IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF JUNE, 2023

WRIT PETITION No. 15069 of 2023

BETWEEN:-

LEELADHAR VISHWAKARMA, S/O BADRI PRASAD VISHWAKARMA, AGED 62 YEARS, R/O 1762, NAVNIVESH COLONY, GANGA NAGAR GARHA, JABALPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANKALP KOCHAR - ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH – THE SECRETARY, URBAN DEVELOPMENT & HOUSING MINISTRY, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **THE COMMISSIONER, MUNICIPAL CORPORATION, JABALPUR (MADHYA PRADESH)**
3. **BUILDING OFFICER/ DIVISIONAL OFFICER MUNICIPAL CORPORATION, JABALPUR (MADHYA PRADESH)**
4. **SUPERINTENDENT OF POLICE, JABALPUR (MADHYA PRADESH)**
5. **THE COLLECTOR, JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENTS/ STATE BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE & RESPONDENTS NO. 2 & 3 / MUNICIPAL CORPORATION BY SHRI SHIVENDRA PANDEY - ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

> "7.1 That, this Hon'ble Court may kindly be pleased to issue a writ of certiorari and quash the demolition proceedings being carried out by the respondents on aforesaid disputed property of the petitioner, in the interest of justice.
> 7.2 That, this Hon'ble Court may kindly be pleased to issue a writ of prohibition, prohibiting the respondents from interfering in the peaceful possession over the aforesaid disputed property of the petitioner in the interest of justice.
> 7.3 That, this Hon'ble Court may kindly be pleased to issue a writ of certiorari, quashing the impugned order show cause notice dated 26.06.2023 (Annexure P/4) and may also be pleased to quash the impugned notice dated 28.06.2023 (Annexure P/6), in the interest of justice.
> 7.4 In the alternative, this Hon'ble Court may kindly be pleased to direct the respondents to pass a reasoned and speaking order on the reply dated 27.06.2023 that has been filed by the petitioner, in a time bound manner and till such time, no coercive steps be adopted against the instant Petitioner in the interest of justice.
> 7.5 Any other writ which this Hon'ble Court deems fit and proper may also be granted to the Petitioners."

2. It is submitted by the counsel for the petitioner that the petitioner is the owner of the land situated in Navnivesh Colony, Ganga Nagar, Garha, Distt. Jabalpur admeasuring about 2500 square feet. The petitioner has constructed a house bearing No.1762. With passage of time, the petitioner owing to the need of his family started raising additional construction in the aforesaid residential structure. The petitioner has also paid the diversion rent. Although, it is also the

contention of the counsel for the petitioner that the petitioner had submitted necessary documents before the respondent/ Authority for seeking necessary permission for raising additional construction and the same is pending consideration, but the copy of the said application has not been placed on record and instead of that only the photographs of the structure have been filed as Annexure-P/2. It is the case of the petitioner that the petitioner is regularly making payment of property tax and other taxes. On 26/06/2023, four different notices were served on the petitioner under Section 307 of the Municipal Corporation Act, thereby calling upon to show cause as to why the aforesaid disputed structure must not be abolished for being in violation of various provisions of the M.P. Municipal Corporation Act, 1956 (In short "Act 1956"). It is submitted that by the said show cause notices, Municipal Corporation had directed the petitioner to submit relevant documents highlighting his ownership and title over the disputed property as well the additional construction being undertaken by him. Accordingly, the petitioner submitted his response on 27/06/2023. A copy of the said reply has been placed on record as Annexure-P/5. It is submitted that in spite of reply submitted by the petitioner on 27/06/2023, the Municipal Corporation has issued a fresh notice dated 28/06/2023 thereby asking him to remove the disputed structure within 24 hours and in case the petitioner fails, then the demolition activities pertaining to aforesaid disputed property would be undertaken by them. It is submitted that the show cause notice dated 28/06/2023 is bad in law because the same has been passed under a presumption that the petitioner did not file any reply to the show cause notice dated 26/06/2023. It is further submitted that the petitioner has also filed an application for sanction of map as well as for compounding and without adhering to the said application,

the respondents are out and out to demolish the construction and necessary instructions have also been issued to the Authorities to demolish the same on 30/06/2023, i.e. today. It is further submitted by the counsel for the petitioner that the Directorate, Urban Administration and Development, M.P. Bhopal by its circular dated 26/11/2019 has issued certain instructions in respect of Rule 4 of Madhya Pradesh Municipal (Compounding Of Offence Of Construction Of Buildings, Fees And Conditions) Rules, 2016 (in short "Rules, 2016) thereby introducing certain amendments in Form-A and Form-B as provided under Rule 4 of Rules, 2016. It is further submitted that the entire steps are being taken by way of retaliatory measure because the son of the petitioner has been arrested in a murder case. It is further submitted that there is no place for retaliation under the provisions of the Act, 1956 or Madhya Pradesh Rajya Bhumi Vikas Nigam Adhiniyam, 1956. It is further submitted that a co-ordinate Bench of this Court by order dated 15/05/2023 passed in the case of Mahadev Prasad Awasthy Vs. State of M.P. & others in W.P. No.11799/2023 has stayed the demolition of the disputed building and therefore, the same protection may be granted to the petitioner.

3. *Per contra*, the petition is vehemently opposed by the counsel for the Municipal Corporation. It is submitted that it is incorrect to say that the action in question is being taken in a retaliatory manner. It is further submitted that even otherwise in the entire writ petition, there is no averment that action is being taken in a retaliatory manner. It is further submitted that even otherwise, the petitioner has an efficacious remedy under Section 307(5) of the Act 1956 and prayed that the petition be dismissed on the ground of availability of alternative

remedy.

4. Heard the learned counsel for the parties.

5. The undisputed fact is that Navnivesh Colony is an unauthorized colony and has not been regularized by the Jabalpur Municipal Corporation or by the State. On 26/06/2023, a show cause notice was issued to the petitioner under Section 307(2) of the Act, 1956 thereby calling upon the petitioner to submit his land related documents as well as the sanctioned map in respect of which the construction is being done as well as to stop the construction with immediate effect. The reply was to be given within a period of two days.

6. It is the case of the petitioner that on 28.06.2023 (which appears from the receipt given by Building Department)[Not on 27-6-2023, as claimed by the Petitioner in petition], a reply was filed by the petitioner, which reads as under:-

> प्रति,
>
> श्रीमान संभागीय अधिकारी महोदय
> गढा संभाग नगर निगम, जबलपुर
>
> संदभ्रः—आपके नोटिस क्र.9/66 दिनांक 26/06/2023.
> विषयः—आपके द्वारा म.प्र.न.प. अधिनियम, 1956 धारा 307(2) अंतर्गत नोटिस का जवाब।
>
> महोदय,
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> आपके कर्मचारियों द्वारा म.नं. 1762, नवनिवेश कॉलोनी, गंगा नगर, गढ़ा जिला जबलपुर (म.प्र.) के निरीक्षण के दौरान मेरे घर में ऊपर की ओर किये जा रहे निर्माण के विषयक मुझे नोटिस दिया गया है, एवं तुरंत कार्य बंद करने के निर्देश दिये गये है, एवं भूमि संबंधी दस्तावेज मांगे गये है, तत्संबंध में मेरे द्वारा विगत एक माह पूर्व से ही निर्माण कार्य बंद कर दिया गया है, एवं **मानचित इत्यादि स्वीकृति हेतु विचाराधीन है,** मेरे द्वारा मेरी संपत्ति के संपूर्ण दस्तावेज एवं वर्ष 2023—24 तक का कर देयक का भुगतान कर दिया गया है, एवं उसकी निगम द्वारा अनापत्ति भी इस जवाब के साथ प्रस्तुत कर रहा हूं।

महोदय मेरे द्वारा इस पत्र के साथ नवनिवेश कॉलोनी का ले–आउट प्लान एवं प्लाट नंबर इत्यादि भी संलग्न किये गये है, एवं विगत वर्ष हमारी कॉलोनी को भी शासन द्वारा वैध घोषित कर दिया है, तद्पोरांत हम सहित उपरोक्त अन्य क्षेत्रवासियों द्वारा भी मानचित्र की स्वीकृति हेतु आवेदन एवं अन्य प्रक्रिया की जा रहीं है, मेरे मकान का कोई भी हिस्सा अतिक्रमण की परिधी में नहीं आता, मेरे द्वारा अपने स्वमित्व की क्रय की हुई भूमि पर ही संपूर्ण निर्माण किया गया है, किंतु निगम के निर्देशानुसार यदि कोई अनियमितता पाई जाती है, तो कृप्या मुझे अवगत कराये, मैं नियमानुसार उसे विधिवत करने हेतु तैयार हूं।

धन्यवाद

स्थान–जबलपुर, प्रार्थी

दिनांक–27/06/2023

लीलाधर विश्वकर्मा

मो.नं.–8770168924

प्रतिलिपिः–

1. श्रीमान आयुक्त महोदय, नगर निगम, जबलपुर''

7. Thereafter, on 28.06.2023 itself an order was issued under Section 307(3) of the Act 1956 mentioning therein that the petitioner has not filed his response to the show cause notice dated 26.06.2023 and he has raised a construction without seeking due permission and thus, he has been directed to remove the unauthorized construction and inform the Municipal Corporation, failing which the Municipal Corporation shall take coercive steps at any point of time.

8. This Petition has been filed today and it was prepared on 29.06.2023 because the affidavit was sworn on 29.06.2023 and the entire Writ Petition also contains the seal of the Oath Commissioner to the effect that the affidavit was sworn on 29.06.2023.

9. Paragraph 5.10 of the writ petition reads as under:

> "5.10 That it would not be out of place to mention that the Petitioner has submitted a representation before the Respondent authority

> for compounding of any irregular structure situated at aforesaid disputed property and also has clearly stated that he is ready and willing to deposit the applicable compounding fee in respect of aforesaid land. Copy of representation submitted by the Petitioner is **Annexure P/7**."

10. The petitioner has filed a copy of an undated representation as Annexure P/7, which contains the acknowledgment of receipt given by the Municipal Corporation on 30.06.2023, i.e. the representation was made on 30.06.2023, whereas the petitioner had already made a specific and categorical statement in paragraph 5.10 of the writ petition that he has already made a representation. As already pointed out that since the affidavit in support of contents of the petition was sworn on 29.06.2023, **therefore, contention of making a representation for compounding before the Authorities is incorrect because on 29.06.2023, there was no such application**.

11. Be that whatever it may be.

12. The contention of the petitioner is that he is regularly making payment of property tax and has also filed a copy of the ledger book to show the same. However, the counsel for petitioner could not point out any provision of law to show that the deposit of property tax would justify and legalize the acts of the petitioner which are otherwise contrary to the provisions of Act 1956. Thus, merely because the petitioner had deposited the property tax would not confer any title or would not legalize his illegal action. Therefore, the deposit of property tax will not come to the rescue of the petitioner.

13. A show cause notice dated 26.06.2023 was issued to the petitioner thereby asking to submit the land related documents as well as to file the sanctioned map. In reply to the said show cause notice, it

is specifically mentioned that matter is pending for sanction of map etc.

14. **During the course of argument it was specifically admitted by the counsel for the petitioner that the entire construction has been raised without seeking any building permission or without any sanctioned map as required under Madhya Pradesh Bhumi Vikash Niyam or Act 1956**. Thus, it is clear that the petitioner has admitted that he has raised the construction without there being any sanction by the authority and without there being any building permission and sanctioned map. **Furthermore, it is the case of the petitioner himself that Navnivesh Colony is an illegal colony and therefore, it is clear that even according to the petitioner the disputed structure was raised by the petitioner in an illegal colony there by giving complete go-by to the provisions of law**.

15. It is the contention of the counsel for the petitioner that the impugned order dated 28.06.2023 has been passed under a misconception that the petitioner has not filed any reply to the show cause notice dated 26.06.2023.

16. It is well established principle of law that violation of principle of natural justice by itself is not sufficient to quash the proceedings unless and until the aggrieved party successfully points out the prejudice which may be caused to him.

17. In reply dated 28.06.2023 the petitioner had admitted that his entire construction is illegal and there is no building permission or sanctioned map.

18. Under these circumstances, this Court is of the considered opinion that without entering into the question as to whether any reply was received by the Municipal Corporation prior to issuance of order dated 28.06.2023 or not, it is sufficient to hold that since the petitioner

himself had admitted that his entire building is illegal having been raised without any building permission or sanctioned map, no prejudice was caused to the petitioner.

19. It is next contended by the counsel for the petitioner that the authorities are acting in a retaliatory manner and at a swift speed without giving any breathing time to the petitioner to take recourse of the law. However, the submission with regard to retaliatory action by the respondent/Municipal Corporation Jabalpur has been specifically denied by the counsel for the Jabalpur Municipal Corporation. Accordingly, the counsel for the petitioner was directed to point out as to whether there is any provision in the Act, 1956, thereby mandatorily requiring a show cause notice for giving any particular period for filing reply or not?

20. It is fairly conceded by the counsel for the petitioner that there is no such provision requiring a show cause notice for a particular period.

21. Since there is no requirement that a particular period has to be given to the wrongdoer for filing reply or an order under Section 307(3) of the Act, 1956 can be issued only after a particular period, therefore, after having admitted that the construction has been raised without seeking any building permission or sanctioned map at all, this Court is of the considered opinion that no infirmity can be found with the order dated 28/06/2023, Annexure-P/6. **Furthermore, it is clear that even no application was ever filed by the petitioner for seeking building permission or getting map sanctioned, because the entire illegal construction has been raised in an unauthorized/illegal Colony.**

22. It is next contended by the counsel for the petitioner that on

30/06/2023, i.e. today itself, the petitioner has made an application for compounding as well as for sanctioning the map of already constructed structure.

23. The counsel for the petitioner has invited the attention of this Court to circular dated 26/11/2019 issued by Directorate, Urban Administration and Development, M.P. Bhopal and submitted that even in case of construction of house without any building permission at all, the compounding may be permitted.

24. The relevant part of circular dated 26/11/2019 reads as under:-

> (1) अप्राधिकृत संनिर्माण के प्रशमन में छूट (10 प्रतिशत की सीमा तक):
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> मध्यप्रदेश नगरपालिका (अनुज्ञा के बिना भवनों के संनिर्माण के अपराधों का प्रशमन, शुल्क एवं शर्ते) नियम, 2016 के नियम–4 के अंतर्गत प्रारूप–ख–''स्वीकृत भवन अनुज्ञा के विपरीत/ अधिक निर्माण के प्रशमन हेतु आवेदन प्रारूप'' अनुसार आनलाईन आवेदन के साथ अतिरिक्त निर्माण के संबंध में नक्शे की ईलेक्ट्रॉनिक प्रति भी आनलाइन अपलोड किया जाना होगा। आनलाईन पोर्टल से ही जमा की जाने वाली राशि की जानकारी आवेदक को प्राप्त होगी तथा राशि जमा करने पर उसे डिजिटल हस्ताक्षर युक्त अनुमति पत्र पोर्टल से 15 दिवस में नगरीय निकाय के प्राधिकृत अधिकारी द्वारा जारी किया जाएगा। इसमें किसी मानवीय हस्तक्षेप की आवश्यकता नहीं रहनी चाहिए। यह भी उल्लेखनीय है कि आवेदन करते समय ही इलेक्ट्रोनिक मोड में यह प्रमाणीकरण आवेदक से प्राप्त कर लिया जायेगा कि उसके द्वारा दी गयी जानकारी सही है तथा यदि जानकारी गलत पायी जाती है तो उसके विरूद्ध वैधानिक कार्यवाही की जा सकेंगी।
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> (2) बिना सक्षम अधिकारी की अनुज्ञा के सम्पूर्ण भवन निर्मित करने का प्रशमनः
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> मध्यप्रदेश नगरपालिका (अनुज्ञा के बिना भवनों के संनिर्माण के अपराधों का प्रशमन, शुल्क एवं शर्ते) नियम, 2016 के नियम–4 के अंतर्गत प्रारूप–क–''भवन अनुज्ञा

> के अभाव में निर्मित भवन के प्रशमन हेतु आवेदन प्रारूप'' अनुसार ऐसे भवन जो सक्षम अधिकारी के अनुमोदन के बिना निर्माण किये गये हैं, उनमें भवन अनुज्ञा प्राप्त करने की प्रक्रिया के तहत आनलाइन आवेदन किया जावेगा तथा इनमें अन्य कोई अनियमित्तायें नहीं पाये जाने पर निर्धारित शुल्क (आवेदन/प्रशमन/अनुज्ञा) लेकर प्रशमन की स्वीकृति दी जावे। ऐसे प्रकरण पूर्व से संचालित आनलाइन प्रक्रिया के अनुसार निराकृत किये जायेंगे तथा प्रत्येक स्तर पर आवेदक को एस.एस.एस./ई–मेल द्वारा सूचित किया जावेगा। इन प्रकरणों में स्थल–जांच एवं परीक्षण भी आवश्यक होगा, किन्तु किसी भी परिस्थिति में यह अनुज्ञा 30 दिवस में जारी अथवा अस्वीकृत की जावेगी।''

25. Proviso to Rule 5 of Rules, 2016, reads as under:-

> "Provided that, where entire building has been constructed without the permission from competent authority, the competent for permissible built up area, (in which open area, Floor area ratio, Land-cover, height etc. is included) the fees mentioned in column (3) shall be payable, and for limit of permissible 10 percent fees prescribed in column (4) shall be payable. Provided further that if construction of the building has been made beyond the permissible floor area ratio or more than 10 % of the permissible floor area ratio, the compounding shall be made only after removing or cause to be removed the additional construction.
>
> (Underline supplied)

26. Thus, it is clear from the aforementioned proviso that if construction of the building has been made beyond the permissible floor area ratio or more than 10% of permissible floor area ratio, the compounding shall be made only after removing or to be caused after removing additional construction. Thus, it is clear that for compounding the illegal construction, the illegal construction is

required to be removed first. Therefore, without demolishing/ removing the construction area, the compounding cannot be done at all. Therefore, this Court is of the considered opinion that no relief can be granted to the petitioner on account of filing of his application for compounding. Furthermore, it is once again reiterated that the application for compounding has been filed today itself and that too after the preparation of the Writ Petition by making false statement that the application for compounding has been made.

27. Furthermore, it is the case of the petitioner himself that Navnivesh Colony is an illegal colony. Thus, it is clear that contrary to the rules, the construction was made by the petitioner at a place where the colony is not supposed to be done. **Therefore, even otherwise, compounding cannot be done at all.**

28. At this stage, it is submitted by the counsel for the petitioner that since other houses are also standing in the illegal Navnivesh Colony, therefore, the petitioner is being discriminated by picking up the house of the petitioner only and by not taking any action against the similar houses.

29. Considered the submissions made by the counsel for the petitioner.

30. It is the contention of the petitioner that unless and until all the houses which are illegally constructed are demolished, his house should not be demolished or touched at all. The counsel for the petitioner was accordingly requested to argue as to whether the principle of **Negative Equality** can be applied or whether the principle of negativity is a part of Article 14 of the Constitution of India. It was rightly submitted Shri Kochar that the principle of negative equality

has no place in Article 14 of the Constitution of India.

31. The Supreme Court in the case of **Union of India and Another v. International Trading Co. & Another**, reported in **(2003) 5 SCC 437** has held as under :

> "13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

32. The Supreme Court in the case of **Directorate of Film Festivals and Others v. Gaurav Ashwin Jain & Others** reported in **(2007) 4 SCC 737** has held as under :

> "22. When a grievance of discrimination is made, the High Court cannot just examine whether

someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] thus: (SCC pp. 750-51, para 8)

> "Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High

Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and

> circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

33. The Supreme Court in the case of **Shanti Sports Club & Another v. Union of India & Others**, reported in **(2009) 15 SCC 705,** has held as under :

> "71. Article 14 of the Constitution declares that: "14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
>
> The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals,

others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities. In Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] this Court made a lucid exposition of law on this subject. The facts of that case were that the respondents, who had given the highest bid for 338 sq yd plot in Sector 31-A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the estate officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and the Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on 18-3-1991. Thereafter, the respondent again approached the estate officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the estate officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt Prakash Rani, the Administrator had restored the plot despite dismissal of the writ petition filed by her. While reversing the order of the High Court, this Court observed as under: (Jagjit Singh case [(1995) 1 SCC 745] , SCC pp. 750-51, para 8)

"8. … We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. (emphasis in original) The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the court should direct the

appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. (emphasis supplied) By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case (sic court) nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms

> governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

34. The Supreme Court in the case of **Basawaraj and Another v. Special Land Acquisition Officer**, reported in **(2013) 14 SCC 81** has held as under :

> "8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in

> favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705], Anand Buttons Ltd.v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] ,K.K. Bhalla v. State of M.P.[(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab[(2010) 11 SCC 455 : AIR 2010 SC 1937].)"

35. So far as the question of retaliatory action by the respondents No.2 & 3 is concerned, it is suffice to mention here that there is no whisper of any such allegation in the petition. Furthermore, the counsel for the respondents No.2 & 3 has categorically refuted the allegation of retaliatory action. Even the petitioner in his reply to order dated 26/06/2023 has admitted that he has no building permission and sanctioned map. Once the action of the petitioner in raising construction in an illegal manner is not in dispute, then even otherwise the petitioner cannot assign any malafide motive to the respondents No.2 & 3.

36. It is further not out of place to mention here that in order to attribute biases or the malafide action, not only the petitioner is required to plead the same specifically in the writ petition but the authorities in personal capacity are also required to be impleaded. Neither any authority in personal capacity has been impleaded nor there is any whisper of allegation regarding retaliatory action or malafide action in the writ petition.

37. So far as the interim relief granted by a co-ordinate Bench of this court in another case is concerned, it is suffice to mention here that

each and every case has to be decided on its own facts and circumstances. Merely because the demolition was stayed by a co-ordinate Bench of this Court in relation to some other case involving different factual aspects, the same cannot be cited as a precedent. Even otherwise, the interim order cannot be treated as a precedent.

38. So far as the circular dated 26.11.2019 is concerned, it is sufficient to mention that the said circular does not speak of Rule 5 of Rules, 2016. Even otherwise it is well established principle of law that the executive instructions cannot override the statutory rules.

39. This court by order dated 25.08.2022 passed in the case of **Suraj Singh Dhakad Vs. State of M.P. and others**, in **W.P. No. 18516/2022 (Gwalior Bench)** has held as under :-

> "11. It is settled legal proposition that executive instructions cannot override the statutory provisions [Vide B.N. Nagrajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan and Ors., AIR 1967 SC 1910; Union of India and Ors. v. Majji Jangammyya and Ors., AIR 1977 SC 757; B.N. Nagarajan and Ors. v. State of Karnataka and Ors., AIR 1979 SC 1676; P.D. Agrawal and Ors. v. State of U.P. and Ors., (1987) 3 SCC 622; M/s. Beopar Sahayak (P) Ltd. and Ors. v. Vishwa Nath and Ors., AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; Paluru Ramkrishananiah and Ors. v. Union of India and Ors., AIR 1990 SC 166; Comptroller and Auditor General of India and Ors. v. Mohan Lal Malhotra and Ors., AIR 1991 SC 2288: State of Madhya Pradesh v. G.S. Dall and Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India and Ors.. AIR 1998 SC 431: C. Rangaswamacah and Ors. v. Karnataka

Lokayukta and Ors, AIR 1998 SC 96.]

12. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory Rule nor does it have any force of law; while statutory rules have full force of law provided the same are not in conflict with the provisions of the Act. (Vide State of U. P and Ors. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone etc., AIR 1981 SC 711).

13. In Union of India v. Sri Somasundaram Vishwanath, AIR 1988 SC 2255, the Hon'ble Apex Court. observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail. Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

14. Similar view has been reiterated in Union of India v. Rakesh Kumar, AIR 2001 SC 1877; Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty and Ors., AIR 2001 SC 2353; Khet Singh v. Union of India, (2002) 4 SCC 380; Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr., (2003) 5 SCC 413; and Delhi Development Authority v. Joginder S, Monga, (2004) 2 SCC 297, observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

15. In Ram Ganesh Tripathi v. State of U.P., AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be

> quashed as having no force of law. The Hon'ble Supreme Court observed as under:
>
> > "They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."
>
> 16. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat."

40. Thus, even the circular relied upon by the petitioner will not come to his rescue and no interpretation which would amount to overriding the statutory provisions of Rules, 2016 can be given.

41. So far as the preliminary objection raised by the counsel for the respondents No.2 & 3/ Municipal Corporation Jabalpur that the petitioner has an efficacious remedy under Section 307(5) of Act, 1956 is concerned, once the matter has been elaborately dealt with by this Court, then no useful purpose would be served by sending the petitioner to avail the statutory remedy as provided under Section 307(5) of the Act, 1956. Furthermore, the petitioner himself has admitted that he has no building permission and no sanctioned map and his entire construction is illegal as well as the Navnivesh Colony where the house has been constructed is also an illegal colony, therefore, even otherwise no triable disputed issues are involved in the present case requiring any adjudication on facts.

42. Under these circumstances, the preliminary objection raised by

the counsel for the respondents No.2 & 3 with regard to availability of alternative remedy is hereby **rejected**.

43. No other argument is advanced by the counsel for the petitioner.

44. As no case is made out warranting interference, accordingly the petition fails and is hereby dismissed *in limine*.

(G.S. AHLUWALIA)
JUDGE

shubhankar