

Faruk Abdul Kadarbhai Memon vs State Of Gujarat on 17 September, 2021

Author: Ashutosh J. Shastri

Bench: Ashutosh J. Shastri

C/SCA/13405/2021

JUDGMENT DATED: 17/09/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13405 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Sd/-

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

FARUK ABDUL KADARBHAI MEMON

Versus

STATE OF GUJARAT & 1 other(s)

Appearance:

MR. EKRAMA H QURESHI(7000) for the Petitioner(s) No. 1
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1,2
MR NISHA M THAKORE, AGP for RESPONDENT NO.1- STATE
MR DEEP D VYAS, ADVOCATE for RESPONDENT NO.2

CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 17/09/2021

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:-

A. Be pleased to issue the writ of mandamus, writ in the nature of mandamus or any other appropriate writ order or direction restraining the respondents, specially the respondent no 2 from taking any coercive and arbitrary action against the building site of the present petitioner situated in city survey nos. 2679, 2680, 2681 and 2722/A/3 in Raikhad Ward of the Ahmedabad city, without following the procedure prescribed under Chapter 15 of the Gujarat Provincial Municipal Corporation Act 1949 and principles of natural justice.

B. Pending hearing and final disposal of the present petition the C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 respondent no 2 may be directed not to take any coercive steps against the property of the petitioner situated in city survey. nos. 2679, 2680, 2681 and 2722/A/3 in Raikhad Ward of the Ahmedabad city.

C. Any other and further relief in the interest of justice may kindly be granted.

2. The case of the petitioner is that the petitioner is carrying out his business by developing and renovating the building schemes and had purchased constructed building, which was known as 'BATAKA' Building in Raikhad Ward of City of Ahmedabad. It is the case of the petitioner that in the year 1937, pieces of land bearing Survey Nos. 2679, 2680, 2681 and 2722/A/3 totaling the area about 113.71 Sq. Mtrs. was purchased by Baghbaan-yar Noor Mohammad by different sale deeds, bearing sale deed Nos. 5535 and 5536 of dated 14.9.36, whereas sale deed No. 275 is of dated 4.3.37, and in the year 1937, he constructed a double storied building with basement and named it as 'BATAKA' Building. The petitioner has put forth his case by further asserting that the Municipal Tax bill issued by the respondent No. 2 authority reflects the age of the building as 80 years and was also provided with electricity supply by the electricity company. Original owner Yar Mohammad Noor Mohammad died on 8.5.1945 and wife Janbibi also died on 25.12.1973. The heirs sold the premises to one Fatima I. Pipdawala and Ajema Jave Pipdawala by registered sale deed No. 3664 on 16.8.17.

3. The petitioner purchased the above-said property on as it is basis by registered sale deed No. 3001 on 7.11.20 from Pipdawala family and also taken required permission under the provisions of the Disturbed Area Act and the sale deed got registered in favour of the petitioner. Since the building was of old structure, with a view to put up new structure, the petitioner planned out and submitted an intention by filing online form on 5.3.21. Online application ID No. 1677809. It is the case of the petitioner that the petitioner did not C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 receive any reply from the respondent No. 2. He started demolition work with a view to put up new construction, but all of a sudden, after about three months, the petitioner received a communication dated 21.5.2021 from the Maintenance Surveyor, Raikhad, Ward No. 1, informing the petitioner that his application came to be rejected and the above-said rejection, which was communicated, was limited to one survey number and not to whole parcel of land.

4. The petitioner carried out his work under deemed permission contemplated under the law as the total area of plot is only 113.71 Sq. Mtrs. According to the petitioner, he received one letter, considered to be an order issued under the provisions of the Gujarat Provincial Municipal Corporation Act (GPMC Act) informing the petitioner not to carry out the work and the seal is stated

to have been applied. On 28.5.2021, the petitioner replied to the said communication intimating that he is a bonafide purchaser and necessary work is carried out by keeping in mind the provisions of the GPMC Act and the construction is on the existing old structure and never in past, any objection was received and according to the petitioner, he has not violated any Building Bye-laws and carried out the construction at a time when there was already closure of various Government offices due to Covid and regular process work was on hold. The petitioner was not in a position to wait for long, he carried out the construction in accordance with law, but by discriminatory treatment, on 9.9.2021, respondent No.2 carried out the demolition drive of one premises, namely 'Niaz' Building, without any prior notice or intimation and apprehending that the petitioner would be dealt with in similar way with respect to other properties, since it came within the knowledge of the petitioner that respondent No.1 had sought police protection as well, vide letter dated 17.8.202, the petitioner approached this Court by way of this petition.

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5. The petition which was filed on 15.9.2021 was taken up for hearing on the next date in view of the request and at the time of hearing, learned advocate Mr. Ekrama H. Qureshi for the petitioner has contended that the respondent Corporation has not given any notice to the petitioner and by asserting the averments on oath, contained in paragraphs-18, 19 and 20, a request was made to extend some urgent protection. In view of such specific submission and has asserted further that the petitioner is ready and willing to face any consequence if this averment is found to be incorrect, upon such representation, the Court on 16.9.2021, the Court passed following order:

"Heard learned advocate Mr. Ekrama H. Qureshi for the petitioner. In view of the specific assertion made in paragraph Nos. 18, 19 and 20 that no notice at all is given to the petitioner and he also submitted that if this assertion on oath is found incorrect, the petitioner is ready to face any consequence and as such, in view of this assertion made on oath and representation being made before the Court, Notice and Notice as to interim relief, returnable on 17.09.2021. Direct service today is permitted."

6. Upon direct service being served upon the respondent No.2, learned advocate Mr. Deep D. Vyas has appeared on behalf of the respondent Corporation- the main contesting party and has tendered affidavit-in-reply after serving the copy to the other side.

7. Learned advocate Mr. Ekrama Qureshi on perusal of the affidavit-in-reply has started making his submission and has reiterated that no notice has been given to the petitioner under Section 260 of the GPMC Act and has further submitted that the petitioner has not carried out any illegal construction, as also reiterated that if respondent even if wants to take action proper procedure has to be followed, if proper opportunity could have been given, petitioner ought to have represented and pointed out, hence, the action is bad in law.

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8. Learned advocate Mr. Qureshi has further submitted that his representation which has been made, reflecting on page 37 has not been decided and further by referring to the provisions of GPMC Act has submitted that there is no approval for such action being taken against the petitioner of Standing Committee and therefore, initiation of step against the petitioner itself is impermissible. During the course of hearing, Mr. Qureshi after drawing the attention of the Court to various documents has reiterated his stand and has submitted that the respondent authorities are required to be estopped from demolishing the premises which are being constructed by the petitioner and has requested to extend the protection. Mr. Qureshi has requested that at least, the representation of the petitioner may be directed to be decided and till decision, no action be taken against the petitioner and has reiterated that since the petitioner is the purchaser of the property of old structure, whatever construction is undertaken by him is not illegal and the petitioner is ready and willing to abide by any of the conditions which the Corporation may deem it proper to impose for considering the request of the petitioner.

9. As against the above, learned advocate Mr. Deep D. Vyas appearing on behalf of the respondent Corporation has submitted an Affidavit in-Reply along with several documents attached and has vehemently opposed the stand of the petitioner. It has been contended that there is a gross violation of the provisions of the Act and Bye-laws and looking to the outrageous act of the petitioner which is demonstrated in the affidavit-in-reply, the Court may not exercise the extraordinary equitable jurisdiction. According to Mr. Vyas, with open eyes and with audacity to disobey the instructions of the Corporation and to violate the Building Bye-laws, despite sealing the premises and despite receiving injunction, construction is continued to be carried out by the petitioner as if no law is applicable to the petitioner. It has been demonstrated in the affidavit-in-reply by Mr. Vyas that sequence C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 of events would clearly indicate that though the petitioner was enjoined, though notices have been pasted on place, though seals have been applied on more than 3 to 4 occasions, still those seals are ignored and removed and the construction is continued by the petitioner as if nobody is able to prevent the petitioner. It has been pointed out by placing a document on page 50 that even public notice has also been given on 3.6.2021, in which, Item No.2 is clearly reflecting the name of the building, which is being constructed by the petitioner, and at the time when this advertisement was issued, the building was of ground floor with first floor, whereas at present, the photograph indicates undisputedly that it has traveled much beyond the said position. On number of occasions, the petitioner was instructed, but all the instructions and orders have not been observed at all and in utter disregard to the instructions and steps being taken by the Corporation, the construction activity is being continued in complete illegal and unauthorized manner for which no permission at all is granted. By referring to sequence of dates mentioned in the affidavit, a request is made by Mr. Vyas to direct the State authority to provide adequate police force so as to enable the Corporation to initiate action against such kind of uncontrolled petitioner and for that purpose, in addition to the facts which are stated in the affidavit- in-reply, Mr. Vyas has drawn the attention of the Court to the provisions of Sections 478 and 483 of the GMPC Act and thereby requested to dismiss the petition with appropriate direction.

10. Learned advocate Mr. Vyas further has further contended that the petitioner has complete knowledge about all these proceedings which are to be initiated and still however, illegal

construction is carried out. Mr. Vyas has taken the Court to the sequence of events which is projected in the affidavit-in-reply and thereby has contended to dismiss the petition with cost. It has been stated before the Court that the Court is misled to entertain the petition by not projecting C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 clear facts before the Court and there is a material suppression while presenting the petition about disclosure of full facts and as such, no equitable jurisdiction be exercised looking to the conduct of the petitioner himself.

11. To the aforesaid submission, learned advocate Mr. Qureshi has in rejoinder submitted that the petitioner would like to approach the authority and has also requested in the alternative to withdraw the petition with a view to approach the authority. However, Mr. Qureshi could not meet with the circumstances which are projected by the Corporation in the affidavit-in-reply.

12. Having heard learned advocates appearing for the parties and having gone through the contents of the petition as well as the affidavit-in-reply, following circumstances are not possible to be unnoticed by the Court:-

(1) Before dealing with the present controversy, the Court would like to postulate certain provisions of the GPMC Act, which is framed to provide for establishment of Corporations with a view to ensure a better Municipal Government in the city. This Statute is also regulating the issue related to construction and entrusted power related to it. Chapter-V deals with Building Regulations, whereby, by virtue of Section 253, every person who is intending to erect a building shall give due intimation to the Commissioner about his intention in the form prescribed in the bye-laws containing all detailed particulars as required. Even for making an alteration, repairs or addition to a building, a duty is cast upon a person intending to do such activity by virtue of Section 254 to issue notice to the Commissioner about his intention and in respect of it, plans are also required to be submitted to the Corporation. In addition to the aforesaid provisions, by virtue of Section 257, a person who intends to erect a new building or execute any work as described under Section 254 of the Act, is under an C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 obligation to erect or carryout such work under the supervision through a qualified agency, subject to conditions and restrictions as may be prescribed under the bye-laws. In case of no compliance, or misrepresentation or fraudulent statement in respect of such intimations to the Commissioner, a power is entrusted to the Commissioner by virtue of Section 258 to cancel the permission.

Reading of this provision is clearly indicating that a person concerned who intends to carryout any construction work, is under an obligation to observe the bye-laws and to put up the construction of any nature with the permission of the Corporation and same shall be after previous due intimation.

(2) Yet, further provisions are also in respect of regulating such activity of construction. The powers of inspection are also conferred by virtue of Section 259 and at any time, if erection of any building or execution of construction work as described under Section 254 is carried out contrary to the provisions of the Rules or Bye-laws, proceedings can be initiated in respect of such work by issuance

of the procedure prescribed under this provision and after giving opportunity, a power is entrusted to remove such construction, which is in conflict with the bye-laws or the instructions or the relevant Regulations. Section 261 deals with the building or works commenced contrary to the Act may be cut into and laid open for purpose of proper inspection. Section 262 relates to enforcement of provision concerning buildings and works and after such construction in a lawful manner, being carried out, completion certificate and permission to occupy or use is to be obtained by virtue of Section 263 of the GPMC Act. By virtue of Section 263A, power is entrusted rather duty requiring demolition or alteration of lawfully constructed huts and sheds infringing rules or bye-laws and by virtue of Section 264, removal of structures which are in ruins and likely to fall is also contained in the aforesaid provision. So far as the works unlawfully carried out, a specific procedure and provision is made. Under Section C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 267, powers are entrusted to direct removal of unlawful work and Section 268 is the power to vacate the premises carried out in conflict with the provisions of Regulations and Bye-laws.

(3) Additionally, there are other provisions also made with regard to unauthorized construction and removal of it and with a view to have proper assistance to a civil body for implementation and discharge of its duty, the Act has also provided a provision for enabling recovery of expenses of removals and further, additionally, for the purpose of carrying out such removal process, cooperation of the police authority is also made available to the Corporation upon request, so as to see that proper enforcement of the provision of the Act and maintenance law and order in the city can be prevailed and as such, conjoint reading of these provisions of the Act is clearly indicating that not only it is the duty of the Corporation to initiate action against unauthorized construction and construction being carried out by a person, but corresponding duty is also upon the persons who are intending to put up construction or alteration or addition of any such nature and as such, if on account of any reason, a civic body is not in a position to take any action promptly, same would not give license to a person to carry out unauthorized or illegal construction in any manner. The civic body may have multiple problems in taking prompt action looking to the huge area consisting in the City, there may be a lack of staff, may be a threat of Law and Order or at times, collusion as well, but those circumstances in any case would not permit a person to flout outrageously the building bye-laws and the Rules and Regulations under the Statute and thereby cannot shirk the responsibility for such illegal act. In addition to the aforesaid statutory provisions, with a view to have a planned development of the city to see that the basic civic amenities are provided to the residents of the Corporation limit about sanitation, water, drainage, parking, environmental issues and for that purpose, regulations are also framed. Those regulations are also to be strictly observed by a person C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 who is intending to carry out the construction. So, the conjoint reading of all the relevant provisions of Statute and the relevant Regulations, the unauthorized or illegal construction has no place in it. As a result of this, any violation thereof may not be allowed to be operated and to be handled strictly.

(4) Here, the background of facts and the chronology of events, which have been given in the affidavit, have given an impression clearly that the petitioner being a developer in the building line has started and carried out the construction in complete defiance of the instructions from the Corporation, though seals have been applied, removed the same and carried out the construction of illegal nature without express permission and has made an attempt to violate with impunity and

despite such act being noticed by the Corporation, every attempts have been made unsuccessful by the petitioner and the Corporation had not been in a position to conclude the action without assistance of the police. If this kind of attitude is allowed to be operated, the civic body would not be in a position to discharge its function without any fear or free mind. The society is governed by the Rule of Law, hence such kind of attitude which is reflecting from the affidavit is not possible to be tolerated or unnoticed by the Court and as such, in absence of any pleadings in the petition, the petitioner has also not discharged his obligation as reflected in the Statute, and has not stated at all about the aspect of permission, this Court is not in a position to unnotice the aforesaid circumstances. Now, in the light of this situation which is prevailing on record, if the Court sees prime contention which has been taken by the petitioner while persuading the Court to issue notice upon the authority, that no process at all has been carried out as required under the Act and without granting any opportunity, action straightway is sought to be initiated and has not complied with even the process contemplated under Section 260 of the GPMC Act onwards and having no approval from the Standing Committee, a request is made to extend immediate protection. But, C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 the Court finds such submission is found other way round and for the purpose of testing this main stand, whether it is just or proper, sequence of events projected by the respondent Corporation in the affidavit-in-reply deserves to be quoted hereunder:-

(5) The affidavit-in-reply has been filed by the Deputy Estate Officer (CZ) of the respondent No.2, who made specific averments which could not be confronted by learned advocate Mr. Qureshi during the course of hearing. Para 6 and 8 of the said affidavit deserve to be quoted hereunder:-

6. It is submitted that the following issues would be material, before dealing with the matter on merits. under the extraordinary jurisdiction:

(a). There is material suppression of facts, more particularly despite of sealing the premises 4 (FOUR) times, the seals are highhandedly broken and the construction, wherein the authority was constrained to give a written complaint for registering company u/s. 188 of IPC That, despite of the same, the construction is further carried out and the process of law is disrespected at all stages

(b). The application purportedly filed for development permission through registered engineer/architect via online portal has been rejected, since the filing itself was defective. Copy of the status report of the application is annexed hereto and marked as ANNEXURE R/2. The online portal is common across Gujarat and has inbuilt system of intimating status and details by text messages and emails, directly by the State Government, moreover where the system are also accessible by the registered engineers/architect and petitioner, and therefore they cannot plead ignorance.

(c). There is misrepresentation by the petitioner, conveniently not advertng that despite illegal commencement of works, the authority had issued statutory notices at the stages of cellar and ground floor slab However, not only the notices are

disrespect, but law and order situation is created at site, for which the authority had repeatedly requested the police authorities advantage of the pendency, 6 and taking floors and underneath construction, including cellar is made C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 illegally.

(d) Despite sealing the premises and filing criminal complaints, the construction has continued, where for the height there is no margin for fire safety or adequate parking, moreover were the nature of construction is not permissible under development regulations and cellar is not permitted for the areas below 250 sq mtrs, under the prevailing development regulations and even the height of the construction ie floors are not permissible under the building rules and bylaws.

7. It is submitted that in view of the conduct, where statutory proceedings are disrespected at all stages and the parties have not done equity, they cannot claim equity under the extraordinary jurisdiction before the Hon'ble Court

8. It is submitted that with aforesaid matter, on unlawfully commencing and carrying out new construction within the premises, the authority has undertaken the following process:-

Sr. No.	Date	Notices	Proceedings	ANNEXURE
1.	20.05.2021	267(1)	Since construction unlawfully commenced & carried out. authority issued prohibitive notice to stop activities forthwith.	ANNEXURE R/3
2.	24.05.2021	267(2)	Construction then had reached cellar and ground floor slab) Since direction u/s 267 (1) was flouted, the Police Inspector Gaekwad Haveli Police Station, was requested to removal of such persons and for enforcing the provisions of the act.	ANNEXURE R/4
3.	21.05.2021	260(1)	Show Cause Notice	ANNEXURE R/5
4.	26.05.2021	260(2)	Notice for demolition	ANNEXURE R/6
5.	26.05.2021		With a view to stop unlawful activities, premises came to be sealed on 26.05.2021	ANNEXURE R/7
6.	26.05.2021		Despite sealing of the premises, the same was broke, for which the authority sealed the premises again on 26.05.2021.	ANNEXURE R/8
7.	28.05.202		Requested police and for	ANNEXURE

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- maintaining good order and for R/9 protection of the municipal officers and citizens for implementing enforcing the provisions of the act
8. 9.06.2021 Despite sealing. property on 2 of ANNEXURE the previous occasions, the same R/10 was broken and construction was carried out and with a view to activities prohibitive: premises stop notice. came unlawful despite the be to Sealed again on 9.06.2021
9. 17.- 06.2021 Requested police aid for ANNEXURE maintaining good order and for R/11 protection of the municipal officers and citizens for implementing enforcing the provisions of the act.
- 10 20.07.2021 Requested police aid for ANNEXURE maintaining good order and for R/12 protection of the municipal officers and citizens for implementing and provisions enforcing of the the act, wherein specific request was made to provide aid at the suitable time, as convenient to the police. authorities. for the purposes of effecting and enforcing the provisions of the Act.
- 11 27.07.2021 Despite of sealing premises ANNEXURE 26.05.2021 twice and 9.06 2021, R/13 the same on R/13 on was broken and with a view to stop unlawful activities despite prohibitive notice, the premises came to be Sealed again
- 12 17.08.2021 Requested police aid for ANNEXURE maintaining good order R/14 and R/14 for protection of the municipal officers and citizens, for implementing enforcing the provisions of the act.
- 13 24.08.2021 Statutory provisions were ANNEXURE violated, therefore police R/15 authorities requested for strict

adherence of the provisions of
Sec.267(2) of the Act and
enforcing the provisions of the
Act.

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14	24.08.2021	Despite filing of complaint, no ANNEXURE complaint was registered and R/16 therefore police authorities were requested for registering complaint u/s, 188 IPC and take further actions. accordance with law.
15	3.09.2021	Written notice. sent for non- ANNEXURE granting/discontinuing essential R/17 including services, water, of electricity and also to the office of registrar for not registering any document for the said premises.

(6) The aforesaid sequence of events is clearly indicating that the petitioner has not disclosed true and correct facts before the Court and has further materially suppressed the events which took place, as stated in the aforesaid paragraphs of the affidavit.

(7) From the aforesaid affidavit, along with the documents, it appears that a Public Notice was already given on 3.6.2021, in which the very disputed construction centering around the present controversy of the petition is reflecting at item No.2, which consists of Ground Floor + First Floor. From page 53 of the said document, attached with the affidavit, it appears that Section 267 notice has also been given to the petitioner as well as other related persons. The said notice has been acknowledged by Mohammad Imran as reflecting in bottom of the said communication and this notice is dated 21.5.2021.

(8) Yet, another notice also appears to be under Section 260(2) read with Section 479 of the GPMC Act, which is also of 21.5.2021. Further notice of 26.5.2021 is also reflecting on page 57 and in addition thereto, the Deputy Estate Officer has also passed an order to take appropriate steps. These orders have been attached to the property in question, so much so that the Law & Order situation is tried to be disturbed at the instance of the petitioner, as alleged. Even the Corporation was constrained to request the Deputy Police C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 Commissioner, Control Room to extend police protection and assistance, vide communication dated

28.5.2021. Further communications are also reflecting at page 65 dated 17.6.2021, another communication dated 20.7.2021 is also written to the Police Inspector, Gayakwad Haveli Police Station, and several other communications dated 17.8.2021 and 24.8.2021 and also a request was made to the Additional City Engineer to disconnect water and drainage connection from the disputed property as the same is in violation of the Building Bye-laws and illegal construction. All these documents are indicative of the fact that from the beginning, the petitioner is conscious about the step being taken against the petitioner as also, the illegal construction which is being undertaken by the petitioner.

(9) Even the request which has been made by the petitioner reflecting on page 77 written to the Deputy Estate Officer dated 28.6.2021 in which also, on 4th line, it is stated that the Corporation did serve notice.

(10) Now, these documents as well as the sequence of events which are stated on oath not in dispute before the Court are clearly indicating that these material aspects are not brought on record by the petitioner and the stand which is taken appears to be quite in conflict with this much material attached to the affidavit-in-reply.

(11) Yet, another circumstance which is not possible to be unnoticed is the particulars which are stated with respect to another City Survey Nos.5667 and 5668, which is adjacent construction. There also, despite seals have been applied on four times in the very same manner, the construction is undertaken and as such, the sum and substance of the afore-mentioned pleadings on record are suggesting that the petitioner knowing full well and quite conscious about the act C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 of making illegal construction has ignored the instructions of the Corporation and went on making continuous construction in utter disregard. This apparently suggests a clear conduct which would oust the petitioner from equitable jurisdiction of this Court more particularly when all these sequence of events are concealed from the Court.

(12) The construction which has been made since appears to be unauthorized, illegal, without permission, the Corporation would not like to encourage such step of the petitioner. Hence, whatever action which is sought to be initiated appears to be justified.

13. Now, so far as illegal and unauthorized construction part is concerned, evidently, the petitioner has miserably failed to disclose before the Court that his construction activity is with the permission of the Corporation and is authorized. In background of this, the Court would like to refer to few decisions of the Hon'ble Apex Court.

(1) In the decision in the case of Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and others reported in (2013)5 SCC 336, the Hon'ble Apex Court has held and observed in para 2 to 7 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 C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 (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 Courts order, this Court observed:

28. 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.

29. 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:

7. 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 C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 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:

"20. 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.

22. 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 C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 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.

23. 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.

24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. (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 C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 observed:

"74. 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.

75. 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 C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 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:

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

(2) Yet, the Hon'ble Apex Court has clearly observed in para 56 of the decision in the case of *Isha Ekta Apartments Cooperative Housing Society Limited and others Vs. Municipal Corporation of Mumbai and others* reported in (2013)5 SCC 357 that the Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized construction, else it would encourage violators. The said relevant observations contained in para 56 are C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 quoted hereunder:-

56. In view of the above discussion, we hold that the petitioners in the transferred case have failed to make out a case for directing the respondents to regularize the construction made in violation of the sanctioned plan. Rather, the ratio of the above-

noted judgments and, in particular, *Royal Paradise Hotel (P) Ltd. v. State of Haryana and Ors.* (supra) is clearly attracted in the present case. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

(3) Yet, one another decision delivered by Hon'ble the Apex Court in the case of *Municipal Corporation of Greater Mumbai and others Vs. M/s. Sunbeam High Tech Developers Private Ltd.* reported in AIR 2019 SC 5435, there also, in para 2, some significant observations are made which the Court would like to quote hereunder:-

2. The municipal corporations in the State of Maharashtra like in any other part of the country are vested with the power to demolish structures which violate the laws and have been built without any building plans or in violation of the laws. The exercise of the power of demolition which affects the property of the citizens of this country must be exercised in an absolutely fair and transparent manner. Rules in this regard must be followed. At the same time, the Court has to balance the private interest with the larger public interest. Cities and towns must be well planned and illegal structures must be demolished. Rule of law comprises not only of the principles of natural justice but also provides that the procedure prescribed by law must be followed. Rule of law also envisages that illegal constructions which are constructed in violation of law must be demolished and there can be no sympathy towards those who violate law.

(4) Even in very recent time, the Hon'ble Apex Court in a decision reported in 2021 SCC OnLine SC 648 in the case of Supertech Limited Vs. Emerald Court Owner Resident Welfare Association and others has clearly observed that if developers have violated the C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 regulations, such illegal constructions to be dealt with strictly to ensure compliance with the Rule of Law. From para 171 onwards, the Hon'ble Apex Court has emphasized that from commencement to completion, the process of construction by developers is regulated within the framework of law and if regulations are violated, same should be dealt with strictly. With a view to see that present order may not be overburdened, detailed discussion is not quoted hereunder, but the relevant observations contained in para 170 to 183 deserve consideration. Hence, keeping in mind such proposition of law on the issue of unauthorized construction and such illegal activity, in the peculiar background of this case, the Court is not inclined extend any protection and would not like to exercise equitable jurisdiction extraordinary in nature. The conduct of the petitioner itself is not of a worthy consideration. As a result of this, no case is made out by the petitioner to extend any protection.

14. Keeping in view the sequence of events from the affidavit-in- reply and the bald assertion made in the petition, without disclosing any material particulars, the Court is also of the view that the petitioner has made an attempt to mislead the Court, which conduct of the petitioner deserves not to be encouraged.

15. The fact of the matter appears to be that an inaccurate and misleading stand taken by the petitioner before this Court itself is sufficient enough to invite adverse reaction and for this adverse reaction from initial stage, even the petitioner has also undertaken to face and the Court has made it clear at the time of issuance of the notice and as such, in view of the aforesaid background of fact, the petitioner deserves such adverse reaction and for this purpose, the Court is relying upon the observations contained in para 28 and 29 of the decision delivered by the Hon'ble Apex Court in the case of Sciemed Overseas Inc. Vs. BOC India Limited and others reported in C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 (2016)3 SCC 70. The said observations read as under:-

28. In the case of Suo Moto Proceedings Against R. Karuppan, Advocate[2] this Court had observed that the sanctity of affidavits filed by parties has to be preserved and

protected and at the same time the filing of irresponsible statements without any regard to accuracy has to be discouraged. It was observed by this Court as follows:

"13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy.

29. Similarly, in *Muthu Karuppan v. Parithi Ilamvazhuthi* [3] this Court expressed the view that the filing of a false affidavit should be effectively curbed with a strong hand. It is true that the observation was made in the context of contempt of Court proceedings, but the view expressed must be generally endorsed to preserve the purity of judicial proceedings. This is what was said:

"15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge."

16. Yet, in another decision also delivered by Hon'ble the Apex Court in the case of *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and others* reported in (2005)7 SCC 605 , almost similar C/SCA/13405/2021 JUDGMENT DATED: 17/09/2021 conduct has been analyzed by the Court and as such, paras 14 and 15 which are relevant to the issues, the Court deems it proper to reproduce the same hereunder:-

14. Suppression of a material document would also amount to a fraud on the court. (see *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's case* (supra).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's case* (supra).

17. Accordingly, the petition stands DISMISSED. While dismissing the petition, it is observed that if the Corporation demands for adequate police force to initiate step against the petitioner, the Commissioner of Police is directed to provide such police protection to the respondent Municipal Corporation since on previous occasions also, time and again, such request was made, and for that purpose, the respondent State Government to see and ensure that such assistance to the respondent No.2 Corporation be provided promptly.

18. In view of the aforesaid peculiar background of facts, while dismissing the petition, the Court is imposing cost of Rs.25,000/- (Rupees Twenty Five Thousand only) on the petitioner, to be deposited before the Gujarat State Legal Service Authority within a period of THREE MONTHS from today and compliance of the same be kept on record of the case. Notice is discharged. Interim relief, if any, stands vacated forthwith.

Sd/-

(ASHUTOSH J. SHASTRI, J) OMKAR