ನೇಮುಖ್ಯರಸ್ತೆ ಸವಿನಯ ಶಾಲೆ ಹತ್ತಿರ ಬರುವ ಮಹಾನಗರಪಾಲಿಕೆ ಖಾತೆ ಸಂಖ್ಯೆ:2150/3ರ 156.03 ಚ.ಮೀ ಅಳತೆಯ ಸ್ವತ್ತಿನಲ್ಲಿ ವಾಸಕ್ಕಾಗಿ ಕಟ್ಟಡ ಕಟ್ಟಲು ಪರವಾನಿಗೆಗೆ ವಿನ್ಯಾಸ ನಕ್ಷೆಯನ್ನು ಪರವಾನಿಗೆಗಾಗಿ ಸಲ್ಲಿಸಿದ್ದು ಪರವಾನಿಗೆ ಅನುಮೋದನೆಗಿಂತ ಮುಂಚಿತವಾಗಿ ಕಟ್ಟಡ ಕಟ್ಟುತ್ತಿರುವುದು ಕಾಲಂ 321(1)(ಎ) ಹಾಗೂ 314 ಕರ್ನಾಟಕ ಪೌರನಿಗಮಗಳ ಅಧಿನಿಯಮ ಕಾಯ್ದೆ 1976ರ ನಿಯಮಾವಳಿಗಳ ಉಲ್ಲಂಘನೆಯಾಗಿರುತ್ತದೆ ಈ ಕಛೇರಿ ಸಹಾಯಕ ಅಭಿಯಂತರರು ಹಾಗೂ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು ದಿನಾಂಕ:21.01.2021 ರಂದು ಸ್ಥಳ ಪರಿಶೀಲಿಸಿ ಉಲ್ಲೇಖ (2)ರಲ್ಲಿ ವರದಿ ನೀಡಿರುವ ಮೇರೆಗೆ ಉಲ್ಲಂಘನೆಗಳನ್ನು ತೆರವುಗೊಳಿಸಲು ಸೂಚಿಸಿ ತಿಳುವಳಿಕೆ ನೀಡಲಾಗಿತ್ತು. ಈ ಕಛೇರಿಯ ಅಭಿಯಂತರರು ನಿಮ್ಮ ಕಟ್ಟಡವನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ಪರಿಶೀಲಿಸಿ ವರದಿ ನೀಡಿರುತ್ತಾರೆ. ವದಿಯಲ್ಲಿನ ವಿವರಗಳು ಸ್ವಯಂ ವೈದ್ಯವಾಗಿರುತ್ತದೆ. ಸ್ಥಳದಲ್ಲಿ ಉಲ್ಲಂಘನೆಗಳನ್ನು ಸಹ ಅಭಿಯಂತರರು ತಿಳಿಸಿರುತ್ತಾರೆ. ಅಭಿಯಂತರರು ನೀಡಿರುವ ವರದಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ನೀವು ಕಟ್ಟಡ ನಿಯಮಾವಳಿಗಳನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿ ನಿರ್ಮಿಸುತ್ತಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ ಹಾಗೂ ಉಲ್ಲೇಖ(3) ಮತ್ತು ಉಲ್ಲೇಖ(4)ರಲ್ಲಿ ಉಲ್ಲಂಘನೆಗಳನ್ನು ತೆರವುಗೊಳಿಸಲು ಸೂಚಿಸಿ ತಿಳುವಳಿಕೆ ನೀಡಲಾಗಿರುತ್ತದೆ.

ಮೇಲ್ಕಂಡಂತೆ ಪರವಾನಿಗೆ ಅನುಮೋದನೆಗಿಂತ ಮುಂಚಿತವಾಗಿ ಕಟ್ಟಡ ಕಟ್ಟುತ್ತಿರುವುದು ಹಾಗೂ ತಮ್ಮ ನಿವೇಶನದ ಮಿತಿಯನ್ನು ಮೀರಿ ನಾಲಾಜಾಗವನ್ನು ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿ ನಿಯಮಬಾಹಿರವಾಗಿ ಕಟ್ಟಡ ಕಟ್ಟುತ್ತಿರುವುದನ್ನು ನಗರ ಮತ್ತು ಗ್ರಾಮಾಂತರ ಕಾಯ್ದೆ 1976 ಕರ್ನಾಟಕ ಪೌರನಿಗಮಗಳ ಅಧಿನಿಯಮ 321(1)(ಎ) 314 436- ಎ(1)ರ ರೀತ್ಯಾ ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಮಾಡಿದ ನಿರ್ಮಾಣವಾಗಿದ್ದು ಈ ಪ್ರಾವಿಷನಲ್ ಆಡರ್‌ನೊಂದಿಗೆ ಲಗತ್ತು ಪಡಿಸಿರುವ ಅಭಿಯಂತರರ ವರದಿಯಂತೆ ಹೆಚ್ಚುವರಿ ಕಟ್ಟಡ ಭಾಗವನ್ನು ಈ ತಿಳುವಳಿಕೆ ತಲುಪಿದ 7 ದಿವಸಗಳ ಒಳಗಾಗಿ ತೆರವುಗೊಳಿಸತಕ್ಕದ್ದು. ಲಗತ್ತುಗೊಳಿಸಿದ ಅಭಿಯಂತರರ ವರದಿಯಲ್ಲಿನ ಅಳತೆಗಳ ಹಾಗೂ ವರದಿಸಿರುವ ಉಲ್ಲಂಘನೆಗಳ ಬಗ್ಗೆ ಯಾವುದೇ ಆಕ್ಷೇಪಣೆಗಳು ಇದ್ದಲ್ಲಿ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರ ಕಛೇರಿ, ಶಿವಮೊಗ್ಗ ಮಹಾನಗರಪಾಲಿಕೆ, ಶಿವಮೊಗ್ಗ ಸಂಪರ್ಕಿಸಿ ದೃಢಪಡಿಸಿಕೊಳ್ಳಲು ತಿಳಿಸಿದೆ. ಇಲ್ಲದಿದ್ದಲ್ಲಿ ತಮ್ಮ ಹೇಳಿಕೆ/ಸಮಜಾಯಿಷಿ ಏನು ಇಲ್ಲವೆಂದು ಭಾವಿಸಿ ಮುಂದಿನ ಅಗತ್ಯ ಕ್ರಮ ವಹಿಸಲಾಗುವುದೆಂದು ಈ ಮೂಲಕ ತಿಳಿಯಪಡಿಸಿದೆ.

ವಿಶ್ಲೇಷಣೆ:

ಕಟ್ಟಡದ ಮಾಲೀಕರು ಪರವಾನಿಗೆ ಅನುಮೋದನೆಗಿಂತ ಮುಂಚಿತವಾಗಿ ಕಟ್ಟಡ ಕಟ್ಟುತ್ತಿರುವುದು ಹಾಗೂ ತಮ್ಮ ನಿವೇಶನದ ಮಿತಿಯನ್ನು ಮೀರಿ ನಾಲಾಜಾಗವನ್ನು ಅನಧಿಕೃತವಾಗಿ ಒತ್ತುವರಿ ಮಾಡಿ ನಿಯಮಬಾಹಿರವಾಗಿ ಕರ್ನಾಟಕ ನಗರ ಮತ್ತು ಗ್ರಾಮಾಂತರ ಯೋಜನಾ ಅಧಿನಿಯಮದ ಹಾಗೂ ಕರ್ನಾಟಕ ಕಾರ್ಪೊರೇಷನ್ ಅಧಿನಿಯಮ ಕಲಂ 321(1)9ಎ) 314 ಮತ್ತು 436- ಎ(!)ನ್ನು ಉಲ್ಲಂಘಿಸಿ ಕಟ್ಟಡ ನಿರ್ಮಿಸುತ್ತಿರುವುದು/ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದು ಕಡತದಲ್ಲಿರುವ ದಾಖಲೆಯಿಂದ ಹಾಗೂ ಪಾಲಿಕೆಯ ಅಭಿಯಂತರರ ಸ್ಥಳ ತನಿಖಾ ಟಿಪ್ಪಣಿಯಿಂದ ಶ್ರುತವಾಗಿದೆ. ನಿವೇಶನದ ವಿಸ್ತೀರ್ಣ=156.03 ಚ.ಮೀ ಇದ್ದು ನಿವೇಶನದ ಹೊರತು ಪಡಿಸಿ ಹಿಂಭಾಗದ ಒತ್ತುವರಿ ವಿಸ್ತೀರ್ಣ=76.44 ಚ.ಮೀ ಆಗಿರುತ್ತದೆ.

ತಾತ್ಕಾಲಿಕ ಆಜ್ಞೆ

ಆದೇಶ ನಂ.ಕಾವಿ(1):ಸಿಆರ್: /2020- 2021  
ದಿನಾಂಕ:19.03.2021

ಶಿವಮೊಗ್ಗ ನಗರದ ನಂ.05ರ 5ನೇ ಮುಖ್ಯ ರಸ್ತೆ ಸವಿನಯ ಶಾಲೆ ಹತ್ತಿರ ಬರುವ ವಹಾನಗರಪಾಲಿಕೆಯ ಖಾತೆ ಸಂಖ್ಯೆ:2150/3ರಲ್ಲಿ ವಾಸದ ಕಟ್ಟಡ ನಿರ್ಮಾಣದ ಉದ್ದೇಶಕ್ಕಾಗಿ ನಿರ್ಮಾಣ ಮಾಡಿರುವುದನ್ನು ಈ ಆದೇಶ ತಲುಪಿದ 7 ದಿವಸದೊಳಗೆ ತೆರವುಮಾಡಲು ಆದೇಶಿಸಿದೆ. ತಪ್ಪಿದಲ್ಲಿ ಕರ್ನಾಟಕ ಮುನ್ಸಿಪಲ್ ಕಾರ್ಪೊರೇಷನ್ ಕಾಯ್ದೆ 1976ರ ಕಲಂ 321(1)(ಎ) 314 ಮತ್ತು 436- ಎ(1)ರ ಅಡಿ ಈ ತಾತ್ಕಾಲಿಕ ಆಜ್ಞೆಯನ್ನು ಸ್ಥಿರೀಕರಿಸಿ ಮುಂದಿನ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳಲಾಗುವುದು."

To this, the petitioner submits a reply in justification of his construction and contends that the provisions of the Act that are

invoked cannot be invoked against him. This resulted in an order being passed on 01-06-2021, directing measurement of the property to be taken in the presence of the petitioner. In the meantime, the permission to construct the building that was sought by the petitioner on 13-11-2020, is rejected on 30-06-2021, under the caption "other reasons" and as per the report and recommendation of the Engineer and Town Planning Officers to reject the application. Once the application is rejected on 30-06-2021, the impugned order is passed. The impugned order reads as follows:

"ಪ್ರಸ್ತಾವನೆ:

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಶಿವಮೊಗ್ಗ ಮಹಾನಗರಪಾಲಿಕೆ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ಸಂಖ್ಯೆ 05ರ ಸಿದ್ದೇಶ್ವರನಗರ 5ನೇ ಅಡ್ಡರಸ್ತೆಯಲ್ಲಿ ನಿಯಮ ಉಲ್ಲಂಘನೆ ಮಾಡಿ ನಿರ್ಮಿಸುತ್ತಿರುವ ಬಗ್ಗೆ ಉಲ್ಲೇಖ (!)ರಲ್ಲಿ ಅರ್ಜಿದಾರರಾದ ಶ್ರೀ ಚೂಡಾಮಣಿಪಾವ್ ಪವಾರ್ ಇವರು ನಮ್ಮ ಕಛೇರಿಗೆ ದೂರು ನೀಡಿದ್ದು, ಸಂಬಂಧಿಸಿದ ವಾರ್ಡ್ ಅಭಿಯಂತರರ ಸ್ಥಳ ಪರೀಶೀಲನೆಯಂತೆ, ಪರವಾನಿಗೆ ಪಡೆಯದೆ ಉಲ್ಲಂಘನೆ ಮಾಡಿ ವಾಸದ ಕಟ್ಟಡ ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿರುವುದರ ಬಗ್ಗೆ ಸಂಬಂಧಿಸಿದ ಕಟ್ಟಡ ಮಾಲೀಕರಿಗೆ ಉಲ್ಲೇಖ (2) (3) (4) ರಲ್ಲಿ ತಿಳುವಳಿಕೆ ಪತ್ರಗಳನ್ನು ಜಾರಿ ಮಾಡಲಾಗಿತ್ತು. ಉಲ್ಲೇಖ (5)ರಲ್ಲಿ ದಿನಾಂಕ:19.03.2021 ರಂದು ಶ್ರೀ ಕೆ ಎಸ್ ಈಶ್ವರಪ್ಪರವರಿಗೆ ತಾತ್ಕಾಲಿಕ ಆಜ್ಞೆಯನ್ನು ನೇರವಾಗಿ ಜಾರಿ ಮಾಡಿದ್ದು, ಇವರು ಕಾನೂನು ಭಾಹಿರವಾಗಿ ನಿರ್ಮಿಸಿರುವ ಕಟ್ಟಡವನ್ನು ತಾವೇ ತೆರವುಗೊಳಿಸಿಕೊಂಡು ಕೈಗೊಂಡ ಕ್ರಮದ ಬಗ್ಗೆ ಲಿಖಿತ ವರದಿ ಮಾಡಲು 7 ದಿನಗಳ ಕಾಲಾವಕಾಶ ನೀಡಲಾಗಿತ್ತು. ಆದರೂ ಸಹ ಸದರಿಯವರು ಇಲ್ಲಿಯವರೆಗೆ ಯಾವುದೇ ಕ್ರಮವಹಿಸಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಈ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಆಯುಕ್ತರ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ, ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

ಆದೇಶ ಸಂಖ್ಯೆ:ಶಿಮಪಾ/ಕಾವಿ/ಸಿಆರ್- 741/2021- 22 ದಿನಾಂಕ:9.11.2021

ಕರ್ನಾಟಕ ಮುನ್ಸಿಪಲ್ ಕಾರ್ಪೊರೇಷನ್ ಅಧಿನಿಯಮ 1976ರ ಕಲಂ 321(1)(i)(ಎ) 314 ಹಾಗೂ 436- ಎ(1) ರಂತೆ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಶಿವಮೊಗ್ಗ ಮಹಾನಗರಪಾಲಿಕೆ ವ್ಯಾಪ್ತಿಯ ವಾರ್ಡ್ ನಂ.05ರ ಸಿದ್ದೇಶ್ವರನಗರ 5ನೇ ಅಡ್ಡರಸ್ತೆಯಲ್ಲಿ ಶ್ರೀ ಕೆ ಎಸ್ ಈಶ್ವರಪ್ಪ ಬಿನ್ ಶಿವಲಿಂಗಪ್ಪ ತಮ್ಮ ಸ್ವತ್ತಿನ ಸಂಖ್ಯೆ 2150/3 (ಪಿಐಡಿ, ನಂ.32620)ರಲ್ಲಿ ನಿಯಮ ಉಲ್ಲಂಘನೆ ಮಾಡಿ ನಿರ್ಮಿಸಿರುವ ವಾಸದ ಕಟ್ಟಡದ ಬಾಗವನ್ನು ದಿನಾಂಕ:19.11.2021ರಂದು ಬೆಳಿಗ್ಗೆ 10.00 ಗಂಟೆಗೆ ತೆರವುಗೊಳಿಸಲು ಆದೇಶಿಸಿದೆ. ಈ ಕಾರ್ಯವನ್ನು ಕಛೇರಿಯ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು (ಎ- 1 ಮತ್ತು 2) ಉಪ ಆಯುಕ್ತರು (ಕಂದಾಯ) ಹಾಗೂ ಪಾಲಿಕೆಯ ಎಲ್ಲಾ ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು, ಸಹಾಯಕ ಕಾರ್ಯಪಾಲಕ ಅಭಿಯಂತರರು(ಪರಿಸರ) ಕಂದಾಯಾಧಿಕಾರಿಗಳು, ರಾಜಸ್ವ ನಿರೀಕ್ಷಕರು, ಪರಿಸರ ಅಭಿಯಂತರರು, ಎಲ್ಲಾ ಸಹಾಯಕ/ಕಿರಿಯ ಅಭಿಯಂತರರು, ಶಿವಮೊಗ್ಗ ಮಹಾನಗರಪಾಲಿಕೆ ರವರಿಗೆ ಒತ್ತುವರಿ ತೆರವು ಕಾರ್ಯಾಚರಣೆಯಲ್ಲಿ ಕಾರ್ಯಾಚರಣೆಯಲ್ಲಿ ಕಾರ್ಯನಿರ್ವಹಿಸಲು ಆದೇಶಿಸಿದೆ."

The order directs demolition of the construction on the property invoking Sections 321(1)(i)(a), 314 and 436A(1) of the Act. Therefore, it becomes germane to notice those provisions of law, Section 321 of the Act, reads as follows:

**"321. Demolition or alteration of buildings or well work unlawfully commenced, carried on or completed:—**

**(1) If the Commissioner is satisfied,—**

**(i) that the construction or re-construction of any building or hut or well,—**

**(a) has been commenced without obtaining his permission or where an appeal or reference has been made to the standing committee, in contravention of any order passed by the standing committee; or**

*(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based; or*

*(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws; or*

*(ii) that any alteration required by any notice issued under section 308, have not been duly made; or*

*(iii) that any alteration of or addition to any building or hut or any other work made or done for any purpose into, or upon any building or hut, has been commenced or is being carried on or has been completed in breach of section 320, he may make a provisional order requiring the owner of the building to demolish the work done, or so much of it as, in the opinion of the Commissioner, has been unlawfully executed, or make such alterations as may, in the opinion of the Commissioner, be necessary to bring the work into conformity with the Act, rules, bye-laws, directions or requisitions as aforesaid, or with the plans or particulars on which such permission or orders was based and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well or hut.*

*(2) The Commissioner shall serve a copy of the provisional order made under sub-section (1) on the owner or builder of the building or hut or well together with a notice requiring him to show cause within a*

*reasonable time to be named in such notice why the order should not be confirmed.*

*(3) If the owner or builder fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit and such order shall then be binding on the owner.*

*(4) If the construction or reconstruction of any building or hut is commenced contrary to the provisions of section 300 or 314 and the Commissioner is of the opinion that immediate action should be taken, then, notwithstanding anything contained in this Act, a notice to be given under sub-section (2) shall not be of less duration than twenty-four hours and shall be deemed to be duly served if it is affixed in some conspicuous part of the building or hut to which the notice relates and published by proclamation at or near such building or hut accompanied by beat of drum, and upon such affixation and publication, all persons concerned shall be deemed, to have been duly informed of the matters stated therein.”*

*(emphasis supplied)*

Section 321(1)(i)(a) deals with commencement of construction without obtaining permission or where an appeal or reference has been made to the Standing Committee and undertakes such construction or re-construction in contravention of any order passed by the Standing Committee. Since Section 321 of the Act



bears reference to Sections 313 and 314 of the Act, it is germane to notice Sections 313 and 314 of the Act, they read as follows:

**"313. Application to construct or re-construct huts:—**

(1) *Every person who intends to construct or reconstruct a hut shall send to the Commissioner,—*

*(a) an application in writing for permission to execute the work, and*

*(b) a site-plan of the land.*

**(2) Every such application and a plan shall contain the particulars and be prepared in the manner required under the rules or bye-laws.**

**314. Prohibition against commencement of work without permission.—***The construction or re-construction of a hut shall not be commenced unless and until the Commissioner has granted permission for the execution of the work on an application sent to him under Section 313."*

*(emphasis supplied)*

Section 313 deals with application for permission to construct or re-construct and Section 314 deals with prohibition against

commencement of work without permission. The present order of demolition is passed under the afore-quoted provisions of law. An unequivocal mandate of Section 314 of the Act is that, no construction shall be commenced unless and until permission is granted on an application sent under Section 313 of the Act. An application under Section 313 of the Act is submitted by the petitioner on 13.11.2020. No permission was granted for commencement of work, but the petitioner went ahead with the construction without any permission and reached a stage where the construction got completed without such permission.

10. The defence of the petitioner is now required to be noticed and considered. The defence is that, under Section 315 of the Act, permission is deemed to have been granted if an order is not passed on an application submitted for such permission under Section 313 of the Act, within fourteen days. Section 315 reads as follows:

***“315. Period within which Commissioner is to grant or refuse to grant permission to execute***

***the work.—Within fourteen days after the receipt of any application made under section 313 for permission to construct or reconstruct a hut, or of any information or plan or further information or fresh plan required under rules or bye-laws, the Commissioner shall, by written order, either grant such permission or refuse on one or more of the grounds mentioned in section 317 to grant it.”***

*(emphasis supplied)*

Section 315 mandates that the Corporation shall within fourteen days after receipt of the application under Section 313 of the Act, either grant or refuse such permission on one or more grounds referred to in Section 317 of the Act. Admittedly, no order is passed under Section 315 of the Act, on an application submitted by the petitioner under Section 313 of the Act. Section 316 mandates that if the Commissioner delays grant of permission as obtaining under Section 315 of the Act or no order is passed under Section 315, a written request will be made by the applicant before the Standing Committee and the Standing Committee shall be bound on the written request of the

applicant to determine by a written order, whether permission should be granted or not. Sub-section (2) of Section 316 of the Act, reads as follows :

**"316. Reference to standing committee if Commissioner delays to grant permission:—**

*(1) If within the period laid down in section 315, the Commissioner has neither granted nor refused to grant permission to construct or re-construct a hut, the standing committee shall be bound on the written request of the applicant to determine by written order whether such permission should be granted or not.*

***(2) If the standing committee does not, within thirty days from the receipt of such written request determine whether such permission should be granted or not, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act."***

*(emphasis supplied)*

Section 316 mandates that if the Standing Committee does not within 30 days from the date of receipt of such request, determine whether the permission should be granted or not, such permission shall be deemed to have been granted. It is here the deeming clause comes in and not under Section 315 of the Act as contended by the petitioner. If the petitioner had approached the Standing Committee on the delay of an order being passed by the Commissioner, the matter would have been altogether different. The petitioner has not only undertaken construction without any permission but does not even approach the Standing Committee and now contends that permission is deemed to have been granted. The contention is *ex-facie* unacceptable, as it runs counter to Sections 313, 314, 315 and 316 of the Act. Section 317 of the Act reads as follows:

**"317. Grounds on which permission to construct or re-construct hut may be refused:—**

(1) *The only grounds on which permission to construct or re-construct a hut be refused are the following, namely:—*

(a) that the work or the use of the site for the work would contravene some specified provision of any law or some specified rule, bye-law, order or declaration made under any law;

(b) that the application for permission does not contain the particulars or is not prepared in the manner required under rules or bye-laws;

(c) that any information or plan required by the Commissioner under rules or bye-laws has not been duly furnished;

(d) that streets or roads have not been made as required by section 280;

(e) that the land on which the hut is to be constructed or the street or streets on which such land abuts are not adequately drained, levelled or lighted;

(f) that the proposed hut would be an encroachment upon Government or corporation land.

(2) Whenever the Commissioner or standing committee refuses to grant permission to construct

*or reconstruct a hut, the reason for such refusal shall be specifically stated in the order.”*

Section 317 deals with grounds on which permission to construct or reconstruct may be refused. Order of refusal under Section 317 of the Act is also passed on 30-06-2021 and communicated to the petitioner – online, as the application was submitted online.

11. Therefore, on a conjoint reading of the afore-quoted provisions of the Act, what would unmistakably emerge is that, an application seeking construction or re-construction would be submitted under Section 313 of the Act. Without express permission, no work shall be undertaken under Section 314 of the Act. Section 315 of the Act mandates the period in which the Corporation is to grant or refuse to grant permission to execute such work and in terms of Section 316 of the Act, on the delay in granting or refusing permission, the applicant is at liberty to approach the Standing Committee. The Standing Committee shall consider such request and pass appropriate

order within 30 days and in the event, no order is passed, the permission for such construction is deemed to have been granted. Except submission of application under Section 313 of the Act, none of the other statutory formalities are performed by the petitioner nor has displayed patience to wait for such permission to undertake construction.

12. It is, therefore, a fit case where the petitioner has wantonly abused law and undertaken construction. It is not a case, where the Corporation has kept quiet on seeing such construction. Several notices were issued by the Corporation against the petitioner but the petitioner goes on by justifying the construction on one pretext or the other, and completes the construction in a breakneck speed and begins to reside by the time, the impugned notice is issued.

13. It is also to be noticed that there is an allegation that the petitioner has encroached *Raja Kaluve* and constructed the building on such *Raja Kaluve*. The request for survey that was made by the Corporation on 03-02-2021 is also replied by the



Government immediately, that survey has to be conducted on its own, out of its resources and Officers and not communicate to the Department of Survey Settlement. Despite this reply, the Corporation has not taken any steps to conduct a survey or determine encroachment or even reject the application. The application is rejected only on 30-06-2021 and certain notices only for the purpose of record appear to have been issued by the Corporation. If the Corporation had issued notices directing to stop construction it ought to have rejected the application for permission. Therefore, the Officers of the Corporation have also displayed laxity in passing orders or taking timely action and the petitioner has abused the law in undertaking construction without permission. The building which is now completely constructed without even a building license. In such circumstances, no sympathy is required to be shown to the petitioner for having undertaken construction blatantly contrary to law. The order of demolition, thus, cannot be found fault with.

14. Before parting with the case, it may not be inapt to notice the judgments rendered by the Apex Court in several cases concerning unauthorised or illegal construction. The Apex Court in the case of **DR. G.N.KHAJURIA V. DELHI DEVELOPMENT AUTHORITY**<sup>1</sup>, has held as follows:

*"10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in*

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<sup>1</sup> (1995) 5 SCC 762

**accordance with law. This, however, seldom happens.** Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

*(emphasis supplied)*

Later, in **FRIENDS COLONY DEVELOPMENT COMMITTEE VS. STATE OF ORISSA**<sup>2</sup>, has held as follows:

"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**

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<sup>2</sup> (2004)8 SCC 733

***welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."***

*(emphasis supplied)*

Yet again, the Apex Court in the case of **PRIYANKA ESTATES INTERNATIONAL (P) LTD. VS. STATE OF ASSAM**<sup>3</sup>, has held 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 multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of***

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<sup>3</sup> (2010)2 SCC 27

*those flat owners whose flats are to be demolished as compared to the builder."*

*(emphasis supplied)*

A little later, the Apex Court in the case of **DIPAK KUMAR MUKERJEE V. KOLKAT MUNICIPAL CORPORATION**<sup>4</sup>, has held as follows:

**"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed**

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<sup>4</sup> (2013)5 SCC 336

*structures raised by economically affluent people. **The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.***

**9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient, .....**"

*(emphasis supplied)*

In the light of the judgments of the Apex Court as afore-quoted, the prevalent situation either in the limits of the Corporation, Municipality or the Panchayat if noticed, it would demonstrate clear apathy on the part of the Authorities towards the citizens, as illegal and unauthorised construction of the buildings and other structures, as observed by the Apex Court, would not only violate the Municipal Laws, the concept of planned development

of a particular area, but affects various fundamental and constitutional rights of other persons. The common man bears the brunt, feels cheated when he finds those making illegal and unauthorised constructions getting support, sometimes, either tacit or direct, by the wings of the State which are enjoined with a duty to act swiftly and stall such construction.

15. Silence or ignorance; turning a blind eye or a deaf ear of the Authorities towards the cry of certain citizens who bring into light the alleged illegal constructions will have to be forthwith addressed by the powers that be, of such Corporations, Municipal Councils and Panchayats, as all power is a trust that is bestowed upon the servants of the Government or Officers of the statutory bodies, which the State or the Statutory Bodies cannot afford to erode.

16. This Court has come across umpteen number of cases like the subject petition, wherein allegation is of illegal constructions undertaken and of the responsible Officers turning a blind eye towards such constructions. It is, therefore,

necessary that the jurisdictional Assistant Engineer, Assistant Executive Engineer or the Executive Engineer as the case would be, of all the Corporations, who are empowered to act, under the Act, are required to act swiftly, the moment such illegal or unauthorised construction comes to light, either by such officers themselves or on any complaint being registered against such construction, take action in accordance with law, without any loss of time, failing which, the State or the Corporations shall initiate departmental enquiry against those Officers who show or have shown lackadaisical attitude in the performance of their duty to check the growth of such illegal constructions in their jurisdictions. Administrative tolerance against such Officers should be reduced to zero, *as time has come, where a citizen who undertakes illegal or unauthorised construction should be dealt with stern hands, equally so, the Officers who permit such construction also be dealt with the same stern hands.*



17. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition lacks merit and is dismissed with costs of Rs.50,000/- payable to the Chief Minister's Relief Fund.
- (ii) The Corporation shall take the impugned order dated 09.11.2021, to its logical conclusion bearing in mind the observations made in the course of this order.
- (iii) A copy of this order shall be furnished to the Additional Chief Secretary, Department of Urban Development, for compliance and passage of necessary orders.

**Sd/-  
JUDGE**

nvj  
CT:MJ