

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

D.B.: HON'BLE MR. S. C. SHARMA AND
HON'BLE MR. VIRENDER SINGH, JJ

WRIT PETITION No. 10111 / 2013 (PIL)

SANJAY GANGRADE

Vs.

STATE OF MADHYA PRADESH AND OTHERS

* * * * *

Counsel for the petitioner : Mr. Vijay Assudani, learned for the petitioner.
Counsel for the respondent : Mr. Kailash Vijayvargiya, learned counsel for
respondent Corporation.
Mr. Sanjay Kumar Rawat, learned counsel for
respondent No. 14, 15 and 16.
Mr. Abhishek Tugnawat, learned counsel for
the respondent State.
Whether approved for reporting : YES
Law laid down : Illegal constructions are public hazards
and they violate the fundamental rights of
other citizens.
The Municipal Corporation cannot
overlook the provision of Sec. 172(1) of the
M P Land Revenue Code and in absence of a
diversion order changing the land use from
residential to commercial, no building
permission can be granted for construction
of a commercial establishment ie., a Hotel.
Illegal construction, in the light of the
judgment delivered by the apex Court in the
case of Dipak Kumar Mukherjee Vs.
Kolkata Municipal Corporation and others
reported in **(2013) 5 SCC 336** are required
to be demolished forthwith.
Significant paragraph numbers : 25 to 49

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
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ORDER
(17/06/2019)

PER : S. C. SHARMA, J :-

The present petition has been filed as Public Interest Litigation by the petitioner who is claiming himself to be a public spirited person.

02. Facts of the case, as stated in the Writ Petition, reveal that the respondents No.11, 12 and 13 are the Housing Cooperative Societies and the land was purchased by the Cooperative Housing Societies bearing Survey No. 81/1/1, 81/1/2 and 81/1/3, situated at village Nanakheda, Tehsil & District Ujjain and plots were carved out for allotting them to the members of the Societies. The land was purchased by the Cooperative Societies on 5-2-2004 / 27-8-2004, 28-8-

2004 and 23-8-2004 vide registered sale deeds. All the three Cooperative Societies obtained development permission from the Joint Director, Town & Country Planning Department and residential colony was to be developed by the Cooperative Societies. The cooperative societies, in turn, executed sale deeds to its members. Some of the sale deeds executed by the cooperative societies dated 28/12/2006 and 31/3/2012 are on record as Annexure P/2 and Annexure P/3. The Joint Director, Town & Country Planning Department, respondent No.6, granted permission in favour of respondent No.11 Cooperative Society for development of the residential colony over the land bearing Survey No. 81/1/1/2 on 5/2/2004. The Joint Director, Town & Country Planning Department, respondent No.6, granted permission in favour of respondent No.13 Cooperative Society for developing residential colony over the land bearing Survey No. 81/2/1/1 on 23/8/2004. The Joint Director, Town & Country Planning Department granted development permission in favour of respondent No.11 again on 27/8/2004 for developing residential colony over the land bearing Survey No.

81/2/1/2. The Joint Director, Town & Country Planning Department also granted development permission in favour of respondent No.12 again, a Housing Cooperative Society for developing residential colony over the land bearing in Survey No. 81/2/1/3 on 28/8/2004.

03. That the respondent No.13 Cooperative Society executed a sale deed in favour of one Gurubaksh Singh and it was categorically mentioned in the sale deed that the plots will be non-transferable for a period of ten years and the construction over the plot shall be done within three years from the date of execution of sale deed or the plot will be surrendered back to the society. The sale deed was executed in favour of one Gurubaksh Singh on 8/8/2006.

04. That the respondent No.11 Society executed a sale deed on 25/11/2006 in favour of Hotel Shanti Palace, respondent No.14, in respect of residential Plot No. 66, 67 and 68.

05. That the respondent No.12 Society executed a sale deed in favour of Hotel Shanti Palace, respondent No.14, in respect of Plot No. 64 and it was again mentioned in the sale

deed that the plot shall be exclusively used for residential purposes. The sale deed was executed on 31/3/2007.

06. That on 24/4/2007 development permission for construction of a Hotel was granted by the respondent No.6 Dy. Director, Town & Country Planning Department (Annexure P/6) and in the aforesaid permission it was mentioned, as per Clause 4, that in case there is any illegal construction, the same shall be removed within 60 days and the permission was valid only for a period of three years. The contention of the petitioner is that the development permission granted by the Town & Country Planning Department expired due to efflux of time on 24/4/2010.

07. That the respondent No. 12 Society after completing the development work, sold part of Survey No. 81/1/1/3 by executing a sale deed in favour of Prashant Jain, Navin Pathak, Prakash Bothra, Gopal Alia, Suresh Dagga and others. The respondent No.11 Society on 31/3/2012 after completing the development work sold part of Survey no. 81/2/1/2 showing it to be undiverted and undeveloped land in favour of Bharat Shrivastava, Amarchand Roy, Hukumchand

Roy, Gulabchand Chhatani etc.,

08. That on 31/3/2012 the respondent No.13 Society, after completing the development work sold part of Survey No. 81/1/1/1 showing it to be undiverted and undeveloped land in favour of Chintamal Padiyal, Sushil Shrivastava, Nitin Singh, Rahul Shrivastava, Ramswaroop Verma and others.

09. The contention of the petitioner is that plots of the society should have been sold to its members for construction of residential houses only. It has been further stated that on 23/2/2013, the Ujjain Municipal Corporation granted building permission in favour of respondent No. 15 and 16 and at the relevant point of time when the building permission was granted, there was no development permission in existence granted by the Joint Director, Town & Country Planning Department and there was no diversion order diverting the land use for construction of hotel or other activities.

10. That on 31/3/2013 some persons who have been sold piece of land by the Cooperative Societies namely; Bharat Shrivastava, Amarchand Roy, Hukumchand, Gulabchand

chattani and others, have executed sale deed in favour of private respondents, to be more specific, in favour of respondent No. 15 – Chandrashekhar Shrivastava.

11. That on 31/3/2013 again sale deeds were executed by Chintaman Padyal, Sushil Shrivastava, Rahul Shrivastava, Nitin Singh and others in favour of respondent No. 15.

12. That the respondent Nos. 15 and 16 applied for diversion and a diversion order was issued on 17/6/2013 for using the land for Hotel purposes. It has been further stated by the petitioner that the diversion order dated 17/6/2013 was cancelled by the Sub Divisional Officer (Revenue) by order dated 11/9/2013, against which an appeal was preferred and the Collector, Ujjain by order dated 30/9/2013 affirmed the order cancelling the grant of diversion permission. The contention of the petitioner is that the Dy. Director, Town & Country Planning Department, respondent No.6, could not have granted development permission in absence of any order of consolidation of the plots in respect of the land purchased by respondent Nos. 14 to 16 and an illegality was committed by respondent No.6 in

granting development permission dated 24/4/2007. The petitioner has further stated that the State Government has issued executive instructions dated 26/11/2005, which prohibits consolidation of plots. It has been further stated that the State Government has issued another executive instructions dated 5/10/2000 restraining the Joint Director, Town & Country Planning Department from making any amendment / modification in the development permissions already granted and in the present case the development permission was already granted in favour of all the three cooperative societies and, therefore, no such permission could have been granted by the Dy. Director, Town & Country Planning Department, respondent No.6, as has been done on 24/4/2007. It has been further stated that the development permission granted on 24/4/2007 is contrary to Rule 16 and 17 of the M. P. Bhumi Vikas Rules, 1994 as no site plan showing exact Khasra Number by division, position of site in relation to neighbouring streets, details of contiguous land, existing building and proper proof of title was not submitted. It has been further stated that no

development permission could have been granted in respect of the Housing Cooperative societies exclusively meant for development of residential colony for construction of a Hotel.

13. Petitioner has further stated that the respondents on the strength of development permission granted on 24/4/2017 applied for diversion of the land for using it for commercial purposes and unholy haste was shown by the respondents in passing diversion order on 17/6/2013. It has also been stated that the entire exercise of passing diversion order was done within 13 days from the date of execution of sale deeds. The petitioner has also stated that the diversion order was passed without obtaining No Objection Certificate from the Ujjain Municipal Corporation, Ujjain, for developing the aforesaid and the same was a mandatory requirement, as required under Rule 5 of the MP Cooperative Societies Rules, 1962. It has also been stated that no No Objection Certificate was obtained from the National Highway Authority as required under Rule 6 of the Rules of 1962.

14. That the petitioner has further stated that the building

permission granted in the matter is also contrary to the statutory provisions and no such building permission could have been granted in the matter, as the development permission dated 24/4/2007 which was valid for three years, came to an end by efflux of time on 24/4/2010. The petitioner has also stated that the respondent No.14 to 16 have raised construction over Marginal Open Space (MOS), OTS and have not left parking area as per the sanctioned map. Various other irregularities have also been stated in the Writ Petition. The petitioner has stated that the land belonging to the Cooperative Housing societies could not have been transferred in the manner and method it has been done by the respondent Nos. 14, 15 and 16 and no Hotel could have been constructed over the plots which were originally the property of the Cooperative Housing Societies. The petitioner has prayed for the following reliefs :

- (1)** quash and set aside the development permission dated 24/4/2007 (Annexure P/6) granted by respondent No. in favour of respondents No. 14 to 16.
- (2)** quash and set aside the building permission dated 23/2/2013 (Annexure P/10) passed by

respondent No.10 in favour of respondents No. 14 to 16.

(3) quash and set aside the diversion order dated 17/6/2013 passed by respondent No.9 (Annexure P/9) in favour of respondents No.14 to 16.

(4) quash and set aside the sale deeds collectively marked as Annexure P/2 and p/3 respectively, executed in favour of respondent Nos. 14 to 16.

(5) allow this petition with costs

(6) any other further orders as deemed fit by this Hon'ble Court in the facts and circumstances of the case.

15. The respondent Nos. 1, 5, and 6 have filed a reply through Officer-in-Charge of the case, Joint Director, Town & Country Planning Department and it has been stated by the respondents that their reply is only confined in respect of grant of development permission dated 24/4/2007 (Annexure P/6). The respondents on affidavit have stated that the development permission granted on 24/4/2007 was valid for a period of three years and the same expired on 23/4/2010 and thereafter no fresh development permission was granted in favour of respondent Nos. 14 to 16 and the entire construction has been raised after grant of building permission dated 23/3/2013. The respondents have stated that the entire construction is illegal, as it has been raised

during the period when there was no development permission in existence and the Ujjain Municipal Corporation could not have granted building permission in the matter. The respondents have also stated that in the development permission dated 24/4/2007 it was categorically mentioned that respondent No. 14 to 16 will remove the illegal construction within 60 days and respondent No. 14 to 16 have also submitted an Affidavit that they will remove the illegal construction within 60 days. However, no such construction was removed and they have sought information from the Ujjain Municipal Corporation in that behalf. The respondents have also stated that the matter relating to consolidation of plots as always been a matter of concern and initially a circular was issued on 21/11/2005 for consolidation of plots situated in a residential colony. It has been further stated that subsequently a clarifications were issued on 8/6/2007 and on 26/3/2009 and the permission granting consolidation of plots was set aside, hence after 26/3/2009 all development permissions relating to consolidation of plots automatically

stands revoked.

16. The respondents have further stated that respondent No. 4 to 16 have not submitted complete information to them that the bye-laws of the society prohibits sale of plots for a period of 10 years and, therefore, they were kept in dark. The respondent Nos. 5 and 6 have further stated that respondent No. 14 to 16 have submitted false information, however, no proceedings were initiated against them under Rule 25 of the Bhumi Vikas Rules, as the development permission came to an end by efflux of time. The respondents have stated that the entire building has been constructed illegally without there being any development permission and as development permission came to an end after 3 years ie., on 24/4/2010, the question of revoking the same also does not arise.

17. The respondent Nos. 14, 15 and 16 (the persons who have constructed the Hotel) have also filed a detailed and exhaustive reply and it has been stated that in respect of the same subject matter one Mohanlal Waswani has also filed a Writ Petition and the same was registered as W.P.No.

9548/2013 and this Court by order dated 23/9/2013 has disposed of the Writ Petition. It has been further stated that against the order dated 23/9/2013 a Writ Appeal was preferred ie., W.A.No. 898/2013 and, therefore, on the same subject matter the present Writ Petition which is a Public Interest Litigation, is not maintainable and it is barred by the principles of *res-judicata*, hence deserves to be dismissed.

18. The respondents have also stated that the petitioner in the present case is working in the Shop of Mohanlal Waswani as a servant and the present Public Interest Litigation is being used as a tool to score personal vendatta, hence, it deserves to be dismissed summarily. The respondents have also stated that the petitioner is not an aggrieved party. No fundamental right of the petitioner has been violated and he has got no right for seeking relief of cancellation of sale deed as well as for cancellation of various permissions granted in the matter from time to time. The respondents have also stated that as per the provision of Sec. 293 of the M. P. Municipal Corporation Act, in respect of any building permission granted by the Municipal

Corporation, a person aggrieved can prefer appeal before the District Court and as the petitioner has not preferred any appeal before the District Court, the petition is not maintainable. The respondents have further stated that in case a person is aggrieved by diversion order passed by the Revenue Authorities ie., the Sub Divisional Officer, u/S. 172(1) of the M. P. Land Revenue Code, 1959, an aggrieved party does have a right to file an appeal before the appellate forum and as the petitioner has not preferred an appeal, the present petition deserves to be dismissed on this count alone.

19. The respondents have also stated that the allegation of the petitioner in respect of the Housing Societies and in respect of the transfer of residential plots to the respondents for construction and establishment of the Hotel are of no help to the petitioner as he was not a party to the sale deeds, he was not a Member of the Housing Society and he does not have any *locus* to raise any objection in the matter. The respondents have further stated that in case the petitioner is aggrieved in the matter in respect of execution of sale deeds,

the remedy available to him is to approach the Registrar of Cooperative Societies under the provisions of the M. P. Cooperative societies Act, 1960. The respondents have further stated that there are cases pending between the petitioner and the respondents in the revenue courts, in Civil Courts and the petition has been filed with oblique and ulterior motive. It has been further stated that after getting the sale deeds executed in their favour, they have applied for sanction of layout plan for establishment of Hotel and the Joint Director, Town & Country Planning Department has approved their layout with certain conditions by order dated 24/4/2007 for construction of a Hotel over the land admeasuring 7257.58 sqm., of Survey No. 81/1/1, 81/2/1 and 81/1. It has been further stated that in respect of the time limit of extension for year to year, the respondents have also within specified time limit obtained for extension for year to year on 9/6/2011 to 24/6/2012. The respondents have also stated that after the layout was sanctioned by the Joint Director, Town & Country Planning Department, Ujjain, they have applied for diversion of land for using it for

commercial purposes and the Sub Divisional Officer, Ujjain has passed a diversion order on 17/6/2013 changing the land use from residential to commercial by redetermining and fixing the premium of land use at commercial rate. It has been stated that two diversion orders were passed ie., on 17/6/2013 and 27/6/2013 by the Competent Authority, Sub Divisional Officer. The respondents have stated that they have applied for building permission for establishment of Hotel to the Commissioner, Municipal Corporation, Ujjain and the Commissioner, Municipal Corporation, Ujjain sought permission in the shape of No Objection Certificate from the Town & Country Planning Department. The Joint Director, Town & Country Planning Department has issued a letter on 21/12/2012 directing the Municipal Commissioner for compliance of already approved layout plan u/S. 30 of the Nagar Tatha Gram Nivesh Adhiniyam, 1973 and for grant of building permission by the Municipal Corporation, Ujjain and thereafter the permission was granted to construct the Hotel building on 20/2/2013.

20. The respondents have further stated that a part of the

land belonging to respondents was purchased by them and they were having title over a part of the land which was not a diverted land and as it was being used by them, they applied for diversion for a part of the land for using it for commercial purposes. The Sub Divisional Officer, Ujjain has passed an order on 17/6/2013 keeping in view Sec. 172 (1) of the M. P. Land Revenue Code, 1959 in favour of the respondents.

21. The respondents have also stated that after getting the building permission, they have availed financial assistance from the Nationalised Banks to the tune of Rs.10.00 Crores and after obtaining a loan they have completed the Hotel which is functioning. The respondents have stated that they have constructed the building in accordance with various permissions granted to them from time to time and there is already a Writ Appeal pending before this Court ie., W.A.No. 898/2013 and they have also given an undertaking that they will demolish the construction if ultimately they lose. The respondents have prayed for dismissal of the Writ Petition and for imposition of exemplary costs.

22. An affidavit has also been filed by the petitioner dated 7/3/2015 wherein he has denied his relationship with Mohanlal Waswani and he has stated that he is not at all working for Mohanlal Waswani and he has filed the petition challenging the development permission dated 24/4/2007, building permission dated 22/2/2013 as well as diversion order dated 17/6/2013. In the affidavit it has also been stated that the diversion order passed in the matter was cancelled by the Sub Divisional Officer against which an appeal was submitted before the Collector and the Collector has dismissed the appeal and even the second appeal preferred before the Commissioner, Ujjain has been dismissed by order dated 24/2/2015. In the affidavit it has also been mentioned that the diversion order which has been brought on record by respondent Nos. 14 to 16 has already been cancelled. There are various replies to the interlocutory applications filed in the matter by the parties and one such reply dated 22/4/2015 filed by respondent Nos. 4 to 10 reveals that an order was passed in the present case on 26/3/2015 by which this Court has directed respondent Nos.

3, 4, 16, 8, 9 and 10 to take appropriate steps in the matter regarding removal of illegal construction and at the same time respondent Nos. 14 to 16 were directed not to carry out any construction activities based upon various permission granted to them from time to time. The Collector, Ujjain as well as the Commissioner Ujjain Municipal Corporation were also directed to file compliance report and in that backdrop it has been stated by respondent Nos. 4 to 10 that respondent Nos. 14 to 16 have preferred Special Leave Petition before the Hon'ble Supreme Court ie., SLP No. 11472/2015 and the Hon'ble Supreme Court has passed an order in the matter on 16/4/2015. It has been further stated that the Ujjain Municipal Corporation on 13/1/2014 has cancelled the building permission dated 23/2/2013 and Notice was also issued for removing the illegal construction and aggrieved by the aforesaid notice a Civil Suit was preferred by respondent Nos. 14 to 16 before the 4th Addl. Civil Judge, Class II, Ujjain ie., Civil Suit No. 37-A/2014. In the Civil Suit the learned Judge has directed the parties to maintain status quo. It has also been stated that in the

aforesaid Civil Suit that the present petitioner has filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for impleadment.

23. There is a rejoinder also on record filed by the respondent Nos. 14, 15 and 16. Again in the aforesaid rejoinder it has been stated that the present petition is a sponsored Writ Petition and the diversion order once passed in favour of the respondents could not have been cancelled in the manner and method it has been done. There was a proper building permission granted in the matter and the Civil Suit is also pending in respect of the same subject matter. It has also been stated that the respondent Nos. 14, 15 and 16 has obtained loan from the Bank and they will be suffering irreparable loss. It has also been stated that in respect of the same construction which was over the MOS, the same has been removed by them. It has also been stated that the Civil Judge, later on, vacated the injunction order on 18/8/2015 against which an appeal was preferred and the Addl. District Judge, Ujjain Appeal No. 9/2015 has passed an order on 27/8/2015 affirming the order of the Civil Judge,

meaning thereby, there was no injunction in existence and a prayer has been made for granting an injunction to the present petitioner. There is again an application filed by the petitioner along with order of the Hon'ble Supreme Court wherein the apex Court has directed this Court to decide the present matter at an early date.

24. Heard learned counsel for the parties at length and perused the record.

25. The present petition is certainly a Public Interest Litigation filed by one Sanjay Gangrade and he has prayed for the following reliefs :

- (1)** quash and set aside the development permission dated 24/4/2007 (Annexure P/6) granted by respondent No. in favour of respondents No. 14 to 16.
- (2)** quash and set aside the building permission dated 23/2/2013 (Annexure P/10) passed by respondent No.10 in favour of respondents No. 14 to 16.
- (3)** quash and set aside the diversion order dated 17/6/2013 passed by respondent No.9 (Annexure P/9) in favour of respondents No.14 to 16.
- (4)** quash and set aside the sale deeds collectively marked as Annexure P/2 and p/3 respectively, executed in favour of respondent Nos. 14 to 16.
- (5)** allow this petition with costs
- (6)** any other further orders as deemed fit by

this Hon'ble Court in the facts and circumstances of the case.

26. Facts of the case reveal that the respondent Nos.11, 12 and 13 are the Cooperative Societies. The Cooperative Societies are having their bye-laws and the Cooperative Societies were constituted in order to provide residential plots to their members as per the bye-laws of the society. The land was purchased by the Cooperative Housing Societies bearing Survey No. 81/1/1, 81/1/2 and 81/1/3, situated at village Nanakheda, Tehsil & District Ujjain for carving out plots and for allotting them to the members of the society. The land was purchased by the cooperative societies on 5/2/2004 / 27/8/2004, 28/8/2004 and 23/8/2004 vide registered sale deeds. All the three cooperative societies obtained development permission from the Joint Director, Town & Country Planning Department for developing residential colonies. The Joint Director, Town & Country Planning Department- respondent No.6 granted development permission in favour of respondent No.11 – cooperative society for developing a residential colony over the land bearing Survey No. 81/1/1/2 on 5/2/2004. The

development permission was in respect of residential colony.

27. The Joint Director, Town & Country Planning Department – respondent No.6 again granted development permission in favour of respondent No.13 Cooperative Society for developing a residential colony over the land bearing Survey No. 81/2/1/1. The Joint Director, Town & Country Planning Department – respondent No.6 again granted development permission in favour of respondent No.11 Cooperative Society for developing a residential colony over the land bearing Survey No. 81/2/1/2. Similarly, in respect of respondent No. 12 Cooperative Society, the development permission was granted by the Joint Director, Town & Country Planning Department for development of a residential colony over Survey No. 81/2/1/3 by order dated 28/8/2004.

28. The respondent No.13 Society executed a sale deed in favour of one Gurubaksh Singh on 8/8/2006. The sale deed is at page 299 of the paper book and the relevant pages are 305, 306 and 307. The following terms and conditions were

mentioned in the sale deed as it was a plot allotted by the Cooperative Society :

- (a) plots will be non-transferable for a period of ten years;
- (b) the construction of plot should be made within 3 years. Failing which the plots will be surrendered back to the society; and,
- (c) the plots will be used only for residential purposes and for no other purposes.

29. Respondent No.11 Cooperative Society executed a sale deed in favour of Hotel Shanti Palace – respondent No.14 in respect of residential plots bearing No. 66, 67 and 68. The plots sold were part of the layout approved by the Joint Director, Town & Country Planning Department in respect of which the development permission was given only to develop a residential colony. The most important aspect of the case is that the Cooperative Society could not have sold the plot to Hotel Shanti Palace – respondent No.14, as plots were meant for allotment to members of the society that too for construction of residential building (page 104 of the paper book).

30. The respondent No.12 Cooperative Society on 31/3/2007 executed a sale deed in favour of Hotel Shanti

Palace – respondent No.14 in respect of plot No. 64 and again in the sale deed it was categorically mentioned that the plot is meant for residential purposes (page 246 of the paper book). Again the aforesaid plot could not have been sold to Hotel Shanti Palace, as it was meant for allotment to the members of the society that too for residential purposes.

31. The Joint Director, Town & Country Planning Department who has earlier granted development permission for developing residential colony over the land in question, again granted development permission for construction of a Hotel on 24/4/2007 (page 310 Annexure P/6). In the development permission at Clause 4, it was categorically mentioned that in case there is an illegal construction, the same shall be removed within 60 days. The development permission was valid for a period of 3 years. At this point of time, the relevant statutory provision of law which deals with the lapse of permission, as contained under the M. P. Nagar Tatha Gram Nivesh Adhinyam, 1973, reads as under :

33. Lapse of permission.— Every permission granted under Section 30 or Section 31 or Section

32 shall remain in force for a period of [three years] from the date of such grant and thereafter it shall lapse :

Provided that the Director may, on an application, extend such period from year to year but the total period shall in no case exceed [five years] from the date on which the permission was initially granted :

Provided further that such lapse shall not bar any subsequent application for fresh permission under this Act.

32. The aforesaid statutory provision of law makes it very clear that the permission granted by the authority shall be valid for a period of 3 years and can be extended from year to year basis, but such extension shall not exceed 5 years and, therefore, by virtue of the aforesaid statutory provision of law, the development permission expired by efflux of time on 24/4/2010.

33. The another important aspect of the case is that the respondent No. 12 Society, after completing the development work, sold part of Survey No. 81/1/1/3 vide registered sale deed dated 21/12/2011 on 31/3/2012 showing it to be undiverted and undeveloped land in favour of Prashant Jain, Naveen Pathak, Prakash Bothra, Gopal, Suresh and others. Similarly, the respondent No.11 housing

cooperative society on 31/3/2012 after completing the development work sold part of Survey No. 81/2/1/2 showing it to be undiverted and undeveloped land in favour of Bharat Shrivastava, Amarchand Roy, Hukumchand Roy, Gulabchand Chhatani etc., The respondent No.13 Cooperative Society on 31/3/2012 after completing the development work sold part of Survey No. 81/1/1/1 showing it to be undiverted and undeveloped land in favour of Chintanmal Padiyal, Sushil Shrivastava, Nitin Singh, Rahul Shrivastava, Ramswaroop Verma and others.

34. The Ujjain Municipal Corporation on 23/2/2013 granted building permission to respondent No. 15 and 16 even though there was no development permission in existence granted by the Department of Town & Country Planning and in absence of any diversion order changing the land use from residential to commercial (for the purposes of establishing a Hotel). The another important aspect of the case is that in the building permission, the land use for which the permission was granted was not mentioned. The relevant statutory provision of law which deals with grant of

building permission as contained u/Ss. 293, 294 and 296 of the M. P. Municipal Corporation Act, 1956 reads as under :

293. Prohibition of Erection or re-erection of buildings.-

(1) No person shall- (i) erect or re-erect any building; or (ii) commence to erect or re-erect any building; or (iii) make any material external alteration to any building; or (iv) construct or re-construct any projecting portion of a building which the Chief Executive Officer is empowered by section---- to require to be set back or is empowered to give permission to construct or reconstruct,- (a) unless the Chief Executive Officer has either by an order in writing granted permission or has failed to intimate within the prescribed period his refusal of permission for the erection or re-erection of the building or for the construction or re-construction of the projecting part of the building; or (b) after the expiry of one year from the date of the said permission or such longer period as the Chief Executive Officer may allow or from the end of the prescribed period, as the case may be: Provided that nothing in this section shall apply to any work, addition or alteration which the Municipality may by byelaw declare to be exempt. (2) If a question arises whether a particular alteration in or addition to an existing building is or is not a material alteration the matter will be determined by the Commissioner. (3) Any person aggrieved by the order of the Commissioner in this behalf may appeal to the district court within thirty days of such order in the manner prescribed therefore and the decision of the district court shall be final.

294. Notice of Buildings.- Every person who intends to erect or re-erect a building shall submit to the Commissioner- (a) an application in writing for a approval of the site together with a site plan of the land; and in the case of land which is the property of the Government or of the Corporation a certified copy of the documents authorizing him to occupy the land, and if so required by the Commissioner the original document or documents; and (b) an application in writing for permission to build together with a ground plan, elevation and section of the building and a specification of the work to be done. (2) Every plan of any building to be constructed wholly or partly of masonry, submitted under sub-section (1) shall, in token of its having been prepared by him or under his supervision, bear the signature of a licensed surveyor. (3) Every document submitted under sub-section (1) shall be prepared in such manner and shall contain such particulars as may be prescribed by byelaws. (4) Nothing herein contained shall require a person to comply with the provisions of clause

(b) of sub-section (1) until such time as the site has been approved by the Commissioner or such person as he may appoint.

296. Grounds on which site of proposed building may be disapproved.- The Commissioner may refuse to approve the site on which an applicant proposes to erect or reerect any building- (a) that the erection or re-erection of the proposed building on such site would be in contravention of a town-planning scheme under section 291 or of any other provision of this Act or of any other enactment for the time being in force; or (b) the site is in a portion within the limits of the City in which the position and direction of the streets have not been determined, and that the building which it is proposed to erect on such site will, in the opinion of the Commissioner, obstruct or interfere with the construction in future of suitable streets in such portion or with the drainage, water-supply or ventilation thereof: Provided that any person to whom permission to erect or re-erect a building on such a site has been refused may, by written notice to the Chief Executive Officer require that the position and direction of streets to be laid down in future in the vicinity of the proposed building should be forthwith determined, and if such requisition is not complied with within one year from the date thereof, may, subject to all other provisions of this Act applicable there to, proceed with the erection of his building; or (c) that the site has been re-claimed or used as a place for depositing sewage, offensive matter rubbish or then carcasses of dead animals or is otherwise in sanitary or dangerous to health ; or (d) that the site is in a portion within the limits of the City for which a town-planning scheme has not been sanctioned by the Government and that the building which it is proposed to erect or re-erect on such site will, in the opinion of the Commissioner, be likely to conflict in a manner, to be communicated in writing to the applicant, with the provisions of a town-planning scheme: Provided that any person to whom permission to erect or re-erect a building on such a site has been refused may, by written notice to the Chief Executive Officer, require that the preparation of a town-planning scheme for the portion in which the site is situated shall be proceeded with as early as possible; and if the applicant is not informed in writing within twelve months of the date of the requisition that the Government have sanctioned the said townplanning scheme, he may subject to all the other provisions of this Act applicable there to proceed with the erection or re-erection of the building in respect of which the application was made.

The aforesaid statutory provisions of law makes it very

clear that the building permission can be granted in consonance with the provisions as contained under the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973.

35. On 31/3/2013, the persons in favour of whom the cooperative societies have executed sale deeds namely; Bharat Shrivasa, Amarchand Roy, Hukumchand, Gulabchand Chhatani and others executed sale deed in favour of respondent No. 15 – Chandrashekhar Shrivasa on 31/3/2013 and similar sale deeds were executed by Chintaman Padyal, Sushil Shrivasa, Rahul Shrivasa, Nitin Singh and others in favour of respondent No. 15 on 31/3/2013.

36. Respondent No. 14, 15 and 16 applied for diversion order for changing the land use and the diversion order was passed on 17/6/2013 for using the land for the purposes of Hotel.

37. By order dated 11/9/2013 diversion order was cancelled by the Sub Divisional Officer (Revenue) against which an appeal was preferred and the Collector, Ujjain by order dated 30/9/2013 has affirmed the cancellation of the said diversion order. Thus, the important aspect of the case

is that initially diversion order which is not in existence now was passed on 17/6/2013 and the building permission was granted by the Ujjain Municipal Corporation on 23/2/2013, meaning thereby, prior to the order of diversion passed by the Sub Divisional Officer, the building permission was granted by the Ujjain Municipal Corporation. As on date, it has been informed to this Court that the diversion order was cancelled by the SDO and the cancellation was affirmed by the Collector and the Commissioner. The matter is now pending before the Board of Revenue. Thus, in short, this is no diversion order in existence.

38. The Ujjain Municipal Corporation, when all such irregularities were brought to the notice of the authorities, has also revoked the building permission by order dated 13/1/2014, meaning thereby, there is no diversion order in existence and there is no building permission in existence. Otherwise also, the initial diversion order which was passed in the matter ignoring the fact that the land in question is exclusively meant for residential house, could not have been passed by the revenue authorities, in the light of the order

passed by the Joint Director, Town & Country Planning Department dated 5/2/2004, 23/8/2004 and 27/8/2004 by which permission was granted to the cooperative societies for developing the residential colonies only. The map sanctioned by the Ujjain Municipal Corporation was also an illegal act. There was no development permission, there was no diversion order and inspite of the aforesaid in respect of the residential land, permission was granted to construct a Hotel and, therefore, the Ujjain Municipal Corporation has rightly cancelled the building permission on 13/1/2014. The Ujjain Municipal Corporation has not issued service certificate, completion certificate and occupancy certificate to private respondents till date.

39. The reply filed by respondent No.1 Director, Town & Country Planning Department on affidavit establishes that the development permission was valid till 23/4/2010 and as the entire construction has been completed thereafter it is illegal. The salient points mentioned on affidavit in the reply of the Director, Town & Country Planning Department, reads as under :

(1) that the development permission was valid till 23/4/2010 and as the entire construction has been made thereafter, the entire construction is illegal;

(2) that the private respondents have not complied with the affidavit on the basis of which development permission dated 24/4/2007 was granted and said illegal construction has not been removed;

(3) that after 26/3/2009 all development permissions granted on the basis of consolidation of plots stand automatically cancelled;

(4) that in ignorance to cooperative rules and bye-laws which prohibits sale of 10 years, construction of residential accommodation within time bound manner, the development permission was granted; and,

(5) that the private respondents No. 14 to 16 have not submitted complete information before the respondents while applying for grant of development permission.

40. In the light of the aforesaid reply on affidavit by the Town & Country Planning Department by the State of Madhya Pradesh – respondent No.1 and respondent No. 5 and 6, the entire construction is an illegal construction.

41. The Ujjain Municipal Corporation has also filed a return and has stated that they have revoked the building permission and the structure in question has to be demolished. Thus, it is established that there is no building permission as on date, the permission which was granted has

been revoked.

42. In the present case, the Hotel has been constructed by consolidating the plots. Sec. 30A of the M. P. Nagar Tatha Gram Nivesh Adhiniyam deals with the consolidation of plots and the same reads as under :

30A – Merger of division of a plot (1) The State Government or an officer so authorised by it may, subject to the provisions of this Act and such conditions as may be prescribed, allow merger or division of the plot :

Provided that where the purpose of land use is residential;

(a) plots for economically weaker sections and low income groups shall not be merged;

(b) division of plots shall not be permitted;

(c) only continuous plot shall be merged and the size of such merged plot shall not exceed 500 sq. mtrs.; and,

(2) An application under sub-section (1) shall contain such details, documents and accompanied by such fee as may be prescribed.

43. The aforesaid statutory provision of law deals with merger or division of plots and the aforesaid statutory provision of law does not empower the Competent Authority for merger of plots meant for residential purposes to be used for commercial purposes, meaning thereby, to be used for any other purpose except for residential purpose.

44. In the present case, after merger of plots, a Hotel has been constructed and, therefore, the building permission which was granted after merger of the plots was certainly illegal and has rightly been revoked by the Ujjain Municipal Corporation.

45. The apex Court while dealing with illegal / unauthorised constructions has directed demolition as illegal constructions affects planned development of the area meant for public benefit. It causes public hazards and violates fundamental rights of other citizens. In the case of Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and others reported in (2013) 5 SCC 336. The apex Court has dealt with various illegal constructions, violation of development laws and has observed that such illegal constructions are acquiring monstrous proportion in different parts of the country. Paragraphs 2 to 9 and 29 reads as under :

2. In last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions - (1) K.

Ramadas Shenoy v. Chief Officers, Town Municipal Council (1974) 2 SCC 506; (2) Virender Gaur v. State of Haryana (1995) 2 SCC 577; (3) Pleasant Stay Hotel v. Palani Hills Conservation Council (1995) 6 SCC 127; (4) Cantonment Board, Jabalpur v. S.N. Awasthi 1995 Supp. (4) SCC 595; (5) Pratibha Coop. Housing Society Ltd. v. State of Maharashtra (1991) 3 SCC 341; (6) G.N. Khajuria (Dr) v. Delhi Development Authority (1995) 5 SCC 762; (7) Manju Bhatia v. New Delhi Municipal Council (1997) 6 SCC 370; (8) M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999) 6 SCC 464; (9) Friends Colony Development Committee v. State of Orissa (2004) 8 SCC 733; (10) Shanti Sports Club v. Union of India (2009) 15 SCC 705 and (11) Priyanka Estates International Pvt. Ltd. v. State of Assam (2010) 2 SCC 27.

3. In *K. Ramadas Shenoy v. Chief Officers, Town Municipal Council* (supra), the resolution passed by the Municipal Committee authorising construction of a cinema theatre was challenged on the ground that the site was earmarked for the construction of Kalyan Mantap-cum-Lecture Hall and the same could not have been used for any other purpose. The High Court held that the cinema theatre could not be constructed at the disputed site but declined to quash the resolution of the Municipal Committee on the ground that the theatre owner had spent huge amount. While setting aside the High Court's order, this Court observed:

“An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.

The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The

special and substantial interest of the residents in the area is injured by the illegal construction.”

4. [In Pratibha Coop. Housing Society Ltd. v. State of Maharashtra](#) (supra), this Court approved the order passed by the Bombay Municipal Corporation for demolition of the illegally constructed floors of the building and observed:

“Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits.”

5. [In Friends Colony Development Committee v. State of Orissa](#) (supra), this Court noted that large number of illegal and unauthorised constructions were being raised in the city of Cuttack and made the following significant observations:

“.....Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law

must stretch to catch hold of such unscrupulous builders.....

In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

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.” (emphasis supplied)

6. In [Shanti Sports Club v. Union of India](#) (supra), this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed:

“In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin

diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.”

7. In [Priyanka Estates International Pvt. Ltd. v. State of Assam](#) (supra), this Court refused to order regularisation of the illegal construction raised by the appellant and observed:

“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 those flat owners whose flats are to be demolished as compared to the builder.”

8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure 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 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-storied structure 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 sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, ‘the Corporation’) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, ‘the 1980 Act’) and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.

29. Reports showing compliance of the aforesaid directions be filed by the Corporation and respondent No.7 in the Registry of the Kolkata High Court within six months. Thereafter, the matter be placed before the learned Single Judge who had passed order dated 28.7.2010. If the learned Single Judge finds that any of the aforesaid directions has not been implemented then he shall initiate proceedings against

the defaulting officers and/or respondent No.7 under the [Contempt of Courts Act](#), 1971 and pass appropriate order.

46. In the light of the aforesaid, this Court is of the considered opinion that the present Writ Petition (PIL) deserves to be allowed. The impugned development permission dated 25/4/2007 (Annexure P/6) is quashed. The building permission dated 23/2/2013 (Annexure P/10) is also quashed. The diversion order dated 17/6/2013 (Annexure P/9), though it has been cancelled, is also quashed. The respondent – authorities shall be free to take appropriate action in accordance with law. It is made clear that there is no interim order restraining the authorities to proceed ahead in the matter, in accordance with law.

47. The Ujjain Municipal Corporation has already by an order dated 13/1/2014 has cancelled the permission dated 23/2/2013 and has issued a notice to respondent Nos. 14, 15 and 16 to remove the unauthorised construction and, therefore, the Municipal Corporation shall proceed ahead in the matter of removal of the entire construction which is subject matter of the dispute and shall report compliance to the Principal Registrar of this Court.

48. The another important aspect of the case is that the authorities under the M. P. Nagar Tatha Gram Nivesh Adhiniyam and under the Municipal Corporation Act, 1961 have granted various permissions *de-hors* the statutory provisions. It is a serious matter. The Hotel was constructed by obtaining loan, as stated on record. It is wastage of public money and, therefore, the matter requires a probe in respect of the role of the cooperative societies and all the persons related, by the Director General, Economic Offence Wing to arrive at a conclusion in respect of the involvement of the officers and other persons, if any, in the matter of grant of various permissions from time to time.

49. Resultantly, the Director General of Economic Offence Wing shall enquire into the matter with quite promptitude and shall be free to proceed ahead in the matter in accordance with law.

The Writ Petition is allowed. No order as to costs.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E

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