

Advocate General Vs. State of A.P. and ors.

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Court : Andhra Pradesh

Decided On : Jan-08-2004

Reported in : 2004(1)ALD708; 2004(2)ALT460

Judge : V.V.S. Rao, J.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 228 and 378; Hyderabad Municipal Corporations Act, 1955 - Sections 451, 461, 485, 681, 669 and 685; Code of Civil Procedure (CPC) - Order 39, Rules 1 and 2; Municipalities Act - Sections 379

Appeal No. : WP Nos. 3616 and 4711 of 2000

Appellant : Advocate General

Respondent : State of A.P. and ors.

Advocate for Def. : V. Raghunat Reddy, SC for Municipal Corporation of Kurnool, ;E. Sambasiva Pratap, SC for Municipal of Rajahmundry, Ganta Rama Rao, SC for Municipal Corporation of Hyderabad, ;K. Venugopal Reddy, SC fo

Advocate for Pet/Ap. : By Paper-cutting (Hindu) in WP No. 3616 of 2000 and ;By Representation in WP No. 4711 of 2000

Disposition : Petition dismissed

Judgement :

V.V.S. Rao, J.

1. The common law jurisprudence of individual enjoyment of ownership and property has been replaced by community welfare and community wellbeing. Indeed, the common law theory of individual ownership has been unshackled by the environmental law that no one can pollute and no one can curtail the right of a co-citizen in the guise of enjoying one's property is well accepted in all world jurisdictions. These principles seem to be violated and flouted day in and day out by the ruler as well as the ruled in urban constructions. This is the signature theme of this judgment in this taken up writ petition which has been assigned to me by the successive Chief Justices notwithstanding the fact that cognizance was taken by me as 'taken up as writ petition'.

2. It was Saturday on 4.3.2000 when I received a Telephone call from My Lord the Hon'ble the then Chief Justice M.S. Liberhan asking would I mind to take up house motion. After getting nod from me to go to High Court buildings to take the case, all things moved quickly. A builder; a greedy person, who undertakes the business of constructing group housing by way of multi-storied buildings obtained status quo order from the High Court in a writ petition and completed construction (?) and the said building within a few months collapsed on 33.2000. The Municipal Corporation of Hyderabad (MCH) which was still then slumbering and in winterly hibernation moved an application for vacating interim order so that it will not hauled up for contempt of Court if they remove almost collapsed or collapsing colossal building in a busy residential area. That such thing happened was known to everybody in great city-Hyderabad, for it was in the headlines in all the newspapers. On 4.3.2000 'the Hindu' English Daily Newspaper reported a news item under the heading 'Building crash raises disturbing questions'. It is to the effect that '...the Stilts in the basement and half of the first floor of a new multi-storied apartment block in Yellareddyguda collapsed at noon on Friday and the building developed cracks on all sides, showing signs of the entire structure caving in. No one was injured as only two of the flats were occupied and luckily, even these residents were away. The building did not completely collapse. By evening, officials of the Municipal Corporation of Hyderabad) MCH decided to demolish it albeit carefully so as to prevent damage to other smaller structures around it. The

first signs of the disaster were visible when some pieces of a pillar started to fall, after a sharp cracking noise. There were some men and women working, giving the finishing touches to the complex, including installation of the elevator and laying tiles in the apartments. Small pieces of mortar fell on a girl who was playing in the basement.....The Deputy Commissioner of Police (West), Mr. R.P. Thakur was among the first of Senior Officials to arrive and take charge of the situation. Mr. Thakur said a case of rash and negligent action had been registered against the builder, Mr. Madhusudan Reddy of M/s. Sri Balaji Constructions. Commissioner, MCH, visited the place and made arrangements for the demolition of the building. The Commissioner said the inspection of the site showed that the stilt floor had sunk by about nine feet. Only four floors were visible above the ground level. It was also observed that the builder had deviated from sanctioned plan. He said the structure will be monitored for two or three days before demolishing it. No one will be permitted to meddle with the structure till the final decision was taken.'

1. In these parts of the country a special motion moved before the High Court and taken up by the Hon'ble Judge/Judges in Court at their residences either after Court hours or on holidays.

3. At a special sitting at 2.30 p.m., after disposing of the matter vacating the stay/status quo which would certainly enable the MCH to remove the collapsed building to avoid further damage to life and property, I directed to register taken up Writ Petition, and also directed as follows:

The Registrar (Judicial) to issue a public notice to all the concerned in one leading English Newspaper and one Telugu Newspaper circulated in the entire State.

I also passed an interim order to the following effect:

There shall be interim directions to all the Commissioners of Municipal Corporations of Hyderabad, Visakhapatnam, Vijayawada, Guntur, Warangal, Kurnool and Rajahmundry and Commissioners of Police and Superintendents of Police of Hyderabad, Visakhapatnam, Vijayawada, Guntur, Warangal, Kurnool and Rajahmundry to stop forthwith all the multistoried constructions/ apartment blocks

(ground + four floors) by builders undertaken as business ventures until farther orders. The Commissioners of Police shall enforce this order if necessary by taking coercive steps....There shall be interim directions to Commissioners of Municipal Corporations aforementioned to cause verification and inspection of all the multistoried structures/apartment blocks (ground + four floors and above) on constructions in their respective jurisdictions with reference to soil strength, structural design, the quality of materials used and workmanship and submit a report to this Court by 29th March, 2000.

4. As directed by this Court the Registrar issued notices to all the public authorities shown as respondents and also published notices in newspapers including members of the public interested in the matter to intervene. The notice issued by the Registrar and published in the Hindu Newspaper reads as under:

Whereas the High Court of Andhra Pradesh, Hyderabad suo motu has taken-up the writ petition for consideration in connection with the collapse of the multi-storeyed residential/commercial complexes in the cities of Hyderabad, Visakhapatnam and other Municipal Corporations in the State of A.P., and also passed an interim order until further orders stopping all further constructions of multistoreyed complexes/ Apartment Blocks (Ground + 4 floors and above)...Whereas the above Writ Petition is ordered to be posted to 13.3.2000 and all those who are interested, either Builders, Flat owners or Land owners, environmentalists etc., may appear before the Court either in person or through Counsel duly instructed, on that day.

5. After receiving notices, the respondents - Government of Andhra Pradesh, A.P. Builders Federation, A.P. Builders Association, Hyderabad, Visakhapatnam, Vijayawada, Warangal, Kurnool, Rajahmundry, Guntur and Tirupati Municipal Corporations - have entered their appearance and filed detailed counters. Some of the Associations, namely, Hyderabad Urban Development Authority and the Indian Institute of Architects, A.P. Chapter have filed implead applications and filed counter-affidavits.

6. Against the interim orders passed by me on 5.3.2000 directing to stop all further constructions in Andhra Pradesh, Writ Appeal Nos.293 and 294 of 2000 were

preferred by Builders Forum, Hyderabad and A.P. Builders' Association, Hyderabad respectively. A Division Bench of this Court while disposing of the Writ Appeals substantially approved my order and passed the following order:..Without expressing our opinion whatsoever on the order of the learned Single Judge, we are of the view that substantial justice will be done to the workers/labourers whose livelihood depends on the daily wages of the work sought by the builders if the appellant - Forum is allowed to carry on with the construction work at the risk of the builders, subject to the filing of an undertaking that in case of any defects found as spelt out by the learned Single Judge in the impugned order, or are pointed out in the report, the builders will remove the structures or the defects if possible at their own costs, until the fitness of building is appropriately approved by the authorities. We are also of the view that the respondents - authorities should take appropriate steps to comply with the orders of the learned Single Judge and submit the report on or before the date fixed by the learned Single Judge viz., 29.3.2000. We are of the further view that the learned Single Judge will be at liberty to pass appropriate orders in each case after taking into consideration the report filed by the respondents...It is made clear that there is no other modification in the order of the learned Single Judge. '

7. The State of Andhra Pradesh, first respondent herein, filed a counter-affidavit sworn to by Sri N.S. Hariharan., Principal Secretary to Government, and additional counter-affidavit sworn to by Sri A.K. Goyal, Principal Secretary to Government, Municipal Administration and Urban Development Department. In the counter-affidavit it is stated that pursuant to the interim orders passed by this Court on 4.3.2000 the Government communicated orders to all the Commissioners of Municipal Corporations of Hyderabad, Vijayawada, Visakhapatnam, Warangal, Rajahmundry, Guntur and Kurnool by Memo dated 6.3.2000 directing them to strictly implement the orders of this Court. The Municipal Corporation of Hyderabad published notification in the newspapers dated 7.3.2000 informing the general public and builders of multistoried complexes and apartments/ blocks about the orders of the Court and requested them to produce (i) soil strength (ii) structural design (iii) quality of material used and (iv) workmanship from technically qualified experts/agencies who have undertaken construction of buildings that are presently under construction in the prescribed preforma by 20.3.2000 to the Chief

City Planner, Municipal Corporation of Hyderabad. The Government also informed the Commissioners of other Municipal Corporations to issue similar press releases for verification of the buildings under construction within their corporation limits. The Commissioner of MCH has also gave a press notification on 16.3.2000 for empanelment of qualified structural engineers and geo-technical experts. The Commissioner also formed four technical expert committees to deal with the issues in pursuance of the interim orders. Proceedings dated 21.3.2000 were issued requesting committee members to verify and inspect all the buildings where the builders/owners grossly violated the sanctioned plan and especially where there is construction of additional floors and submit report to the Commissioner, MCH. The Government constituted an expert committee in G.O. Ms. No. 567, Municipal Administration, dated 12.7.1999 to go into various aspects of town planning and building byelaws and suggest necessary modifications for adoption in the State to ensure structural stability of the buildings. The expert committee constituted under the said G.O. submitted its report on 24.3.2000 and the same is being under examination of the Government. The Government will take appropriate action within a short period.

8. In the additional counter-affidavit, the Principal Secretary to Government, Municipal Administration and Urban Development Department while reiterating the various averments made in the main counter-affidavit, it is further stated that after careful examination of the report submitted by the Expert Committee (constituted vide G.O. Ms. No. 567 dated 12.7.1999), the Government issued orders in G.O. Ms. No. 541, dated 17.11.2000 fixing the responsibility on builders, architects, structural engineers and site engineers in construction of buildings above ten meters height excluding stilt portion for parking. The deponent of this affidavit also incorporated salient features of the Government Order. As per the Government Order the occupancy certificate shall have to be issued by local authority only after submission of building completion certificate by the Architect and structural stability certificate by the Structural Engineer duly certifying that the building is structurally safe. The extract of the site register containing inspection of Site Engineer, Structural Engineer, Architect and insurance policy for the completed building for a minimum period of three years. It was also stipulated that the building shall employ Site Engineer, who shall maintain a register in which the

Engineer, Architect and Structural Engineer shall record their comments at different stages, i.e., foundation level, and each slab level. In case, the builder proceeds with the construction without engaging services of the Architect, Structural Engineer, Site Engineer, the construction shall be deemed to be without permission. The Government also issued a follow up Memo dated 20.2.2000 notifying all concerned that lapse in implementing G.O. Ms. No. 541, dated 17.11.2000 would be viewed seriously.

9. The Government of Andhra Pradesh issued necessary orders vide letter dated 1.11.2000 requesting to take necessary action to bring amendments to the relevant Acts for effective implementation of guidelines in G.O. Ms. No. 541, dated 17.11.2000. The Managing Director of Hyderabad Metropolitan Water Supply and Sewerage Board (HMWSSB) was also asked to take necessary action for amendment of the relevant Acts.

10. A.P. Builders Federation, A.P. Builders Association, Hyderabad, Visakhapatnam, Vijayawada, Warangal, Kurnool, Rajahmundry, Guntur and Tirupati Municipal Corporations have stated in their counters that necessary action will be taken in accordance with Government Orders and that the local authorities should not give any scope for lapse in strictly enforcing the law.

Scope of 'Taken Up Writ Petition '

11. No specific lis exists before this Court. It must be recorded in fairness that all the learned Counsel made their submissions in dispassionate manner without sticking to adversarial stand. This Court does not intend to convert itself into inquisitorial authority or investigating agency into gross violations of law by local authorities which everybody accepts. This Court is only inclined to examine the core issues in the bawground of rare forensic comradeship to issues, with central theme 'by-gones are by by-gones, but tomorrow cannot be allowed to survive and thrive on yesterday's sinful municipal actions.'

12. During the days of deep contemplation and thought about this case, I have noticed three or four provisions in Hyderabad Municipal Corporation Act, 1955 (HMC Act) as well as A.P. Municipalities Act, 1965 (Municipalities Act) which in

this new millennium look constitutionally ugly among various others handful of beautiful provisions. Be it noted that by reason of provisions incorporating HMC Act in Vrjayawada Municipal Corporation Act, 1981, Visakhapatnam Municipal Corporation Act, 1979, and A.P.Municipal Corporations Act, 1994, HMC Act is applicable to all the Municipal Corporations in State. Hence, I only refer to HMC Act and Municipalities Act. Sections 432 and 437 of HMC Act read as under.

432. Effect of non-compliance with requisition made under Section 429 or Section 431 :--If any requisition made under Section 429 or 431 is not complied with, the notice given under Section 428 shall be deemed not to have been given.

437. When building or work may be proceeded with :--If within thirty days after receipt of any notice under Section 428 or 433 or of the plan, section, description or further information, if any, called for under Sections 429, 431, or 434 as the case may be, the Commissioner fails to intimate in writing, to the person who has given the said notice, his disapproval of the building which the said person proposes to erect or of the work which he proposes to execute, or if, within the said period the Commissioner signifies in writing to the said person, his approval of the said building or work, the said person may, at any time within one year from the date of the delivery of the notice to the Commissioner proceed with the said building or work in accordance with his intention as described in the notice or in any of the documents aforesaid, but not so as to contravene any of the provisions of this Act or any bye-law made thereunder.

13. Section 214 of the Municipalities Act reads as under:

214. Effect of delay in grant or refusal of approval or permission:--If within the period prescribed by Section 212 or Section 213, as the case may be, the Commissioner has neither given nor refused its approval of a building site, or its permission to execute any work, as the case may be, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

14. It has been brought to the notice of this Court that the above provisions have been misused, more often than not allegedly with connivance of employees of local bodies. The Building Rules under the Municipalities Act or the Building Bye-Laws under Municipal Corporations Act lay down very stringent legal regime to be followed in the matter of building constructions at pre-application stage and post-permission stage. These are to be followed by the local authority as well as the builder. The very purpose of Municipal Law is being defeated by these two provisions, which facilitate a 'deemed permission'. The applications/notices for construction are so managed in the offices that the Builders commence construction and in some cases complete construction even before the applications for permission/ notices for construction reach the designated authority. When these provisions are enacted by the Legislature, the intention was to encourage building activity to meet demand for more housing. In the changed scenario, it is for the Legislature to have a second look at these provisions for the purpose of deleting from the Statute Book. Be it noted that it is the Legislature which has to say what the law shall be and for the Court to rule what the law is. As there is no adversarial lis before this Court, they cannot be invalidated as offending Article 14 as well as Part-IXA of the Constitution, which was inserted with good intentions. Also, it is axiomatic that no Court can issue a direction to the Legislature to enact the law as willed by the Court.

Law of Building Permissions:

15. Any Municipal Administration Law or law of local authority is essentially intended to facilitate practice of principles of democracy to the grass-roots and involvement of the people in healthy and planned development of urban locality, be it a town or city. There are adequate provisions in the Municipalities Act and HMC Act to deal with this. Besides, the Rules and Bye-Laws have been framed under these Acts which deal with the procedure for obtaining building permission, the inspection to be made by the authorities, method and manner of constructing and prerequisites like soil testing, structural testing before granting permission. These Bye-Laws have been held by many Courts to be of mandatory nature. Everybody admits that if these Bye-Laws are strictly adhered to, the damage to social and economic interest of the people can be avoided. The experts are

unanimous that the authorities follow Building Rules and Bye-Laws more in breach notwithstanding the fact that these Bye-Laws are inflexible Regulations and have to be strictly adhered to.

16. In *Saddi Narasimha Reddi v. Commissioner, Municipal Corporation of Hyderabad*, 1981 (1) An.WR 166, his Lordship Justice P.A. Choudary while adverting to MCH Building Bye-Laws ruled that Building Bye-Laws of Municipalities are inflexible and inexorable laws of building the observance of which cannot be waived normally either in prospect or retrospect of by the Municipal authorities. The prohibitions contained in those building bye-laws are prohibition is against a builder and the benefit of the neighbourhood. A builder, who carries on construction in violation of building law would be infringing the rights of neighbouring house owners. His Lordship further observed as under:

The building bye-laws are intended mainly for the purpose of protecting the rights of the neighbourhood to free air and light and good health when the non-observance of these bye-laws causes detriment to the neighbourhood, Government exemption even in such cases would be clearly unconstitutional. Bye-law No. 80 empowering the Government to grant exemption in such cases would in effect to authorizing the Government to sanction invasion of these rights of the neighbourhood by suspending the operation of these building bye- laws. The result would be to statutorily authorizes an individual builder to endanger the health and happiness of the neighbourhood through an order of exemption obtained from the Government. Such a power to suspend laws enacted for preventing individual injuries, cannot constitutionally existing in our country. Under our Constitution State Power can only be used for the common good.

17. Not only the Bye-Laws are not allowed to operate by reason of deeming provision, but the powers that be indulge in granting relaxation in a routine manner. This cannot be done. Any power conferred on public authority to relax Building Rules or Bye-Laws, which is not specifically authorised by the parent statute is ultra vires. In a recent judgment dated 15.11.2002 in WP No. 14807 of 1997 and Batch (*Emerald Apartments Owners' Association v. Government of Andhra Pradesh*), Hon'ble Sri Justice B.S.A. Swamy has considered this aspect of

the matter. The Experts Committee appointed by the Government in G.O. Ms. No. 567, dated 12.7.1999 also considered this aspect of the matter and made recommendations. These need to be strictly adhered to at pre-application (for building permission) as well as post-permission stage. This is a good beginning and we can leave it at that with a hope that the letter and spirit of these guidelines would inform decisions of all authorities.

Common Law Courts - Building Law Violations

18. In the introductory remarks to this judgment, I have mentioned that the right to make constructions on one's property is no more a inviolable right. By reason of larger community right involved, no person can claim common law right of vintage years. Therefore, when a Municipal Commissioner issues a notice of demolition for violation of building norms and rules, it is doubtful whether a suit under Section 9 of Code of Civil Procedure, 1908 (CPC) is maintainable. Under Section 373 of the Municipalities Act, no suit shall be maintainable against the Government, District Collector, Revenue Divisional Officer or Chairman or Municipal Authority or any Officer in respect of anything done in good faith under the Act, the Rules or Bye-Laws. Similarly, Section 685 of HMC Act prohibits a suit against the Corporation, Commissioner or any official in respect of any act done in pursuance of execution of the provisions of the Act unless one month's notice is served.

19. When a person constructs a building without permission or when a person constructs a building in deviation of sanctioned plan, it is the duty of the Commissioner to initiate action for demolition of such illegal building by issuing a notice, considering application and passing orders. The action taken by the Commissioner is in relation to Statutory provisions having regard to larger community interest. Essentially element of public law alone is involved. For resolving a public law dispute the remedy cannot and should not be private law remedy of filing a suit, but public law remedy under Article 226 of the Constitution of India.

20. Under Section 9 of CPC, a Civil Court shall have jurisdiction to try all the suits of a civil nature except the suits of which their cognizance is either expressly or impliedly barred. After the Constitution of India came into force the power to

resolve public law disputes by exercising power of judicial review is vested with the High Court under Article 226 of the Constitution of India. No Civil Court or for that matter no other Court in India can exercise this power of judicial review (See *L. Chandra Kumar v. Union of India*, : [1997]228ITR725(SC)). A Civil Court, which has no power of 'Judicial review' cannot be presumed to have power to examine the validity of a notice issued by public authority for alleged violation of law. To a contravener of law such public authority is acting under law and adjudication essentially involves the adjudication of exercise of power by such authority. Therefore, Civil Courts in entertaining suits for declaration or injunction when the municipal authorities issue notices for demolition must act with great circumspection and restraint keeping in mind Section 378 of the Municipalities Act and Section 685 of HMC Act.

21. It has been argued before me that even on mere apprehensions as and when there is an inspection by municipal authorities, the builders are approaching Civil Courts and taking up huge construction taking advantage of orders of status quo or ex parte ad interim injunction orders passed by the Civil Court. If a notice is issued by the municipal authorities under relevant provisions of law (Section 228 of Municipalities Act or Sections 451 or 461 of the HMC Act or any other relevant provisions) the Civil Court must be slow to register suit because the question involved is whether such issuance of notice in the facts and circumstances of the case : valid. In *Shiv Kumar Chadha v. Municipal Corporation of Delhi*, : [1993]3SCR522 , the Apex Court considered this aspect of the matter as under:

It is well known that in most of the cities building regulations and bye-laws have been framed, still it has been discovered that constructions have been made without any sanction or in contravention of the sanctioned, plan, and such constructions have continued without any intervention. There cannot be two opinions that the regulations and bye-laws in respect of buildings, are meant to serve the public interest. But at the same time, it cannot be held that in all circumstances, the authorities entrusted with the demolition of unauthorized constructions, have exclusive power, to the absolute exclusion of the power of the Court. In some special cases where 'jurisdictional error' on the part of the Corporation is established, a suit shall be maintainable. According to us:

(1) The Court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner, in terms of Section 343(1) of the Corporation Act. The Court should direct the persons aggrieved to pursue the remedy before the appellate Tribunal and then before the administrator in accordance with the provisions of the said Act.

(2) The Court should entertain a suit questioning the validity of an order passed under Section 343 of the Act, only if the Court is of prima facie opinion that the order is nullity in the eyes of law because of any 'jurisdictional error' in exercise of the power by the Commissioner or that the order is outside the Act.

22. In case an allegation is made in the suit as well as in the affidavit accompanying interlocutory application for ex parte ad interim injunction that municipal authorities are trying to demolish without issuing notice and without passing any orders, even then the Civil Court should not pass an ex parte ad interim order. The matter can be adjourned to next day to enable learned Standing Counsel for Municipality or local authority to get instructions in the matter as to what is the correct position. In any event, when an interim order is passed either ordering status quo or ordering ad interim injunction the Civil Court must be careful to see that the plaintiff does not take advantage of the status quo order and completes construction to report fait accompli rendering the suit infructuous. Invariably and without exception Civil Court should prohibit plaintiff also from making any construction pending suit. Under no circumstances a plaintiff can be allowed to proceed with the construction in the guise of interlocutory injunctions. That would defeat the very purpose for which the Civil Court is vested with incidental and supplemental powers under Part-III and part-VI of the CPC as well as Order 39 Rules 1 and 2. Be it noted, that the Civil Court is vested with powers to pass interlocutory orders 'to be just and convenient'.

23. For granting an order of injunction pending the suit as well as granting order of ex parte ad interim injunction three conditions are sine quinon; Prima facie case', 'Balance of convenience' and 'Hardship'. Heavy burden lies on the plaintiff by aliunde by affidavit or otherwise to prove these ingredients. They, however, cannot be connotations which depend on ipsi dixit by Presiding Officer. These concepts

are judicially defined by the Courts of record, and the principles must be strictly adhered to. For this purpose, a reference may be made to the Division Bench judgments of this Court in *S. Radha Krishna Murthy v. K. Narayanadas*, : AIR 1982 AP384 , *N. V. Chowdary v. Hindustan Steel Works Construction Limited*, : AIR 1984 AP110 , and *Ultra Drytech Engineering (Private) Limited v. Niraj Petro Chemicals Ltd.*, : AIR 1994 AP33 . A reference may also be made to following observations from the judgment of Supreme Court in *Dalpat Kumar v. Prahlad Singh*, : AIR 1993 SC276b .

Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court, on exercise of the power of granting ad interim injunction, is to preserve the subject-matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that (1) there is a serious disputed questions to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant; (2) the Court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injection will be greater than that would be likely to arise from granting it.

24. Hon'ble Supreme Court also explained three pre-requisites for grant of ad interim injunction as under:..... the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is 'a prima facie case' in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court

would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that 'the balance of convenience' must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

25. In *Shiv Kumar Chadha v. Municipal Corporation of Delhi* (supra), the Supreme Court considered the power of Civil Court to grant temporary injunction in relation to a challenge to an order of demolition. It was laid down therein:

It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the Court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles - *ex debito justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the

balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. ...Power to grant injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that 'where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay,

26. In the above case the Supreme Court also noticed that even while passing orders of injunction before issuance of notice, the Court should record reasons as ex parte orders have far reaching effect. It was also observed that when the statute requires a thing to be done in a particular manner, it should be done in that manner or not at all.

27. In *Morgan Stanley Mutual Fund v. Kartick Das*, : (1994)4SCC225 , the Supreme Court was concerned with the question whether District Consumer Disputes Redressal Forum established under Consumer Protection Act, 1986 has power to grant interim relief While answering said question in the negative, the Apex Court also considered the principles which govern granting of ex parte orders of injunction, it was held thus:

As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the Court in the grant of ex parte injunction are--

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the Court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the Court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the Court would expect a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time;

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

28. Section 340 of the Municipalities Act lays down that if the construction or reconstruction is commenced without the permission of the Municipality or in breach of the provisions of the Act, Bye-Laws or the Rules, the owner shall be liable for conviction with fine which may extend to a sum of Rs. 500/- (Rupees five hundred only). Section 366 empowers the Commissioner to prosecute persons, who violate provisions of the Municipalities Act or the Rules. Under Section 378 of the Municipalities Act, it shall be the duty of every Police Officer to communicate without delay to proper Municipal Officer any information of design to commit an offence under the Municipalities Act and it shall be the duty of the Police Officer to assist Chairperson, Commissioner or Municipal Officer for lawful exercise of the power. Indeed, under Section 379 of the Municipalities Act, any Police Officer can arrest a person committing offence under the provisions of the Municipalities Act. Insofar as HMC Act is concerned, Section 669 empowers the Police Officer to arrest a person who is committing offence under the said Act and as per Section 681 it shall be the duty of Police to help the Corporation Officials in discharge of their functions. This leads to an inference that when an unauthorized construction is being made or a construction is being made in breach of building permission, Bye-Laws or Building Regulations, as complained to Police Officer, the Police Officer can arrest the person and stop construction work duly bringing the same to the notice of the Municipal Commissioner. The anxiety of the Legislature in

enacting these provisions is to see that the provisions of the Act are strictly adhered to. It is surprising that unless and until a requisition is made, Police never act even if some unauthorized construction is going on in front of their nose. The authorities in the Police Department should take appropriate action in this regard, if necessary by issuing proper Circulars.

29. Having regard to the above binding precedents all the Civil Courts which entertain suits challenging the action of the municipal authorities except in exceptional cases must exercise sound discretion while granting ad interim injunction.

30. As observed by me hereinabove this case has generated a considerable amount of interest may be pursuant to notice issued by this Court inviting objections. It is not possible to deal with a number of individual complaints against the builders received by this Court. It is open to all of them to take action in the light of the observations made hereinabove, which may be summarised as under:

(i) All the Commissioners of Municipal Corporations and Municipal Councils must strictly adhere to the guidelines issued by the Government of Andhra Pradesh in G.O. Ms. No. 541, Municipal Administration and Urban Development (MI) Department, dated 17.11.2000. It shall be open to any of them to directly send their recommendations to State Government for amendment of the provisions if they find difficulty in implementing them within the present legal framework;

(ii) The Municipal Commissioners should take stringent action against all the erring employees, whatever be the rank, if they in any manner collude or connive with the persons approaching municipalities/corporations for building permissions. If any illegal construction comes to the notice of the Commissioners, they should initiate necessary action within the legal framework and should demolish the structures;

(iii) The Government of Andhra Pradesh as a general rule should not give any relaxation or exemption to any building from the provisions of the municipal laws and municipal bye-laws. In case such relaxations/ exemptions are required to subserve public interest, the decision may be taken by the highest authority of the

State;

(iv) State may also consider appointing Expert Committee to review the existing Municipal Laws, Municipal Bye-Laws Building Rules etc., and take steps for making amendments, if necessary, in view of the observations made hereinabove;

(v) The Civil Courts should not and ought not ordinarily entertain every suit against local authority, Panchayat, Municipality or Municipal Corporation especially in cases where these authorities have issued notices under the relevant provisions of law. This principle should be enforced even in relation to pending suits and the parties may be advised to avail public law remedy by filing Writ Petitions;

(vi) The Civil Courts, even if they entertain suits in extraordinary circumstances must be circumspect and strictly adhere to the principles laid down by this Court and Supreme Court while granting order of injunctions restraining demolitions. If the local authorities have duly followed the procedure of issuing notice and considering explanation, the Civil Courts ought not to stay any demolition as held by the Supreme Court in Shiv Kumar Chadha v. Municipal Corporation of Delhi (supra);

(vii) Having regard to the provisions of HMC Act and Municipalities Act referred to hereinabove, it shall be open to Police to arrest any person who is constructing a building without permission and/or a person who is constructing a building in contravention of the provisions of the relevant Acts and Building Bye-Laws; and

(viii) Liberty is reserved to parties to these writ petitions to approach this Court for any other clarification, if needed.

31. The writ petitions are accordingly disposed of.