

Dalpatsingh Hansraj Rajpurohit vs Vadodara Municipal Corporation on 7 October, 2021

Author: Ashutosh J. Shastri

Bench: Ashutosh J. Shastri

C/SCA/6499/2020

JUDGMENT DATED: 07/10/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6499 of 2020

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 ? | No |
| 2 | To be referred to the Reporter or not ? | No |
| 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 |
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DALPATSINGH HANSRAJ RAJPUROHIT

Versus

VADODARA MUNICIPAL CORPORATION

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Appearance:

MR PR THAKKAR(899) for the Petitioner(s) No. 1,2

MR.J P THAKKAR(7116) for the Petitioner(s) No. 1,2

MR. MAULIK NANAVALI, ADVOCATE FOR NANAVALI & CO.(7105) for the Respondent(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3,4

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 07/10/2021

ORAL JUDGMENT

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

C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 "15. a) Your Lordship may be pleased to allow and admit this petition and be pleased to issue a writ of mandamus or a writ of certiorari or any other appropriate writ or an order or a direction, quashing and setting aside the impugned order of sealing the premises of the petitioners dated 17.02.2020 issued by respondent no. 3 authority Annexure - A and your Lordship may be pleased to direct the respondent Authority to open the seal installed at 1st floor of the petitioners premises and allow the petitioner to do the business of restaurant in the said premises.

b) Your Lordship may be pleased to pass an appropriate order or a direction, quashing and setting aside the notice dated 29.01.2020 Dy. Town Development Officer.

c) Pending the final hearing and disposal of this petition, Your Lordship may be pleased to stay the further operation of impugned order / notice dated 07.02.2020 of Respondent Town Development Officer (Annexure A) and be pleased to restrain the respondents from causing any hurdle from entering into the premises in question and from doing the restaurant business in the said premises.

d) Cost of this petition be awarded.

e) Any other just and proper relief be granted in favour of the petitioners, by considering the facts and circumstances of the case, as your Lordship may deem fit in the interest of justice and equity and conscience."

2. The background of the facts which has given rise to the present proceedings is that the petitioners are the occupiers of building / premises situated in Vadodara in Raopura area of city precisely in Mama's Pole bearing C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 Tika No. 21/1, City Survey No. 74 having area admeasuring 170.57 sq. mtrs. (plot area 1827 sq. fts.). The said property is a three storied building comprising of ground, first and second floor, and the petitioners are holding possession thereof since 2009 initially as a permissive user, and thereafter have purchased the property in question by registered sale document dated 23.02.2017. It is the case of the petitioners that the petitioners are holding thereafter the premises as the owners and was being used for non-residential purpose - commercial purpose and the respondent Corporation used to assess and have levy of commercial tax from the petitioners.

3. The petitioners are since in catering business, the ground floor of the premises was used for office work, whereas first and second floor were being used for ancillary purpose of catering business. After purchase of the said premises in February, 2017, the petitioners have chosen to renovate the

building by executing colouring work, gate work, repairing of flooring etc. and while doing so, the original old structure of the premises is kept intact. According to the petitioners, there is no alteration either in the basic structure or in the shape of the premises by carrying out such work. At the first floor, the petitioners have undertaken renovation of running a restaurant in the name of "Desi Rotlo (Kathiyawadi Restaurant)". According to the petitioners, the legal requirements related to run a restaurant are C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 being complied with. The petitioners have applied before the respondent Corporation for license under Gumasta Dhara. The Corporation after physical inspection of the premises, issued the said license on 02.01.2020 for a period of three years renewable on 1st January on expiration of the said period of three years. An application was also submitted for license from Food and Drugs Control Administration Department of the State of Gujarat as required under the Food Safety and Standards Act, 2006. The competent authority, upon such scrutiny, was also pleased to grant such license on 15.02.2020 for a initial period of five years. The related license fee charged by Vadodara Municipal Corporation has also been paid which fact is not in dispute according to the petitioners.

4. The petitioners have further asserted that there being the business of catering in the name of Hansraj Caterers, for which the license have been obtained from the competent authority. The said business being a key business for the maintenance and livelihood for not only the family members of the petitioners but all family members of the employees who are connected with it. According to the petitioners, in this very area there is one Jain Temple having City Survey No. 169 in this Mama's pole and in the northern side there is Upashraya of the temple situated having City Survey No. 76 in the very same pole. The description is given about the topography of the Mama's pole in para 3.6 of the C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 petition, and then the petitioners have submitted that practically the whole area is being utilized for the purpose of commercial use. On account of running of this catering business, neither there is any traffic hindrance is created nor any inconvenience of the locality nor any hazardous activity is going on which may warrant anybody to object to this business. But somehow, at the instance of the trustees of this Jain Temple, an action sought to be initiated by the respondent Corporation and according to the petitioners, the trustees of the Jain Temple have requested the petitioners to sell their property as mentioned above by closing down the business and one of the trustees happened to be the close relative of the Mayor of the Vadodara City who is also from the same community. It is on account of such refusal to accede to the request to sell, the Corporation appears to have issued notices at the instance of such temple persons.

5. In this context, for the first time, the notice came to be issued by the respondent Corporation on 29.6.2018- 19 indicating that the petitioners are carrying out such construction activity without permission, and thereby threatened to initiate action under section 260 of Gujarat Provincial Municipal Corporation Act, for removal of such construction. The petitioners have replied to the said notice on 04.07.2018 and categorically explained that they are not doing any illegal activity, there are merely undertaking a renovation work and further have also C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 explained that it is on account of trustees of Jain Temple, upon whose application, the action is sought to be initiated, hence, requested to recall the notice.

6. According to the petitioners, instead of considering the explanation and reply of the petitioners in the right spirit, the respondent Corporation at the behest of the said trustees of Jain Temple, have submitted objection before the Madhya Gujarat Vij Company Ltd. and requested the Electricity Authority not to give the commercial electricity connection to the petitioners. In turn, the Madhya Gujarat Vij Company Ltd. has wrote a letter to the Corporation on 02.02.2019 indicating that if law permits, the same will be provided and then a further objection was also raised with a view to not only for embarrassing the petitioners but to apply pressure tactics so that business of the petitioners may not be undertaken at this place. According to the petitioners, approx. 50% of premises of this Mama's pole are being used as on date for commercial purpose and for the non- residential purpose including the premises which are used for Jain Temple as well. To this effect, the petitioners have also filed an application before the Town Planning Authority i.e. respondent herein on 30.01.2019 pointing out to take appropriate steps including lodging a complaint before the District Collector, Vadodara, since the petitioners only were to be dealt with on account of such pressure from the Jain Temple. The petitioners have also submitted a detailed representations on C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 03.07.2019, 29.07.2019 so as to see that appropriate action may be initiated. So much so, that upon such process being carried out, the Collector of Vadodara also wrote a letter on 10.04.2019 to the Deputy Municipal Commissioner for resolving the complaint lodged by the petitioners. Lateron, the Town Development Officer of the respondent Corporation wrote a letter to the petitioners on 13.08.2019 expressing his inability to take appropriate action against other commercial users of the residential premises situated in the very same pole like the action being taken against the petitioners. So in substance pleaded in the petition is that, practically in the entire Mama's pole, more than 50% area is utilized for the commercial purpose and the petitioners are being threatened for taking action at the behest of the trustees of the Jain Temple, even an information have also been sought by the petitioners under the provisions of Right to Information Act, in which it has been found that there are as many as 45 persons holding the premises in Mama's pole are using the same for commercial purpose, 34 persons are actually using for which the Corporation is not taking such kind of steps as being taken against the petitioners and lateron despite aforesaid situation, a further notice has been issued to the petitioner No. 1 on 29.01.2020 threatening the petitioners that premises of the petitioners would be sealed without issuance of any further notice. The whole exercise according to the petitioners is at the instance, behest and pressure of the trustees of the Jain Temple. This very construction as a C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 matter of fact is in existence over the period of more than 50 years, even the Predecessors of the petitioners were also using this premises for a period of about 50 years by now, and alteration and the construction which has been made is not violative of any of the building bye- laws. Hence, by all these prejudicing circumstances and difficulties which are faced by the petitioners on account which, the petitioners have approached this Court by invoking extraordinary jurisdiction of this Court.

7. It appears that the notices have been issued by virtue of the order dated 16.03.2020 and while issuing the notice, the Coordinate Bench of this Court has taken a note that the impugned order is completely based on illegal construction, for which no notice had been issued, and as such by recording such observation, the respondent authorities have been called to explain. The order dated 16.03.2020 reads as under : -

"NOTICE returnable on 30-03-2020.

Learned Advocate for the petitioners submitted that action is in breach of provision of Gujarat Provincial Municipal Corporation Act in as much as Notice of 29-01-2020 purportedly under Section-268 was on the ground of property being used for commercial purpose in place of residential use. However, the impugned order of 07-02-2020 is based on completely different ground of illegal construction for which no notice as on date has been issued by the respondents.

Direct service is permitted."

8. lateron after completion of pleadings with the C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 aforesaid background, the petition has come up for consideration before this Court and the detailed hearing has taken place on 22.09.2021 and lateron the matter is kept for orders. Since no other submissions were to be made by the respective advocates representing the relevant parties.

9. Learned advocate Mr. P.R. Thakkar appearing on behalf of the petitioners as vehemently contended that that the powers are sought to be exercised, are not independent in nature but at the behest and pressure of trustees of Jain Temple, who happened to be influential persons in the city of Vadodara. The action started only after the negative reply given by the petitioners to the Jain Temple's Administrators indicating not to sell the property to them and then at their behest and request, the Corporation has now started taking action against the petitioners. It has been contended by the learned advocate Mr. Thakkar that powers are sought to be exercised independently and with proper application of mind, and then same cannot be exercised under dictation or pressure. It appears that the statutory powers which are sought to be exercised and concluded against the petitioners, are not independent in nature, as a result of this, the entire exercise gets vitiated.

10. Mr. Thakkar has further submitted that the premises of the petitioners is within the Mama's Pole in which more than 50% residential units are being used for C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 commercial purpose, and on the contrary on account of this Upashray and Jain Temple, several people are put to inconvenience, and as such when such is the situation, it is surprising for the petitioners as to why action is sought to be initiated against the petitioners only and not against those persons who are carrying out such activity. It has been submitted that under the provisions of Right to Information Act, it has been revealed that several persons have even been issued notice long back, and the action having been concluded, they are freely undertaking their activities. Since the petitioners are in confrontation with the Jain Temple Administrator or trustees, this action is an example of hostile discrimination which violates the Articles 14 of the Constitution of India. It has been further contended that as noticed by the Coordinate Bench of this Court that the notice dated 07.02.2020 is based upon completely on a different ground of illegal construction and for that no notice was given. However, be that as it may, the renovation work being undertaken by the petitioners is certainly not falling within the requirement of getting prior permission.

11. On the contrary, under the provisions of Town Planning Act, the Regulations which have been framed, which are called Draft General Development Control Regulations of the Development Plan reflecting on page 143 of the petition compilation and Statute attached to the said Regulation indicates that no development C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 permission shall be required for undertaking alteration and minor works in all buildings and this regulations in which Schedule is consisting 16 items, for which no permission is required and it is the case of the petitioners that none of the work which has been carried out of renovation, which would require any permission and by referring to Clause 1, 4, 7, 11, 12, 15 and 16, the contention is raised that the action is impermissible against the petitioners. As a result of this, the impugned action in the form of notice requires to be quashed and set aside.

12. To strengthen his submission, in addition to the contention of this Regulation, even photographs are also attached to this petition compilation and thereby Mr. Thakkar has contended that none of work which has been undertaken so far, are required the permission.

13. Additionally, Mr. Thakkar has drawn attention of the Court to the yet another document attached at page 99/1, whereby there are several premises and the firms, which have been served with the notice to stop the commercial use and by referring to this list, a special attention is made to item No. 34 which is consisting of Jain Temple in Mama's Pole. So if at the instance of Jain Temple, the Corporation is out to take an action only against the petitioners and not concluding the steps against those who have been served such kind of notice, a feeling of arbitrariness, nepotism and favouritism is C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 reflecting apparently. Hence, there is hardly any justification by the Corporation to initiate action against the petitioners. Mr. Thakkar has further submitted that under the scheme of GPMC Act, Section 268 and the related provisions, this action is beyond the scope of the authorities. Hence, this being in nullity, the reliefs as prayed for, deserve to be granted and if the action is sought to be initiated, is allowed to be implemented, there will be serious irreparable and irreversible situation created not only financially but the livelihood is also would be at stake. Since several persons are connected with the business and will be into precarious position at the instance of some interested persons only so as to see that the property can be sold. As a result of this, on overall consideration, according to Mr. Thakkar, it reflects clear arbitrariness for which judicial interference is required to be made. By referring some of the provisions of the Schedule, it has been contended that the issuance of the impugned communication is beyond the scope of authority. Considering the aforesaid overall circumstances, the request is made to grant reliefs as prayed for in the petition. No other submissions are made.

14. As against this, the learned advocate Mr. Maulik Nanavaty appearing on behalf of the respondent No. 2 - Vadodara Municipal Commissioner has contended that the action initiated against the petitioner is thoroughly justified as undisputedly the premises in which C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 commercial activity is to be undertaken is a residential unit. It may be that some of the buildings in the Mama's Pole, might be utilized for such purpose but for that, a separate action is already initiated against several but that would not give license to the petitioners to carry out any commercial activity in the residential area. Learned Advocate Mr. Nanavati submitted that it is not a simplicitor work of a renovation of old structure, a substantive alteration work has been undertaken covering certain area with the roof, covering certain area about

the open space, and than time and again a intimation was given by the Corporation not to carry out, but it appears that since others have undertaken such work, the petitioners have continued to do the same. According to Mr. Nanavati, no such negative equality can be sought and thereto from the equitable jurisdiction of this Court.

15. Learned advocate Mr. Nanavati submitted that the action is initiated by the authority is with specific authority of law and the powers invested and to substantiate that Mr. Nanavaty has kept ready and produced for perusal the original file from which it has been indicated that right from beginning, circumstances were put to the Commissioner, this issue related to the petitioners is deliberated and the permission having been granted from the Commissioner, the action was put to motion. It is not that the impugned communication is without the authority of law. Hence, no case is made out C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 by the petitioners to call for any interference. Mr. Nanavaty has further submitted that time and again notices have been given but with deliberate intent, by taking shelter of the objector's application, the case is tried to be put up as if the entire exercise at the behest of dictum of Jain Temple community, infact it is not so, by running a restaurant in the pole, lot of traffic congestion, lot of problems are being created and from the photographs itself it is quite clear that to what extent, the alteration work has been undertaken. This is not a simplicitor alteration which may not require any permission. So as per the Schedule also, this is not a case in which no permission at all is required. As a result of this, there is no case of any discrimination nor any undue pressure upon which powers are sought to be exercised, hence, since the construction itself is without the permission, not within the peripheral norms of Regulation, hence the action is taken by the Corporation.

16. There is hardly any case made out to call for any interference. According to Mr. Nanavati, time and again even Hon'ble Apex Court has also propounded to discourage unauthorized and illegal construction activity for multiple reasons, and this is a fit case in which when the action is taken, the same cannot be branded as arbitrary in any nature. Simply because the tax is calculated of a commercial nature, the same would not permit the petitioners to contend that the respondent Corporation is to ignore any irregularity. There is no pick C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 and choose policy, there is no discrimination, there is no arbitrariness, which would warrant this Court to exercise extraordinary jurisdiction. Here is the case in which though the Corporation had intimated to approach the authority, by explaining the circumstances by placing every material before it and even during the course of hearing of this petition also, the same was pointed out but the petitioners have chosen to see that since others have carried out such kind of use in the residential area, the petitioners also may be allowed. This is in no way would help the petitioners for seeking equitable jurisdiction. The chronology of events and the documents which are attached to the petition compilation would clearly indicate that the petitioners' construction is not worthy to be encouraged, no reliefs be granted in favour of the petitioners.

17. Learned advocate Mr. Nanavati has pointed out from the affidavit-in-reply that building is not having any fire safety certificate to run a restaurant, has also not obtained any certificate from the Health Department, the Corporation cannot allow the petitioner to play with the life of persons in absence of such kind of basic essential requirements. As a result of this, there is hardly any circumstance which may permit the petitioners to invoke extraordinary jurisdiction.

18. Having heard the learned advocates for the respective parties and having gone through the material C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 on record, following circumstances are not possible to be unnoticed, which the Court would like to quote hereunder:-

19. From the record of the petition, it appears that the respondent Corporation in exercise of power under section 268 of the G.P.M.C. Act, has indicated to the petitioners that House No. 25 situated at Ward No. 8 in Mama's Pole, upon which unauthorized construction is undertaken and the same is so far not removed and notice to that was issued on 29.01.2020. Hence, so long as notice is not withdrawn by the Corporation, no person be allowed to enter into the said premises, failing which steps will be taken under section 268(5) of the Act.

20. Perusal of the sale document attached to the petition compilation is a document by which the erstwhile owner had sold the premises and the said document also indicates that what has been transacted, is a residential unit. Schedule attached in the said sale document reflecting on page 49 has indicated such fact. Few documents related to registration under the provisions of Shop and Establishment Act as well as property tax bills have also been attached to indicate about the fact of payment. But those are related to the assessment and not exactly concerning about the use and the unauthorized structure being undertaken by the petitioners which is objected by the Corporation. So much reference is not noted on such, however, page 77 C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 of the petition compilation is a notice issued calling upon the petitioners to submit relevant documents regarding property card, city survey map, sanad, raja-chitthi, approved map etc. and if the said material will not be produced within seven days, steps will be contemplated under section 260(1), 260(2) of the Act for removal of such. This notice is dated 29.06.2018-19. Based upon such notice having been received, the very petitioners on page 79 has written a letter on 03.07.2018 indicating that no unauthorized construction is being undertaken and the renovation work is not disturbing anybody in the area and has assured the Corporation that without expressed permission, no unauthorized or illegal construction will be undertaken. In this letter, it has been indicated that Jain Temple persons are insisting to sell away the property to them at a throwaway price and as such on account of this fact only, the trustees have submitted an application against the petitioners.

21. The record further indicates that on page 82, the Corporation has written a letter to the Electricity Company on 31.07.2018 indicating that the premises No. 25 belonging to the petitioners are inclined to use the said residential unit for commercial purpose for running restaurant or hotel. The said renovation work is objected by a communication which is written by the Corporation and as such, a request was made that if a request is made for giving commercial connection, the same may not be issued. However, the Electricity Company namely C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 Madhya Gujarat Vij Company Ltd. has indicated that the said request is not possible to be acceded and as such by way of a communication dated 02.02.2019 at page 83, the Electricity Company has indicted to the Deputy Town Development Officer. It is further visible from the papers that some online complaint in Jilla Lok Fariyad appears to have been submitted by the petitioners on 08.04.2019 indicating that the petitioners have been sent from pillar to post and their request is so far not finalized. In the said further letter dated 29.07.2019, the names of the officers have also been mentioned, however on 13.08.2019 on page 92, the respondent Corporation through

its officer i.e. Town Development Officer has indicated to supply some particulars and clarify and has indicated to stop commercial use of the premises since the religious place of Jain Temple and Upashray is situated and there is likelihood serious repercussion. The said similar communication is sent to the State authorities in Urban Development and Urban Housing Department, Government of Gujarat by the Corporation on 13.09.2019. According to the petitioners, since several residential units in the Mama's pole being used for commercial purpose, the Corporation has given some 40-45 notices. Under the provisions of Right to Information Act, the particulars related to such notices came to be demanded and in reference to this request, dated 03.02.2020, it appears that list has been provided indicating the names and particulars related to it some 34 in numbers. Again the petitioners were informed vide C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 the communication dated 04.09.2019. In the meantime, that action will be initiated if the relevant documents will not be provided within seven days. But then ultimately, it appears that on 29.01.2020, on page 100 of the petition compilation, it has been further indicated that despite notices having been given as per the Rules, till date, no sanction map is provided nor any raja-chitthi is provided. Hence, indicated that seals would be applied to the property in question and it is undisputedly stated that the premises have been sealed by taking action under the provisions of Gujarat Provincial Municipal Corporation Act.

22. It is in this background, the present petitioners have invoked extraordinary jurisdiction since the premises are sealed and are not under use. As a result of this, the petitioners appears to have made the representation on 30.01.2020 to consider the request and also to recall the notice, failing which appropriate steps will be taken. The said communication is reflecting on 30.01.2020 on page 111 of the petition compilation, and thereafter, the petition appears to have been presented in March, 2020 on which notices have been issued by virtue of order dated 16.03.2020.

23. From the overall submissions, it appears that the substantial contention is that the area known as Mama's Pole, there are several houses being utilized for commercial purpose and only the petitioners are signaled C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 out and though the work which has been undertaken of renovation, is not requiring any permission, the respondent authority has arbitrarily exercised the discretion.

24. Now in light of the aforesaid stand taken by the petitioners and in view of aforesaid background, the Corporation has come out with a stand by submitting affidavit-in-reply. Few assertions contained therein, are relevant. The respondent No. 1 has submitted an affidavit on page 117 onwards and has disputed the versions which has been projected by the learned advocate for the petitioners. Some facts are stated in para 4 of the affidavit-in-reply which reads as under : -

(i) Petitioner purchased land bearing Survey No. 74, Tika NO. 21/1 admeasuring 170 square meters and constructions admeasuring 105 square meters standing thereon by a registered sale deed dated 23.02.2017 (Annexure - B - page

43).

(ii) The building was used as a residential building by its previous owner, and as mentioned in the sale deed was about 85 years old and in a dilapidated condition at the time of purchase by petitioner in the year 2017,

(iii) Petitioner, from the very beginning, intended to make non-residential use of the said building.

(iv) Petitioner started doing office work relating to its catering business from the ground floor of the building and used the first and second floor for ancillary purpose to the catering business.

(v) Petitioner commenced construction work so as to make changes in the building to run a C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 restaurant in the name of "Desi Rotlo".

25. By highlighting aforesaid facts, an assertion is made that by virtue of section 253 of G.P.M.C. Act, a prior permission deserves to be taken even for roof or to cover an open space between walls or buildings and as such seriously it has been disputed that alteration which is said to have been carried out would not fall within exception as pleaded. Every repair, removal of wall or reconstruction or addition to any portion of building abutting on a street, requires prior permission, and here according to the petitioners, no such permission is sought for. Para 7 of the affidavit-in-reply has indicated that the work which has been carried out, cannot be said to be a simple renovation work and as such activities undertaken by the petitioners are such which requires permission from the Corporation. In addition thereto, it has been clearly asserted that the sealing of the premises has been decided by the Municipal Commissioner and only communication thereto is sent to the petitioners through Town Development Officer and it is not the solitary decision of the Town Development Officer, it is the decision of Corporation for which the xerox copy of notings on the file is produced, and as such has refuted the contention about the lack of authority. In para 16 of the affidavit-in-reply, the stand is taken that against some 35 persons of nearby vicinity, the notices have been issued and the Corporation assures to act against them in accordance with law, and as such no negative equality be canvassed by the petitioners. Para 16 reads C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 as under : -

"16. I submit that allegation of invidious discrimination, inasmuch as he is being singled out by the Corporation for strict action of carrying out construction without obtaining prior permission or making commercial use of the building, because of extraneous reasons is not true. The petitioner is not being discriminated by the Corporation. It is true that occupants of other buildings in the street have also been making commercial use of their residential building. It is not denied that some occupants of residential buildings have without permission of the Corporation converted their houses into shops, warehouse or godown. I say that the Corporation has initiated action against them in as much notices have been issued by the Corporation to about 35 such persons. The Corporation assures to act against them in accordance with law. Having said that, it is not open for the petitioner to contend that

no action should be taken against him, especially for violation of making construction without obtaining prior development permission, till such time action is taken against all the other offending persons by the Corporation. It is settled position of law that Article 14 does not envisage negative equality, inasmuch as it is not open for a party to resist lawful action by the Municipal authority merely because the Municipal authority has failed to take similar action against another similarly situated person. I submit that merely because in some cases, the norms may not have been followed that cannot be a ground to hold that departure from norms should be continued."

26. Yet the affidavit on oath which is reflecting further is that irrespective of aforesaid circumstances admittedly the petitioner does not have even fire safety certificate for running a restaurant and nor the certificate from the Health Department is obtained by the petitioners. The petitioners does not possess any permission from city C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 police as required, and unless and until such permission is made available, the request of the petitioners cannot be considered and hence submitted that no equitable relief can also be provided. Para 18 of the affidavit-in- reply reads as under : -

"18. The prayer of the petitioner for issuance of a direction to the Municipal Corporation "to open the seal installed at 1st floor of the petitioner's premises and allow the petitioner to do the business of restaurant in the said premises" is not tenable in law. One aspect is compliance with the building regulations which is absent in the facts of the present case, and other is obtaining and possessing necessary certificates and clearances from all the relevant statutory authorities for running a food place. Admittedly, petitioner does not have fire safety certificate for running a restaurant. Similarly the petitioner has not obtained certificate from the Health Department. Also, the petitioner does not possess permission from the city police, as is required in law. I submit that in absence of regularization of the construction and obtainment of these statutorily required clearances and approval no permission can be granted to the petitioner to start running a restaurant from the premises."

27. It further appears from the records that despite above situation prevailing on record, the respondent Corporation has taken a stand that it is open for the petitioners to make an application for having construction made at the site, examined by the Corporation and offered to bring the same in conformity with the General Development Control Regulation on payment of prescribed penalty and an assurance is given that as C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 soon as such application is received, the Corporation shall consider the same and take appropriate decision in accordance with law. This assertion is reflecting on page 19 of the said affidavit-in-reply. In the background of aforesaid factual matrix, few things are emerging which cannot be unnoticed by the Court, one - that there is no fire safety certificate, there is no permission from the Health Department of Corporation, the Court would not like to permit such significant things to be overlooked and direct the Corporation to consider the case. This fire safety issue is of prime consideration in addition to health permission as well and so long as said requirements are not satisfied, the Corporation is justified in not considering the case of the petitioners. Further,

undisputedly the premises in question is residential in nature, the same cannot be utilized for commercial purpose unless change of use is permitted by the competent authority. When this be the situation, the Court is not inclined to exercise equitable jurisdiction, more particularly when the Corporation has assured on oath that actions will be initiated against all those other persons to whom the notices have been given by taking the steps in accordance with law. It is further settled position of law that no negative equality can be claimed by a person and as such it may be that at the behest of objector who are some of the trustees of Jain Temple, the steps have been contemplated but then law requires the Corporation to initiate appropriate steps either on there own or upon the intimation, and as such, principle C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 of bias or action under dictation, the Court is not inclined to accept the said stand.

28. If the provisions of Section 253 onwards are to be seen, any person who intends to erect a building shall give to the Commissioner notice of his intention in the prescribed format. Sub-section 3 of Section 253 has defined expression to erect a building which means "to roof or cover an open space between walls or buildings as regards the structure which is formed by roofing or covering such space, to make such structure or alteration in a building so as to affect its drainage or sanitary arrangements or its stability, to construct in a wall adjoining any street or the land not vested in the owner of the wall etc."

29. Section 254 is also dealing with a notice to be given to Commissioner of intention to make addition etc. to the building, and as such conjoint effect of this provision would clearly indicate that any alteration or renovation of such nature requires and intimation by the person who is intending. Here no such facts are visible, on the contrary, the stand is taken that since large number of persons are carrying out such kind of activity, the same be allowed to the petitioners as well, and further the photographs which are indicating the alteration or renovation work, whether it falls within the purview of permissible construction or not, are seriously disputed question of fact which this Court is not inclined to C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 examine. It is for the respondent Corporation to examine this seriously disputed version about the nature of construction, about the permissible limits of a construction, whether the renovation has fallen within the exception purview or not are the question to be determined and examined by the competent authority and for that purpose, this Court is not inclined to exercise extraordinary equitable jurisdiction, however, it would be open for the petitioners to make request to the Corporation to get it examined and then request for permission, if so require.

30. Yet another reason which the Court is not inclined to exercise extraordinary jurisdiction is that undisputedly the petitioners are intending to start a restaurant in a residential area having no health permission, having no fire safety and such a serious issues are not to be taken so lightly. So unless and until such permissions are obtained by the petitioners, the request as prayed for cannot be acceded to. This on the contrary is much significant looking to the past fire incidences happening in recent time, and as such, no case is made out to call for any interference.

31. Further the particulars which have been demanded time and again appears to have not been made available by the petitioners but reiterated the request in the form of representation which in substance is indicating that others are not prevented by taking action like the C/SCA/6499/2020

JUDGMENT DATED: 07/10/2021 petitioners but then it is vogue by now that no negative equality principle be apply in a situation like this. The Court is mindful on following decision and the observations contained therein delivered by the Apex Court in the case of State of Odisha and Another versus Anup Kumar Senapati and Another reported in (2019) 19 SCC 626, since found it appropriate, deserve to be quoted hereunder : -

"40. In Basawaraj v. Special Land Acquisition Officer, (2013) 14 SCC 81, it was held thus:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur v.

State of Punjab, (2010) 11 SCC 455.)"

41. In Chaman Lal v. State of Punjab and others, (2014) 15 SCC 715, it was observed as under :

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81 considered this issue and held as under: (SCC p. 85, para 8) "8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief

as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 be stretched too far for otherwise it would C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 make functioning of administration impossible. (Vide Chandigarh Admn. v.

Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581 and Fuljit Kaur v. State of Punjab, (2010) 11 SCC 455.).

43. In Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal and others, (2007) 11 SCC 641, this Court in the context of negative equality observed thus :

"28. This Court in Union of India v.

International Trading Co. has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

44. In Bondu Ramaswamy and others v.

Bangalore Development Authority and others , (2010) 7 SCC 129, this Court observed thus:

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of

others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

48. In *State of Orissa and another v. Mamata Mohanty*, (2011) 3 SCC 436, it was observed:

"56. It is a settled legal proposition that Article 14 not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Admn. v. Jagjit Singh*, (1995) 1 SCC 745, *Yogesh Kumar v. Govt. of NCT of Delhi*, (2003) 3 SCC 548, *Anand Buttons Ltd. v. State of Haryana*, (2005) 9 SCC 164, *K.K. Bhalla v. State of M.P.*, (2006) 3 SCC 581, *Krishan Bhatt v.*

State of J&K, (2008) 9 SCC 24, *State of Bihar v. Upendra Narayan Singh*, (2009) 5 SCC 65 and *Union of India v. Kartick Chandra Mondal*, (2010) 2 SCC 422)"

32. From the aforesaid discussion and from the background of peculiar set of circumstances and in considered opinion of this Court, no case is made out to exercise extraordinary equitable jurisdiction in nature.

33. From the peculiar background of facts and projected before this Court, there appears to be substantial compliance of relevant provisions of the Act C/SCA/6499/2020 JUDGMENT DATED: 07/10/2021 by Corporation and it also appears that the reasonable opportunity has been given and as such strictly speaking, no case is made out to call for any interference. The petition is found to be meritless. Accordingly, the same deserves to be dismissed.

34. Further, while disposing of the petition, it is provided that if the petitioners approach the authority i.e. respondent Corporation, with an application with appropriate request in continuation of their earlier pending representations, the Corporation may consider the same in accordance with law keeping in view the relevant Building Regulations and the provisions of the Act . It is also provided that if the petitioners approaches the authority within a period of two weeks from today, the authority shall consider the same in accordance with law by taking a decision upon compliance of principles of natural justice preferably within a period of four weeks upon such receipt of the request of the petitioners.

35. With above observations, the petition stands dismissed. Notice is discharged.

Sd/-

(ASHUTOSH J. SHASTRI, J) AMAR SINGH