

Seema Arshad Zaheer & Ors vs Municipal Corporation Of Greater ... on 5 May, 2006

Equivalent citations: AIRONLINE 2006 SC 159, (2006) 102 CUT LT 777, (2006) 2 GCD 1540 (SC), (2006) 2 KER LJ 752, (2006) 3 ALLMR 159, (2006) 3 ALL WC 3059, (2006) 3 CIVILCOURTC 634, (2006) 44 ALLINDCAS 544, (2006) 4 ALL RENTCAS 313, (2006) 4 BOM CR 46, (2006) 4 KER LT 65, (2006) 4 RECCIVR 293, (2006) 5 ANDHLD 1, (2006) 5 ANDH LT 26, (2006) 5 MAH LJ 218, (2006) 5 SCALE 33, 2006 (5) SCC 282, (2006) 5 SCJ 757, (2006) 6 SUPREME 263, 2006 ALL CJ 3 2131, (2007) 1 CIVLJ 567, (2007) 2 LANDLR 429, MANU/SC/2420/2006, 2006 BOM LR 2 1731

Bench: S B Sinha, R V Raveendran

CASE NO.:

Special Leave Petition (civil) 9479 of 2005

PETITIONER:

Seema Arshad Zaheer & Ors.

RESPONDENT:

Municipal Corporation of Greater Mumbai & Ors.

DATE OF JUDGMENT: 05/05/2006

BENCH:

S B Sinha & R V Raveendran

JUDGMENT:

J U D G M E N T With [SLP (C) Nos. 9490/2005, 9688/2005, 10016/2005, 10095/2005, 10280/2005 and 10294/2005] RAVEENDRAN, J.

These matters relate to certain alleged unauthorized structures put up in plot no. X, XI, XIIA later renumbered as Plot Nos. 7 to 10 of Palton Road Estate, Saboo Siddique Road, Mumbai - 40 bearing Cedestral Survey No.14/1504 of Fort Division, Mumbai, belonging to the Central Works Public Department, Government of India. The said land, it is alleged, was leased to one Mohamedbhai Abdullabhai Moonim under lease-deed dated 6.7.1939. The said property was thereafter known as Moonim compound.

2. According to the petitioners, the said tenant - Mohamedbhai Abdullabhai Moonim, who was carrying on business therein under the name of M/s Abdullabhai Faizullabhai, assigned his business to M/s Abdullabhai Faizullabhai Private Ltd, a company promoted by him, in or about the year 1947; and the said company let out several portions thereof to different sub-tenants. It is alleged

that Abdullahbai Faizullahbai Private Ltd assigned all its right, title, interest and claim in the said property to M/s Global Marketing, a partnership firm, under deed of assignment dated 21.9.2000, for a consideration of Rs.18 Lakhs, on 'as is, where is basis' subject to the condition that it shall be the sole responsibility of the assignee to obtain tenancy/occupancy/possessory rights of the assignor in respect of the said property and to continue to use and enjoy the said property on such terms and conditions that the CPWD may stipulate in that behalf.

3. It is alleged by the petitioners that Global Marketing obtained possession of various portions of Moonim Compound from the respective sub-tenants, made improvements/partitions in the existing old structures and then let out the same to different sub-tenants (who are the petitioners herein) in the year 2001-02. It is further alleged that the Municipal Corporation of Greater Mumbai (Brihan Mumbai Municipal Corporation, for short 'the Corporation') issued seven show cause notices dated 13.5.2003 followed by final orders dated 2.9.2003 under section 351 of the Mumbai Municipal Corporation Act, 1888 ('Act' for short) to remove/pull down seven unauthorized and illegal structures in the said premises (Moonim Compound). The occupants of these seven structures filed seven suits (O.S. Nos.4344 to 4350/2003) in the City Civil Court, Mumbai and obtained a temporary injunction (by common order dated 25.11.2003) restraining the Corporation from taking action in pursuance of such notices. The seven appeals (A.O. Nos.1024 to 1030/2003) filed by the Corporation against the said order of temporary injunction were allowed by the Bombay High Court by common order dated 21/22.2.2005 and the temporary injunction was vacated. These petitions seeking special leave are filed against the said common order of the High Court. We will briefly refer to each case separately.

SLP(c) No.9479/2005 (from L.C. Suit No. 4345/2003/ A.O. No.1025/2003)

4. It is alleged that one Abdul Samad was carrying on business under the name and style of 'A to Z Auto Garage' in a portion of Moonim Compound; that he surrendered possession of the said portion to Global Marketing who converted the shed situated in the said portion, that is South-Eastern corner, into 33 shops and let out the said shops to different tenants [Seema Arshad Zaheer & Ors.] under various unregistered tenancy agreements.

5. The Municipal Corporation of Greater Mumbai [Brihan Mumbai Municipal Corporation, for short the 'Corporation'] issued a notice dated 13.5.2003 under section 351 of the Mumbai Municipal Corporation Act 1888 ['Act' for short] to the occupants thereof namely Mohamedbhai Abdullahbai Moonim and A. R. Shaikh (one of the partners of Global Marketing) alleging that an unauthorized structure with brick masonry walls and A.C. Sheet roofing measuring 17.5m X 7m (with a sloping roof of 3.50m on one side and 3.10m on the other) had been unauthorizedly constructed, and calling upon them to show cause why the said unauthorized construction should not be removed or pulled down. A reply dated 26.5.2003 was sent through counsel by 33 occupants of the said Building, to the said notice, alleging that the entire property (Moonim Compound) measured 2766 sq.yds., that it had several structures, that the structure in regard to which the notice had been issued was in existence even prior to 1961-62 and was earlier in the occupation of Abdul Samad who was carrying on business therein under the name and style of M/s A to Z Auto Garage, that the said structure had been assessed to municipal tax by the Corporation and provided with electricity and water

connection, that Abdul Samad who was running A to Z Auto Garage surrendered the said structure in his occupation to Global Marketing, and that Global Marketing partitioned the said existing structure into 33 shops and let out those shops to 33 tenants. It was contended that as per the policy of the Corporation contained in its Circular dated 11.11.1980, all non-residential structures, authorized or unauthorized, which were in existence prior to datum line (1.4.1962) were to be "tolerated" and regularized, and therefore, the said structure should not be demolished.

6. The Commissioner of the Corporation after considering the objections received in reply to the notice dated 13.5.2003 and the documents produced by the objectors, passed a considered order dated 2.9.2003 holding that the objectors have failed to prove that the structure which was the subject matter of the notice, existed prior to the datum line (1.4.1962) or that it was subsequently constructed authorisedly. He, therefore, directed the said unauthorized construction to be removed within 15 days failing which it would be demolished.

7. Feeling aggrieved, the 32 occupants of that structure (Seema Arshad Zaheer and Others) filed L.C. Suit No. 4345/2003 in the City Civil Court, Mumbai for a declaration that the notices dated 13.5.2003 and 2.9.2003 were illegal and for a permanent injunction restraining the Corporation from taking any action pursuant to the said notices. They also moved a notice of motion seeking a temporary injunction restraining the Corporation from taking any action in respect of the said structure. The City Civil Court passed a common order dated 25.11.2003 (in the said suit and connected suits relating to similar suits filed by occupants of other structure in the said property), granting a temporary injunction restraining the Corporation and its officials from taking any action in pursuance of the notices dated 13.5.2003 and 2.9.2003 respectively.

8. The Corporation challenged the said temporary injunction by filing an appeal before the Bombay High Court in A.O. No.1025/03. A learned Single Judge of the High Court, by judgment dated 21/22.2.2005 (passed in the said appeal and connected appeals) set aside the order of the temporary injunction granted by the City Civil Court and dismissed the notices of motion for temporary injunction. Leave is sought in this special leave petition [SLP(c) No. 9479/05] to challenge the said order.

9. The trial court was of the view that the plaintiffs had established prima facie that the structure in which the 33 small shops were situated, was in existence for several years and was assessed to property tax, and therefore, the plaintiffs were entitled to the temporary injunction sought till disposal of the suit. On the other hand, the High Court held that the occupants-plaintiffs had failed to make out a prima facie case that the structure was authorized, or put up prior to 1.4.1962, and that the trial court had, without noticing and drawing correct inferences from the documents, had proceeded in a very vague manner. The High Court, after referring to the documents in detail, has concluded that the structure was of recent origin and unauthorized and there was no justification for staying the action in pursuance of the notices dated 13.5.2003 and 2.9.2003. The question for consideration is whether the order of the High Court calls for interference.

10. The documents produced show that the Corporation had earlier issued a notice dated 21.10.1991, under section 351 to Abdul Samad carrying on business under the name of A to Z Auto Garage

alleging that a L-shaped structure had been constructed in the Moonim compound (as shown in the sketch annexed to the notice). It showed that by using the compound wall as the support wall, and by fixing MS Poles parallel to the compound wall and using MS angle purlins and AC sheets and G.I. sheets, a structure (longer wing of the L-shaped structure measuring 18.15m X 4.25 m and shorter wing measuring 2.5m X 2.7 m with an average height of 3m) had been unauthorisedly constructed. The notice called upon Abdul Samad to show cause why it should not be pulled down. Abdul Samad filed a Long Cause Suit no. 8446/1991 in the City Civil Court, Bombay to restrain the Corporation from enforcing the said notice. On 5.11.1991, on a notice of motion moved by the said Abdul Samad, the City Civil Court granted an ex parte interim temporary injunction in the said suit restraining the Corporation from giving effect to the notice dated 21.10.1991. During pendency of the said suit, a final order dated 27.12.1996 was made by the Corporation in regard to the said unauthorized structure. Abdul Samad, by another notice of motion sought a temporary injunction, and the court by order dated 22.1.1997 granted another temporary injunction restraining the Corporation from taking any action in pursuance of the said notice dated 27.12.1996, subject to Abdul Samad filing an undertaking not to carry out any additional construction, alteration, or extension to the suit property. In view of the said temporary injunctions, the unauthorized structure could not be demolished by the Corporation. Subsequently, the said suit (LC Suit No. 8446/1991) was dismissed for non-prosecution on 10.12.1998. No attempt was made to revive the said suit and the dismissal became final. It would appear that Abdul Samad thereafter delivered possession to Global Marketing. It is also evident that between 2001-2002, Global Marketing either dismantled the said unauthorized construction (subject matter of notice dated 21.10.1991) and put up a new unauthorized structure in its place, or made extensive extensions/additions/alterations to the said unauthorized structure and converted it into 33 shops. It is in these circumstances, a fresh notice under section 351 of the Act was issued by the Corporation on 13.5.2003 followed by final order dated 2.9.2003.

11. In the meanwhile, it would appear that the partners of Global Marketing were found to be engaged in organized crime and the Special Court functioning under the Maharashtra Control of Organised Crimes Act, 1999 (MOCA Act) passed an order dated 19.5.2003 in MCOC Special Case No.3 of 2003, appointing a Receiver to take possession of the entire property with the structures thereon. In the said suit, the special court has made an order directing the Corporation to take action only by following due process of law.

12. The petitioners assert that the 33 small shops in their possession have been carved out of the existing structure wherein A to Z Auto Garage was run. In para 15 of the plaint, the petitioners alleged that 'the structure mentioned in the notice issued in the year 1991 and the suit structure which is the subject matter of the impugned notice and present suit are one and the same.' There was already an order for demolition of the said structure by the Corporation in pursuance of the notices dated 21.10.1991 issued under section 351 of the Act. The challenge thereto in LC Suit No. 8446/1991 having ended in dismissal, the said order for demolition became final. The structure could not be demolished in pursuance of the earlier notice, on account of the pendency of L.S. Suit No.8446/1991 and the orders of temporary injunction granted therein. When the suit was dismissed and when it was found that the said structure has been either extended or replaced by a new structure, action was rightly taken by the Corporation, by issuing the notice dated 13.5.2003

followed by trial order dated 2.9.2003. Admittedly, no plan was sanctioned in regard to the structure. No document is produced to show that the structure in question existed prior to or on the datum line 1.4.1962. The documents produced only show that a temporary shed was unauthorisedly put up in the year 1991 and the order for its demolition has become final. The High Court was, therefore, justified in vacating the temporary injunction.

13. Some documents were produced to show that Abdul Samad was running an Auto Garage in an area measuring about 81.158 sq. meters and he took permission to use an additional space of 70 sq. feet for the Auto Garage; that the small temporary structures were erected in the 1970s; and that those had been replaced by an unauthorized structure in the year 1991, leading to the first notice by the Corporation and again by another unauthorized structure in the year 2002-03 leading to the second notice by the Corporation dated 13.5.2003. Some other documents produced by the petitioners refer to existence of structures bearing Ward Nos. A3357, A3358 and A3369, but a careful examination of the documents shows that they do not relate to the area in question which were earlier in occupation of Abdul Samad, (A to Z Auto Garage) or to existence of the present structure prior to 1.4.1962. Petitioners also produced certain documents to show that there were, in fact, two structures in the premises prior to 1.4.1962 which had been assessed to municipal tax by producing documents relating to the same. Moonim compound is a huge property, more than half an acre in extent. The two old structures were demolished and in their places two new structures (in the occupation of Sara Shoppee and Sahara Shoppee) have come up, constructed in the year 1997 and 2001 respectively, after obtaining licence. Therefore, merely showing that some structures had existed prior to 1.4.1962 and assessed to tax, is not sufficient unless it is shown the demolition order has been passed in regard to that structure. We are concerned with the structure on the South-Eastern portion corner which was earlier in occupation of Abdul Samad, proprietor of A to Z Auto Garage. No document is produced to show that any structure of the size or shape now existing, existed prior to 1.4.1962 in the said area. Nor any document is produced to show that any licence/sanctioned plan was obtained for putting up the existing structure at any point of time. The Commissioner of the Corporation in his final order dated 2.9.2003 has considered the documents and found that they did not establish that the existence of the structure in regard to which the notice was issued. The High Court has also considered these documents and found them to be not relevant. Therefore, this S.L.P. is liable to be rejected.

SLP (C) No. 9490/2005 (from L.C. Suit No. 4344/2003/ A.O.No.1024/2003)

14. This relates to another structure in Moonim Compound measuring 11.30 m x 6.60 m (with a height of 3.10 m on one side and 3.50 m. on the other side) with brick masonry walls and A.C. sheet roofing. The structure is situated on the Southern side of the Moonim compound property and lies between Sara Shoppee on the Western side and the unauthorized structure which is the subject matter of SLP (c) No.9479/2005 on the Eastern side.

15. Mohd. Hajif A Hamid and 16 others filed L.C. Suit No.4344/2003 in the City Civil Court, Mumbai for quashing the notices dated 13.5.2003 and 2.9.2003 issued by the Corporation and for an injunction. These occupants also claimed that the structure (which has been divided to small shops and let out to them by Global Marketing) was earlier in the occupation of Abdul Samad (A to Z

Auto Garage). The documents relied on and contentions urged are the same as those in SLP (c) No.9479/2005. This petition is liable to be rejected for the reasons stated above, for dismissing SLP (c) No. 9479/2005.

SLP (c) No.9688/2005 (from L.C. Suit No. 4346/2003/ A.O. No. 1026/2003

16. This relates to another structure consisting of ground plus two floors with brick masonry walls measuring 38.35 m x 3.85 m with a ground floor (height 3.2 m), first floor (height 3.2 m) and second floor with AC sheet roofing (2.85 M on one side and 2.55 M on the other). The structure is situated north of the Sahara Shoppee in Moonim Compound, in the set back area between the northern boundary wall and Sahara Shoppee.

17. One Fatimabi Abdul Rehman Shaikh filed L.C. Suit No.4346/2003 in the City Civil Court, Mumbai, in regard to the said property for declaring the notices dated 13.5.2003 and 2.9.2003 issued by the Corporation as illegal and for an injunction. She claims to be the tenant of the premises under Global Marketing. She also claimed that the structure was earlier in the occupation of Abdul Samad (A to Z Auto Garage).

18. The facts of the case and the documents relied on are the same as earlier cases, dealt with in SLP [C] No.9479/2005. In fact the structure in question by the side of the northern boundary has nothing to do with the area or structure on the south-eastern side of the property which was in occupation of A to Z Auto Garage. No document is produced to show the existence of any old structure in the area where the present structure is situated. For the reasons stated in regard to SLP (C) No.9479/2005, this SLP is liable to be dismissed.

SLP(c) No. 10294/2005 (from L.C. Suit No. 4349/2003/A.O. No.1029/2003)

19. This relates to an unauthorized structure measuring North to South:

35.80m and East to West 4.20m constructed in the set back area on the Western side of Moonim compound with brick masonry walls. The structure consists of a ground floor (150.36 sq.m.) and part first floor (92.4 sq.m.). It abuts the structures of Sara Shoppee and Sahara Shoppee as also the unauthorized structure which is the subject matter of SLP (C) No.10095/2005.

20. M. Yunus M. Ali and 41 others filed L.C. Suit No. 4349 of 2003 in the City Civil Court, Mumbai for declaring the notices dated 13.5.2003 and 2.9.2003 issued by the Corporation as invalid and for a permanent injunction. They claimed that the present structure was earlier in the occupation of one Zulfikar son of Masook Khan, who was carrying on business under the name and style of 'Masook & Sons', and that the structure formed part of the property assigned the No.A3357-58(1) and assessed to municipal tax. They rely on the property register extract for the year 1997 to contend that the property bearing ward no. A3357-58(1) was assessed to property tax prior to 1961-62. As in the earlier cases what is significant is that no document has been produced to show that the structure is an authorized structure constructed after obtaining a sanctioned plan and licence nor is any

document produced to show that the said structure existed prior to datum line 1.4.1962 so as to attract the benefit of the Corporation circular dated 11.11.1980. On the other hand, the Corporation contends that earlier there was a smaller unauthorized structure in that portion of Moonim Compound and it had issued a show cause notice dated 21.10.1991 for its demolition; and the present unauthorized structure of a larger area had been put up in 2001-02. While the documents produced show the existence of some smaller unauthorized structure in Moonim compound around 1990, they do not show or refer to the structure of the measurements now existing. The High Court after referring to the documents (in paras 29 to 31) has rightly recorded a clear finding after that none of the documents show the existence of the structure in that area prior to 1.4.1962.

SLP(c) No. 10280/2005 (out of L.C. Suit No. 4347/2005/ A.O. No.1027 of 2003)

21. This relates to an unauthorized structure measuring East to West :

13.4 M and North to South : 12.8 M (in all 171.52 sq.m.) situated on the Eastern side of Moonim compound, to the south of Sahara Shoppee and north of the unauthorized structure which is the subject matter of SLP (c) No. 10016/2005.

22. Dawood Vadia Hussain and 7 others filed L.C. Suit No. 4347/2003 in the City Civil Court, Mumbai alleging that they were the occupants of different portions of the said structure. They alleged that the said structure was earlier in the occupation of Crescent Gas Supply Agency who had been granted trade licence by the Corporation and the structure was in existence prior to 1.4.1962. It is stated that Crescent Gas Supply Agency surrendered the premises to Global Marketing who converted the structure into several shops. None of the documents produced disclose or establish that the said structure was in existence on or before 1.4.1962 or that it was constructed thereafter after obtaining licence and sanction plan. A copy of licence dated 29.3.1983 issued by the Corporation to Crescent Gas Supply Agency is produced. This merely shows that licence was granted to keep 26 gas cylinders in the premises of Moonim compound and does not show the size of the structure or the age of the structure. In fact, it is stated that the Corporation had issued a notice dated 15.12.1987 under section 351 of the Act to Crescent Gas Supply Agency alleging that an unauthorized structure measuring 8.35 m X 4.65m (in all 38.83 sq.m.) with brick masonry walls and Shahabad flooring had been put up and calling upon them to remove the same. Even assuming such structure was situated in the area which was earlier occupied by Crescent Gas Supply Agency in the year 1987, it is evident that unauthorized additions have been subsequently made to such structure which was in existence in 1987 or it has been demolished or replaced by a new unauthorized structure. Further, there is nothing to show that even the structure mentioned in the notice dated 15.12.1987 was in existence on or before 1.4.1962. The High Court after referring to the documents in detail (in paras 20 to 25) has rightly recorded a finding that there is no evidence to show that the present structure is the shed of Crescent Gas Supply Agency or that it was in existence on or before 1.4.1962.

SLP(c) No. 10095/2005 (out of L.C. Suit No. 4348/2003/A.O. No.1028 of 2003)

23. This relates to an unauthorized structure measuring East to West:

15.40m and north to south: 12.70m (in all 195.58 sq.m.) on the western side of Moonim compound constructed with brick masonry walls and AC sheet roofing. The structure is squeezed between the Sara Shoppee on the south and Sahara Shoppee on the north.

24. Md. Rizwan Taibani and 31 others filed L.C. Suit no. 4348/2003 for declaring the notices dated 13.5.2003 and 2.9.2003 as illegal and for permanent injunction restraining the Corporation from interfering with the said structure. In the plaint, they alleged that the said structure was earlier in the occupation of one Zulfikar son of Masook Khan, who was carrying on business in the name and style of Masook & Sons and Global Marketing obtains possession from the said tenant and divided them into 32 shops. It is alleged that the structure has been in existence prior to 1.4.1962. On the other hand the Corporation contended that a show cause notice was issued on 21.10.1991 in regard to an unauthorized structure measuring 10M x 6.9M (in all 69 sq.m.) in the occupation of Masook & Sons. The facts of the case and the documents relied on are similar to those in SLP (C) No. 10294/2005. The High Court has considered the documents in detail (in paras 26 to 28) and rightly recorded a finding that there is nothing to show that the existing structure was earlier in the occupation of Zulfikar (Masook & Sons) or that the structure existed prior to 1.4.1962.

SLP(C) No.10016/2005 (from L.C. Suit No.4350/2005/A.O. No.1030/2003) :

25. This relates to an unauthorized structure measuring about east to west : 18.4M and north to south : 9.10 M (on the eastern side and lesser measurement on the western side) with ground floor and first floor of a total constructed area of 323.76 sq.m. The structure is situated on the eastern side of Moonim Compound with the unauthorized structure which is the subject matter of SLP [C] No.10280/2005 on the northern side and vacant space and thereafter the unauthorized structure in SLP {C} No.9479/2005 on the southern side.

26. Asma Mohamed Rafique and 11 others filed LC Suit No.4350/2003 on the file of the City Civil Court, Mumbai, for declaring the notices datd 13.5.2003 and 2.9.2003 as illegal and for a permanent injunction restraining the Corporation from interfering with the said structure. In the plaint they vaguely allege that the structure was part of a structure earlier in the occupation of M/s. New Sangam Transport Company. The High Court has considered the material in detail (in paras 32-34) and found that nothing is produced to show the existence of any structure earlier, in particular on or before 1.4.1962. It was obviously put up during 2001-02.

Common submissions :

27. Learned counsel for the appellants submitted that a temporary injunction granted by the trial court in exercise of its discretion, should not ordinarily be interfered by the appellate court, by re-appreciating the entire material merely because another view is possible. It is also submitted that refusal of temporary injunction would lead to immediate demolition, causing of irreparable injury to the petitioners and

rendering their suits infructuous. Strong reliance is placed on the following observations of this Court in *Wander Ltd. v. Antox India P. Ltd.* [1990 Supp SCC 727] in regard to grant of temporary injunction and interference by appellate courts in regard to such discretionary order :

"Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated :

" ... is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case ..

. the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

28. Reference was also made to *Laxmikant V. Patel v. Chetanbhai Shah* [2002 (3) SCC 65], where this Court, after referring to the above observations in *Wander* (supra), proceeded to observe as follows :

"Neither the trial court nor the High Court have kept in view and applied their mind to the relevant settled principles of law governing the grant or refusal of interlocutory injunction in trade mark and trade name disputes. A refusal to grant an injunction in spite of the availability of facts, which are prima facie established by overwhelming

evidence and material available on record justifying the grant thereof, occasion a failure of justice and such injury to the plaintiff as would not be capable of being undone at a later stage. The discretion exercised by the trial court and the High Court against the plaintiff, is neither reasonable nor judicious. The grant of interlocutory injunction to the plaintiff could not have been refused, therefore, it becomes obligatory on the part of this Court to interfere."

This Court also observed that this Court in exercise of jurisdiction under Article 136, would not ordinarily interfere with the exercise of discretion in the matter of grant of temporary injunction by the High Court and the trial court and substitute its own discretion therefor, except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the order of the court under scrutiny ignores settled principles of law.

29. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

30. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu* [1999 (6) SCC 464] made in a different context :

"This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with

law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles."

31. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.

32. We find no reason to interfere with the order of the High Court in the seven appeals. We accordingly dismiss these SLPs. as having no merit. The petitioners are granted 15 days time to make alternative arrangements. Parties to bear their respective costs.