

OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

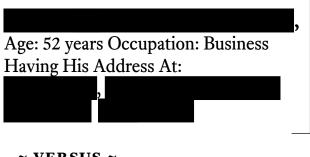
- Age 49 Years, Occ. Business
- 2. VILAS YASHWANT RANADE, Adult, Occ. Business

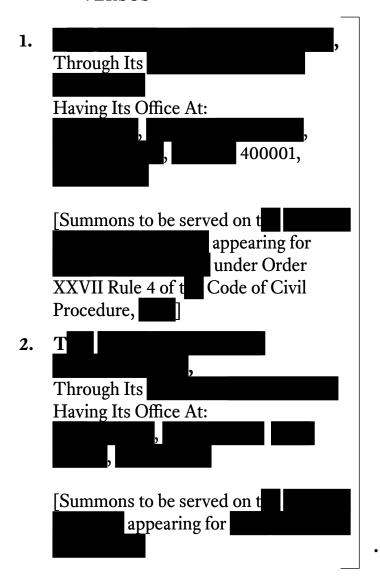
~ VERSUS ~

Summons to be served on

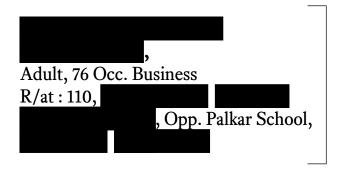
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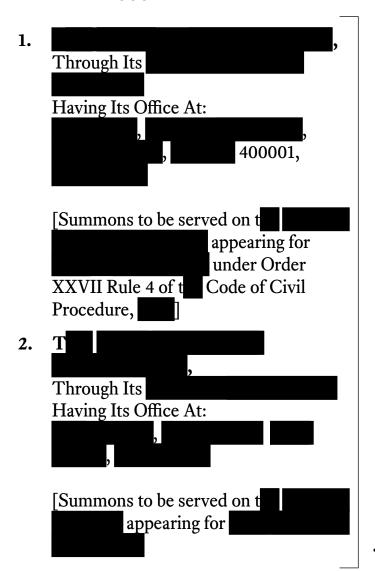
Summons to be served on to Govt. Pleader]

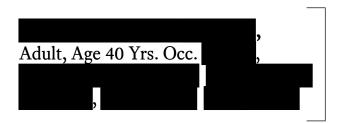


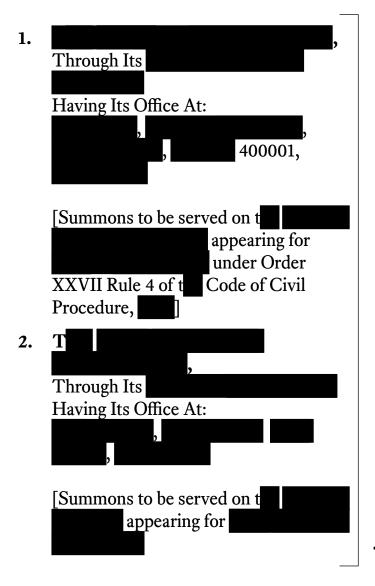


1. Through Its Having Its Office At: 400001, [Summons to be served on t appearing for under Order XXVII Rule 4 of t Code of Civil Procedure, T 2. Through Its Having Its Office At: [Summons to be served on t appearing for



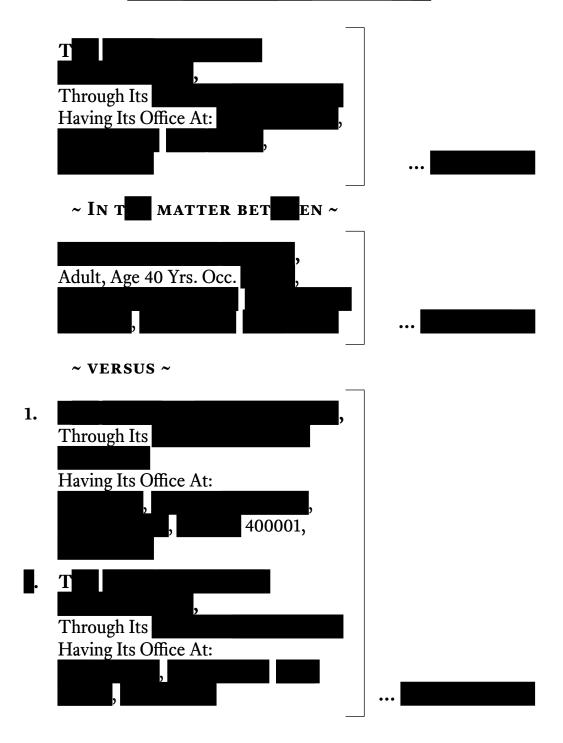


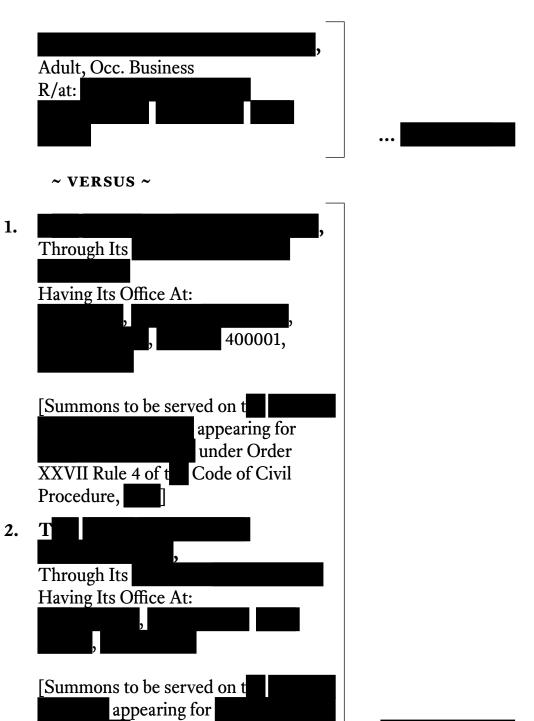




ALONG WITH INTERIM APPLICATION NO. 80 OF

IN

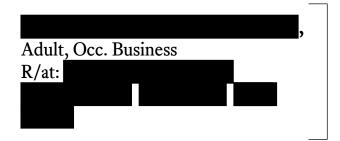




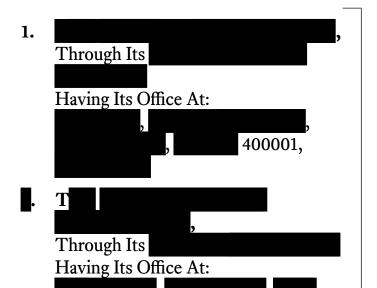
ALONG WITH INTERIM APPLICATION NO. 83 OF

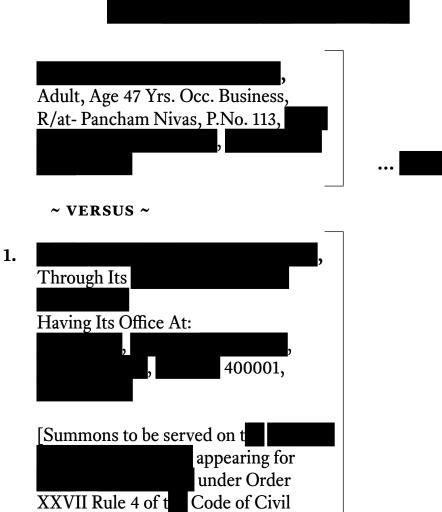
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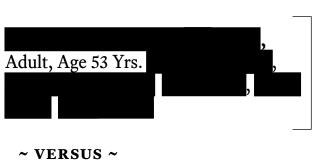
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Adult, Age 50 Yrs. Occ. Business R/at: Shubham',

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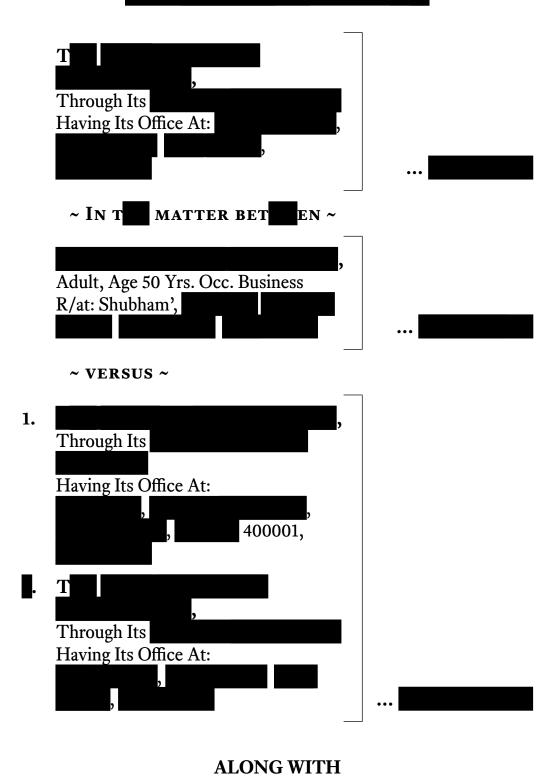
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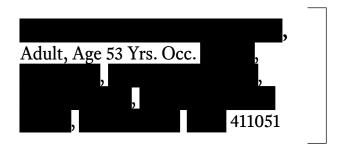
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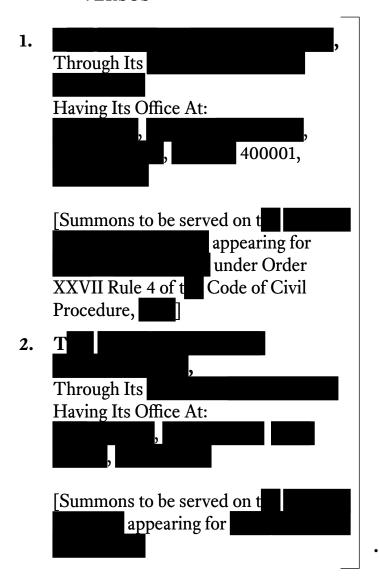
appearing for

ALONG WITH
INTERIM APPLICATION NO. 86 OF

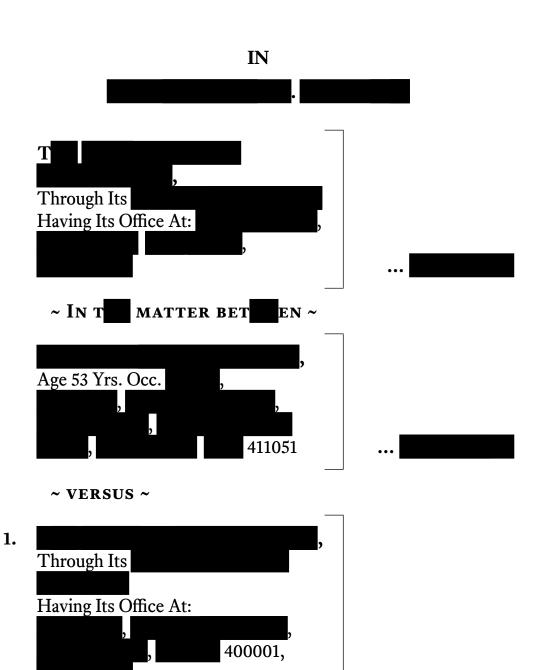
IN







ALONG WITH INTERIM APPLICATION NO. 82 OF

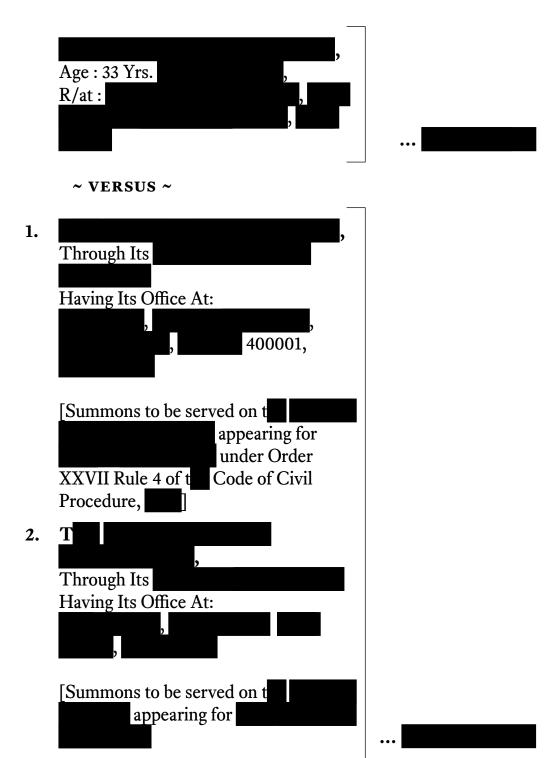


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Having Its Office At:



Adult, Age 51 Yrs. Occ. Business,

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ALONG WITH INTERIM APPLICATION NO. 84 OF

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Age 51 Yrs. Occ. Business,

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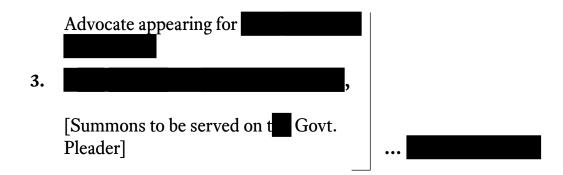
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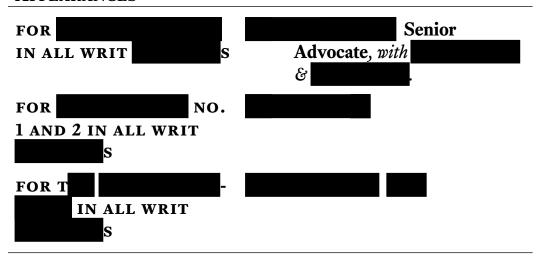
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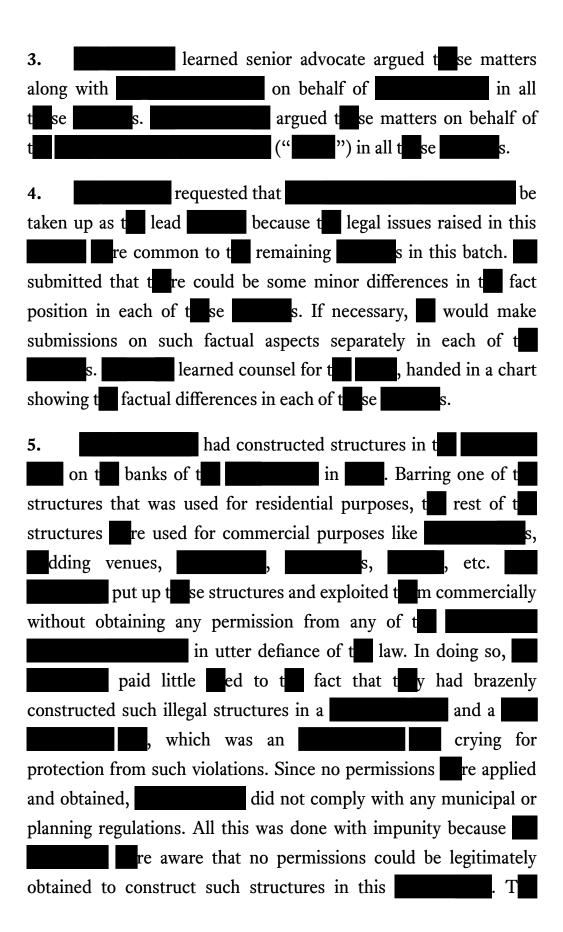
APPEARANCES



RESERVED ON : PRONOUNCED ON :

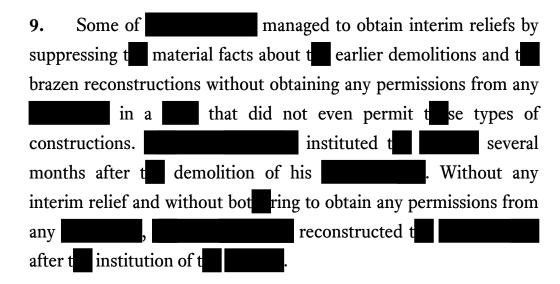
JUDGMENT (Per MS Sonak J):-

- 1. ard learned counsel for to parties.
- 2. Rule. T Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.



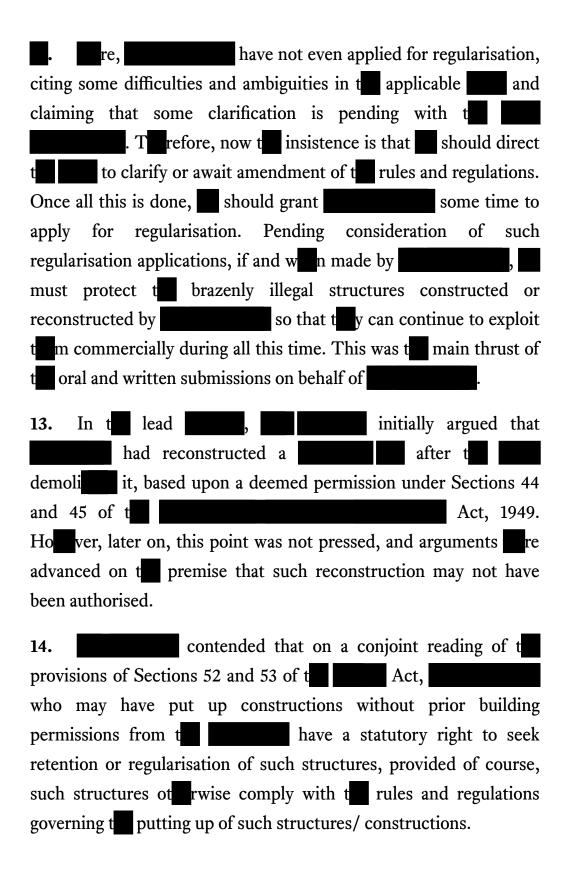
relied upon to usual apathy of to initiate immediate action and perhaps planning protection of the powers that be to see that no action is initiated. 6. After some vigilant lodged complaints issued notices for the removal of all these proceedings, t . Before such notices illegal structures put up by re given to opportunity to show cause, issued, lest complain of t violation of t principles of natural justice. Due legal procedures are folload. Based upon t final demolition notices, most of the structures are removed by the in strict accordance with the law. Undeterred, most of with impunity, reconstructed to structures and recommenced exploiting to m commercially, again without both ring to obtain any permissions or abiding by the rules and regulations. , following all legal procedures and 7. Once again, t complying with the principles of natural justice, has issued the impugned notices under Sections 53 and 54 of t Regional and Town Planning Act, 1966 (" **Act**") for t demolition of the structures reconstructed by on t banks of t refore, have instituted t 8. se enge t same or rater urge that have an indefeasible right to apply for regularisation. insist that until they apply (by citing some imaginary difficulty, none of have even both red to apply for regularisation) and during the period with n such applications (as and with made) are

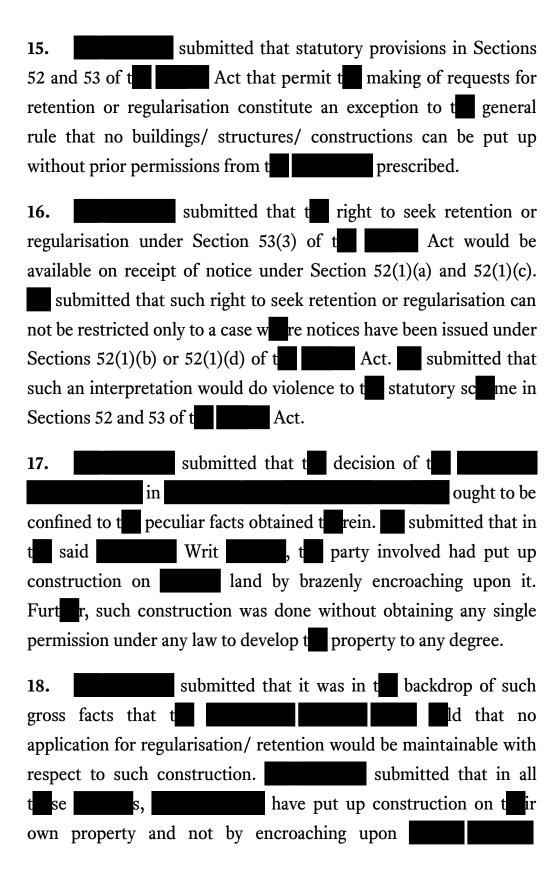
under consideration, tempugned demolition/removal notices should not be acted upon.

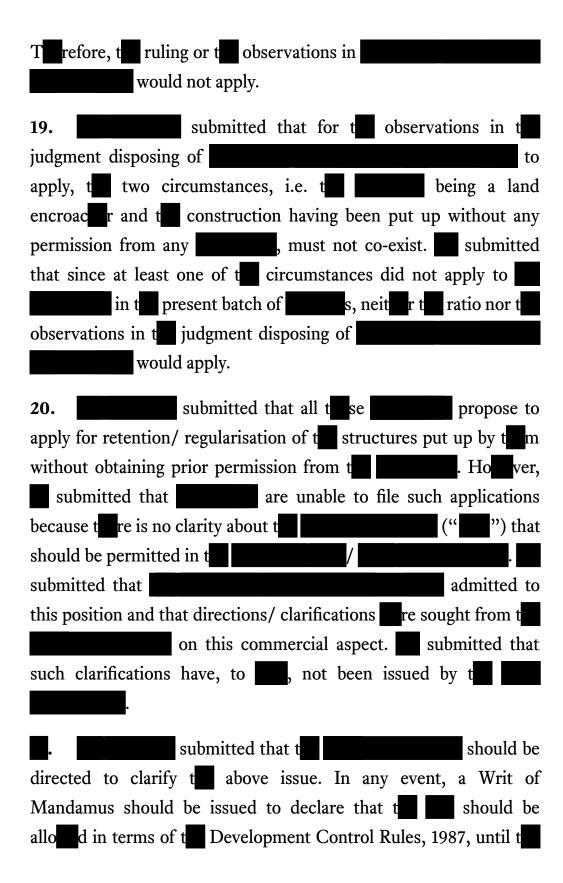


- nost of have, with impunity, rebuilt illegal structures that after following all legal procedures, invoke the extraordinary, equitable, and discretionary jurisdiction of and insist on applying the law as they (or their lawyers) choose to interpret it to protect these patently illegal structures.
- position is that it is perfectly alright to construct or reconstruct illegally and brazenly in a ______ or a _____.

 If and won such illegalities are discovered, and demolitions are ordered, ______ have some indefeasible right to apply for regularisation. Furture, until such regularisation applications are decided, to re should be no demolitions of to brazenly illegal structures through which ______ undertake commercial activities.

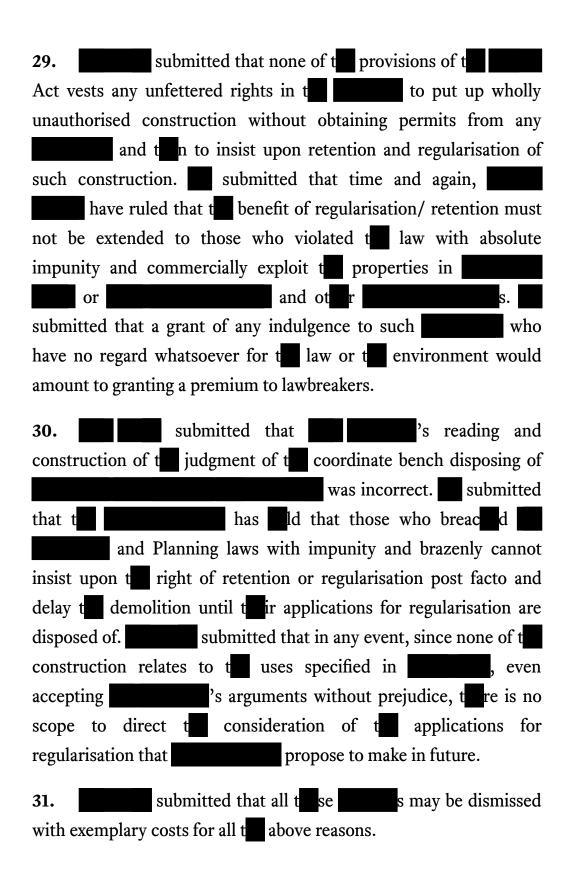


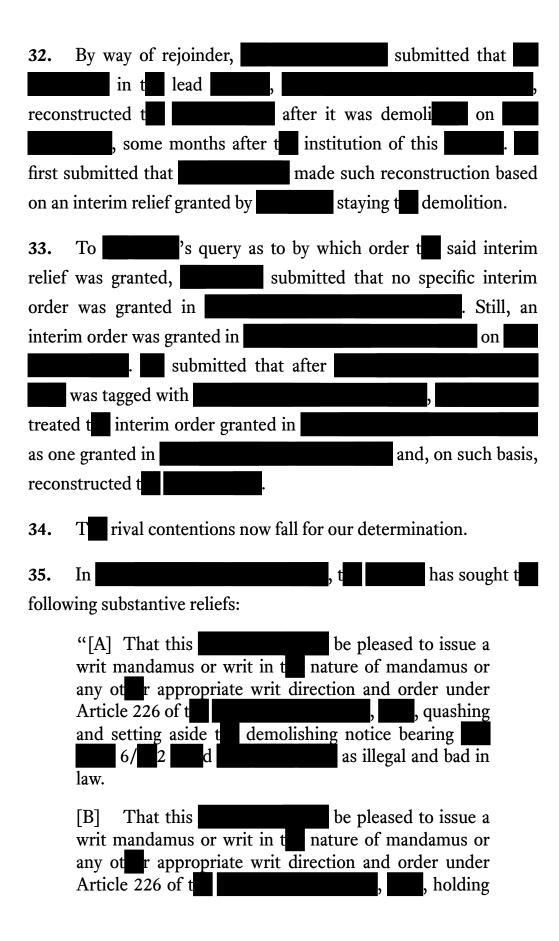


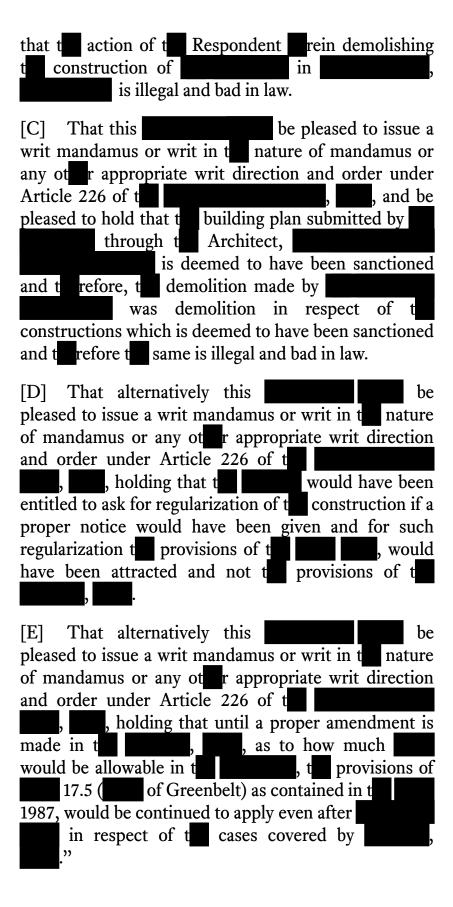


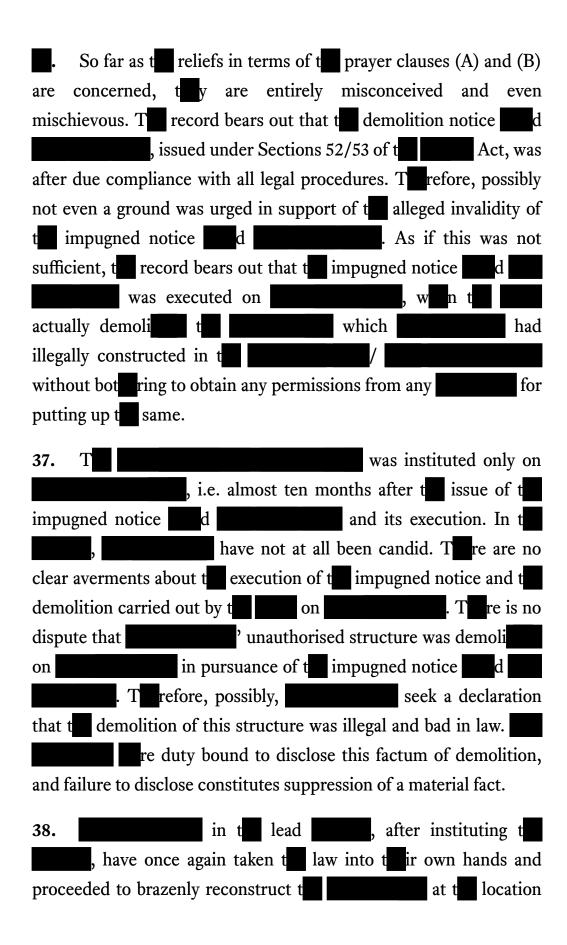
appropriate amendment is made to the Unified Development Control and Promotion Regulations, based on to above, submitted that t 22. be directed to take a decision on textent of allowable in t Once clarification is issued, must be granted some reasonable time to apply for retention/ regularisation under Section 53(3) of t Act. submitted that until this exercise is complete, must restrain from demolishing t structures/ constructions put up by in t without obtaining any permission from t at the conclusion of his arguments, also filed a note summarising his arguments. In the course of the arguments, agreed that only such constructions that are otherwise permissible under rules and regulations could qualify for retention and regularisation. In this regard, submitted that the regulations dealing with permit t setting up of recreational facilities. submitted that t construction of t is a recreational facility, and terefore, te same is allowable under (at Exhibit "H" of t paper book). 24. For all the above reasons, submitted that t rule in each of t s must be made absolute. , learned counsel for the submitted that t 25. very institution of these seconstitutes a gross abuse of the

judicial process and, therefore, all these services must be dismissed with exemplary costs. 26. context of (lead pointed out that the first prayer was to set aside demolition notice submitted that, in pursuance of t notice unauthorisedly put up by was demoli submitted that , after t institution 27. , have brazenly reconstructed t commenced using it for commercial purposes again without bot ring to obtain any permission from t submitted that no relief should be granted to such under Article 226 of t submitted that all t se s are concerned with unauthorised constructions put up in t . By referring to the chart handed out, submitted that none of the constructions or buildings has any nexus with any of the permissible activities in t submitted that even to phrase "recreational facilities" has to be construed in the light of other permissible uses in such a , and from to context, it is quite clear that t construction of t would not amount to a recreational facility as contended on behalf of the some of in t lead including

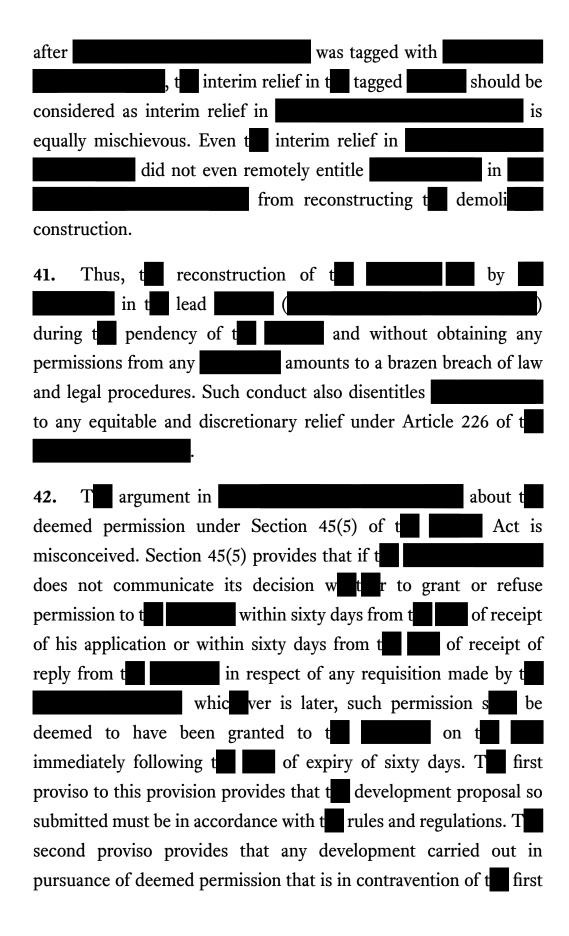








from we re it was earlier demoli Again, did not bother to seek permission from any reconstructed t demoli , and they commenced using it for commercial purposes with no regard for the law or even the safety of the users. Admittedly, there was no occupancy certificate, and consequently, there clearances from t etc. From this, it is apparent that these have neit r any regard nor respect for the law and lawful procedures. The conduct , therefore, disentitles them from seeking any discretionary or equitable reliefs under Article 226 of t 's contention that reconstructed t 39. based on ten interim relief granted by with respect to him, most misconceived. was unable to show any order granting , in t lead interim relief. In any event, to interim relief, if any, would have, at thing st, restrained t from executing t demolition order had it not already been executed. Certainly, at least in t gross facts of this case, there was no question of some interim to reconstruct t mandatory order permitting without seeking any permission from any demoli record bears out that no interim relief was granted in t (lead eit demolition or by permitting reconstruct 1 's tenuous submission that to interim relief was 40. granted in and



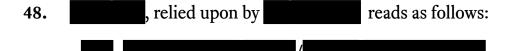
proviso's provisions s be deemed unauthorised development for tupurposes of Sections 52 to 57 of tupurposes. Act. Section 45 of t 43. Act contemplates making a valid application under Section 44 to t provides detailed provisions regarding such applications and t accompaniments. There is absolutely nothing on record to establish did make any such valid applications to t based upon which now claim t deemed permission. As noted above, did not press this issue of deemed permission. Still, initially, referred to paragraph and documents at Exhibits 'C' and 'D' in No. 4 of t support of the plea of deemed permission. Paragraph No.4 in 44. reads as follows: "4. also submitted an application for purpose of seeking to building permission and copy of the application and the plan submitted by is enclosed reto and is marked as A letter, from the Architect of viz. enclosed reto and is marked as EXHIBIT -D to t Memo of this Civil Writ . In that letter, clearly confirmed that t said application was made within the prescribed period, t application has not been rejected. In the submission of refore t Deemed permission has been granted in favour of rein." To document at Exhibit 'C' is a plan that is far from clear. 45. document at Exhibit 'D' is a three-line private letter stating that had submitted by a

building plans of _______, _________, as per D.C. Rules _____. No reply was received sanctioning or cancelling t _____ plans until t _____ of t ____ address of communication _____ d ____.

46. Based upon t ____ pleadings in paragraph 4 and above and two documents at Exhibit 'C' and 'D', no case is made to invoke t

documents at Exhibit 'C' and 'D', no case is made to invoke to provisions dealing with to deemed permissions. Such averments and contentions only strengt in the provision are prepared to go to any extent to breach to law brazenly and put up unauthorised construction for commercial exploitation. For the above reasons, are satisfied that no reliefs can be granted to the claimed in prayer clause (C).

47. 's contention that the same is a recreational facility in the context of same can also not be accepted. The provisions of same have to be read holistically, bearing in mind the context. Such a holistic and contextual reading does not support same same context.

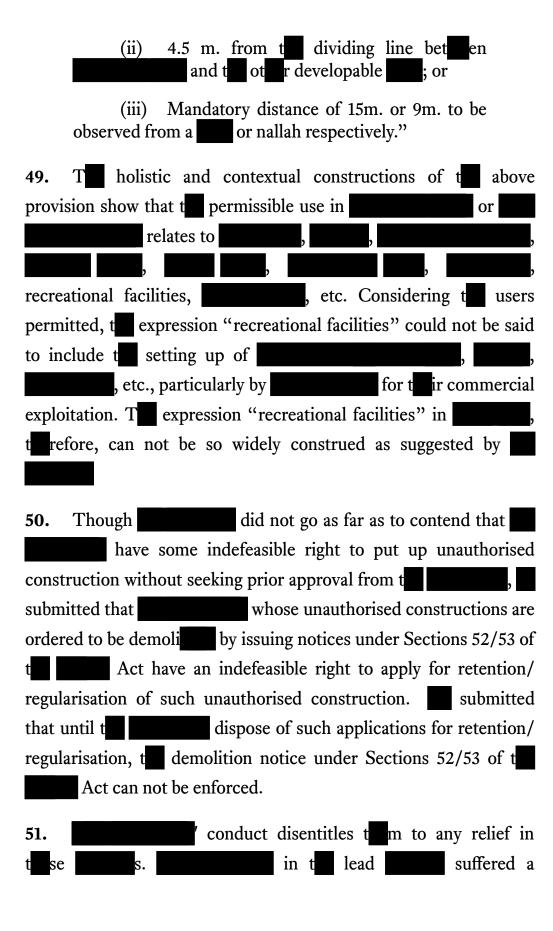


.1 Following uses s be permissible

i)

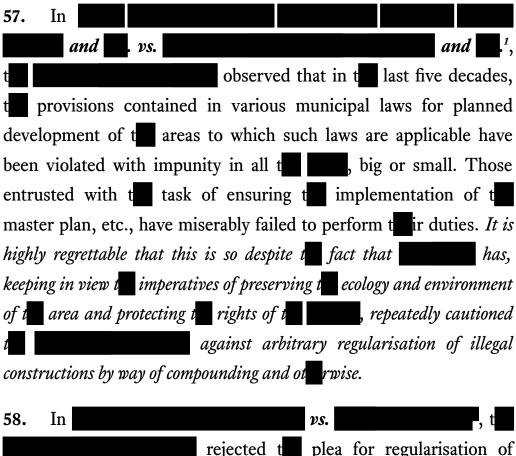
ii) , , and etc.

iii) from development by or any institution authorised on behalf of
iv) Development of , Boat clubs etc.
v) club houses, recreational facilities after leaving 15 m. belt along and 9m. from subject to other provisions in these regulations.
vi) as per requirement.
vii) of any layout/sub-division/ development proposals, if submitted along with to developable land adjoining such after leaving marginal distances fo minimum 15m. and 9m. from and present and present to (1) restrictions mentioned in Regulation No. 3.1.3.
a) To uses and to ir extent s be permissible in such to permissible
b) If the land under sexcepting open space therein, if any, is required by for the public purposes mentioned above, the sexcepting open space therein, if any, is required by sexcepting open space the sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space the sexcepting open space therein, if any, is required by sexcepting open space therein, if any, is required by sexcepting open space therein, if any is required by sexcepting open space therein, if any is required by sexcepting open space the sexcepting ope
c) T side/ rear marginal distances for a proposed building in a land adjoining a be t maximum of:-
(i) Side/ rear marginal distance, to be measure from , as required according to light of building or



demolition in pursuance of tem impugned demolition notice. Still, by claiming to have obtained interim relief won, in fact, none was took to law into his own hands and granted, this . Such a brazenly illegal structure reconstructed t cannot be regularised. Besides, for the above reasons, such a structure is not even regularisable, given to provisions of Furt rmore, this is a case were have not even applied for regularisation or retention before the impugned notice d was executed. have not even applied for regularisation or retention at any time T difficulty about lack of clarity concerning t permissible does not appear to be any bonafide difficulty. Such difficulty did not prevent from brazenly constructing and even reconstructing t refore, based in t upon this so-called projected difficulty, no indulgence whatsoever can be shown to and other similarly circumstanced reliefs in terms of prayer clauses (D) and (E) of 53. are also entirely misconceived in the facts and circumstances of tempresent case. No declaration, as sought in prayer clause (D), can at all be issued in the gross facts and circumstances of to present case. T had issued a proper notice under Sections 52/53 of the Act, and relief in terms of prayer clause (D) proceeds on the premise that such notice was improper. As noted earlier, no submissions are made regarding t

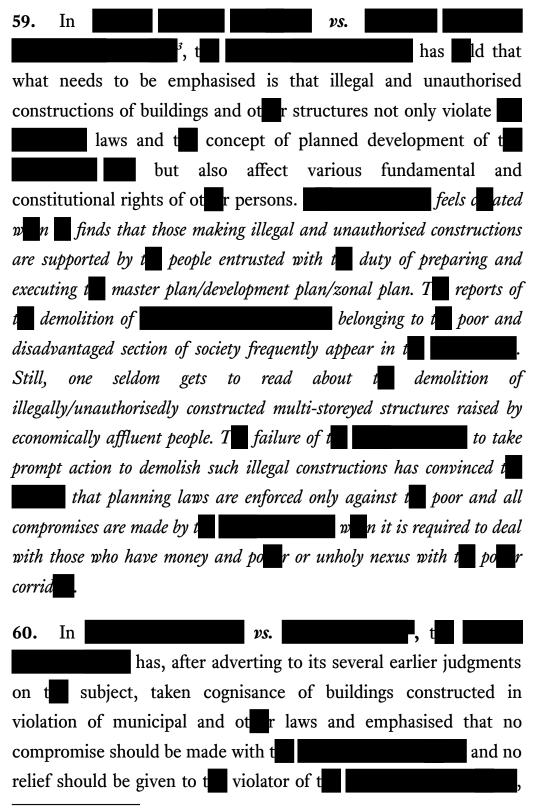
alleged invalidity of the impugned notices. The main thrust of the oral and written submissions was to entitlement to apply for regularisation, however illegal to constructions built by might be. Even to alternate relief in terms of to prayer clause (E) is 54. quite misconceived. There is no question of the directing t or declaring that until such amendment to amendment is made, to same provisions of to 1987 would continue to apply. In the facts of the present case, such an issue does who succeeded in obtaining some not even arise. interim relief raise such contentions only to prolong the aring of matters. For these reasons, the relief in terms of prayer clauses (D) 55. and (E) is reby rejected. Even of rwise, to law concerning to regularisation of **56.** illegal construction is fairly all settled. T benefit of regularisation is never to be extended to the parties who violate t building regulations or environmental regulations brazenly and with has repeatedly warned impunity. against such regularisations and even directed action against officials who regularised such constructions without adequate cause. has all that such indiscriminate regularisation discriminates against to law-abiding who refuse to pay bribes and follow due, though long, process of securing permission from all prescribed before putting up any construction. A review of some of the precedents on this issue would emphasise this point.



rejected to plea for regularisation of construction made in violation of to provisions of to planning and municipal legislation by observing that no administering municipal laws and other laws like to Act involved in to matter, can encourage such violations. Even of the rwise, compounding is not to be done with no violations are deliberate, designed, reckless, or motivated. Marginal or insignificant accidental violations unconsciously made after trying to comply with all to law requirements can alone qualify for regularisation, which is not to rule but a rare exception.

357

² (597



³ (336

⁴ (2009) 1 705

etc. on the ground that has spent a substantial amount on t construction of the buildings. T remarked that, unfortunately, despite repeated judgments of t , illegal constructions continue to mushroom, and and pleas are made for regularisation on to grounds of compassion and hardship. The refore, t has observed that it is high time that t take a serious view of the menace of illegal and unauthorised constructions. 61. In vs. ld that structural and lot has area regulations authorise to regulate and restrict to light, to number of storeys and other structures, t percentage of a plot that may be occupied; the size of ; t density of population; and t location and use of buildings and structures. All these have and do achieve the larger , safety or general lifare. So are front purpose of setback provisions, average alignments, and structural alterations. Any violation of zoning and regulation laws takes a toll in terms of public I fare and convenience being sacrificed apart from to risk, inconvenience, and hardship posed to the occupants of the building. furter observed that municipal laws permit deviations from sanctioned constructions being regularised by compounding, but that is by exception. Unfortunately, with to lapse of time and frequent exercise of the discretionary pour conferred by such exception, t exception has become t Rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as were to benefit gained by

⁵ (2004) 8 733

demolition would be far less than to disadvantage suffered. Other than to se, deliberate deviations do not deserve to be condoned and compounded. To refore, compounding of deviations ought to be kept at a bare minimum.

62. Relying on to above decisions, to see the condoned and bare minimum.

7. The proof of the condoned and compounded. The proof of the condoned and compounded and com

' ard learned counsel for

violation of municipal regulations on construction must be met with an iron fist. That deviation from the regularisation by compounding is only an exception. Only deviations that are bonafide or when the benefit of demolition would be less compared to the disadvantage suffered, can the exception be applied. In do not find any ground to interfere. The demolition was ordered in the year least this day, the same is being prolonged. Ince, and decline to interfere with the judgment and order of the least stands dismissed."

63. Very recently, in

vs.

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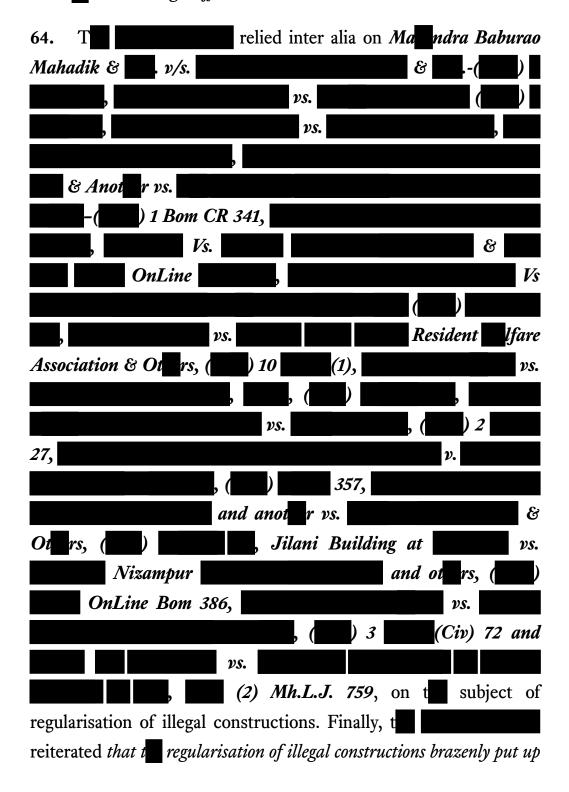
it was

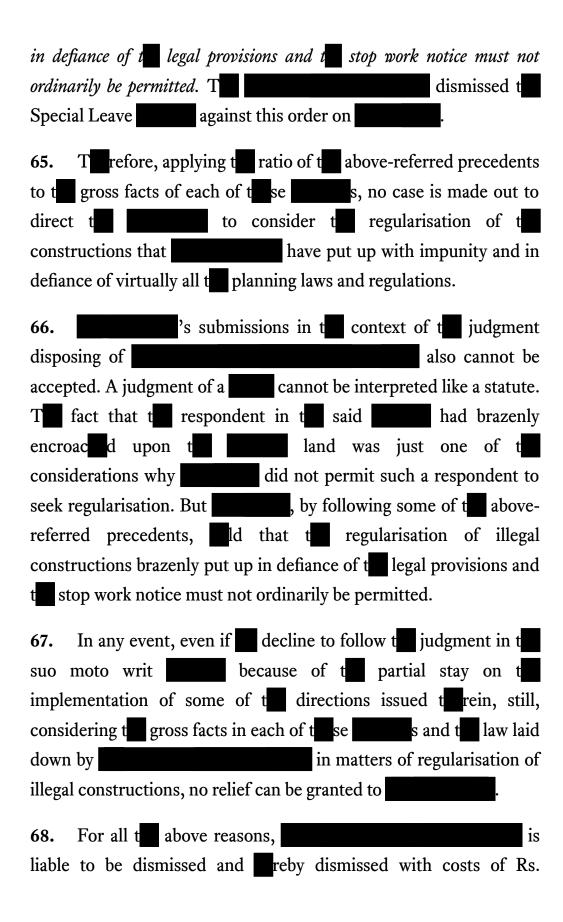
ld that no indulgence must be shown to unlawful constructions that are brazenly put up. Only such deviations deserve to be condoned as

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⁷ Writ (L) No.2 98 of

are bonafide or are attributable to some misunderstanding or are such deviations as were to benefit gained by demolition would be far less than to disadvantage suffered.





50,000/- payable by to t within four eks. T se costs are imposed because with impunity, reconstructed temoli without obtaining any permissions from any and by claiming to have obtained n, in fact, no such interim relief interim relief from was ever granted. So far as in 69. is concerned, has put up a to undertake to industrial activity of glass work, . None of t and users could even be remotely styled as permissible users under quoted above. Therefore, there is no infirmity whatsoever with the impugned action of the last in ordering the demolition of said . Given t discussion for dismissing t lead is also liable to be dismissed with costs quantified at Rs.25,000/- payable by within four eks. Interim relief, if any, is vacated. In so far as is concerned, 70. /toilet rein has put up a only protects 's return s that on t earlier occasion, a smaller structure put up by was demoli pursuant to to notice has suppressed this fact. had reconstructed a similar structure and by t impugned notice, to same was ordered to be demoli repeated unauthorised construction disentitles this to any relief. Even on merits, no relief is due to this is accordingly dismissed with costs

