

Jayeshkumar G. Vyas and ors. Vs. Vijay Housing Development and anr.

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Court : Gujarat

Decided On : Dec-21-1993

Reported in : (1994)1GLR377

Judge : R.K. Abichandani, J.

Appellant : Jayeshkumar G. Vyas and ors.

Respondent : Vijay Housing Development and anr.

Advocate for Pet/Ap. : Mr. Mehta

Judgement :

R.K. Abichandani, J.

1. In all these matters the petitioners have in effect challenged the action of the Municipal Corporation for demolishing unauthorised constructions particularly those made in the space which was required to be kept open for parking vehicles.

2. Special Civil Application No. 5555 of 1993 was originally filed by 55 persons and thereafter, as per Court's order dated 18-6-1993, petitioners Nos. 56 to 77 were added. However, later by order dated 11-6-1993 it was directed by the Court that separate petitions should be filed for petitioners other than the petitioner No. 1. As per the said direction, separate petitions - Special Civil Application Nos. 5711 of 1993 to 5764 of 1993 and Special Civil Application Nos. 6321 of 1993 to 6342 of

1993 were filed. In this group of matters the petitioners have prayed that the respondent No. 2-Municipal Corporation be restrained from demolishing the shops constructed in the cellar, ground-floor and first floor of the building known as Vijay Plaza, situated at Kankaria Road, Opp. Abad Dairy, Ahmedabad. The learned Counsel Mr. A.H. Mehta argued on behalf of the petitioners of this group of matters.

3. Special Civil Application Nos. 6167 of 1993 to 6170 of 1993 also relate to the shops which are proposed to be demolished in the same building Vijay Plaza, in respect of which the petitioners claim rights and Mr. S.S. Belsare, learned Advocate appearing for the petitioners adopted the contentions raised by Mr. A.H. Mehta, supplementing them.

4. Special Civil Application Nos. 5594 of 1993 to 5599 of 1993 have been filed by the persons said to be the owners of certain shops in a building named 'Tulsi', situated in Mithakhali, Navrangpura, Ahmedabad. These petitioners have prayed for restraining the Municipal Corporation from demolishing their property. Mr. D.M. Patel, learned Advocate for Mr. S. I. Nanavati, learned Advocate, appeared in this group of matters.

5. The case of the petitioners in the Vijay Plaza Building group of matters is that the shops in question were sold to them by the respondent No. 1 which is a Partnership firm, for a considerable amount. The respondent No. 1, however, did not inform the petitioners about the fact that the shops were constructed in the area which was shown in the building plan designated as parking space, residential area or nursing home. The cellar in which the shops were constructed and sold to these petitioners was shown as a parking space while the ground floor was shown in the building plan for shops and residence and the first floor for nursing home. According to the petitioners they have been in possession of the shops since 1989 or immediately thereafter. These petitioners have been carrying on various types of vocations and some of them are Lawyers, Chartered Accountants and Businessmen dealing in transport, chemicals and other trades. According to the petitioners, there was a conspiracy to cheat the citizens between the first and the second respondents, inasmuch as Officers of (the second respondent-Municipal

Corporation, have connived at the unauthorised construction and the Corporation had recovered taxes in respect of the shops. It is alleged that there was a deliberate design to induce the people into a belief that the shops could be utilised by them and there was no violation of any bye-laws or regulations in their construction. According to the petitioners about 150 shops came to be purchased in the said complex. It is contended that none of the occupiers were issued any notice under Section 260(1) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act'). However, on 17th May, 1993, a demolition squad assisted by the Police Force, Fire Brigade etc. came to demolish the shops and a Civil Suit No. 2327 of 1993 was consequently filed by the Vijay Plaza Shops Vishwas Complex Owners' Association, which later came to be withdrawn. The petitioners have contended that they have been doing business in the premises in question and have acquired goodwill. It is contended that the respondent-Corporation having collected taxes in respect of shops and having connived their construction, is estopped from proceeding to demolish the construction on the ground that they were not as per the sanctioned plan. It is also contended that there are several other buildings in which parking space is converted into shops and such commercial complexes are situated on the C.G. Road, which is a residential zone. It has also been contended that though even according to the respondent No. 2-Corporation, it came to know about the illegal construction in July, 1989, no steps were taken for a long time even after issuance of the notice and the decision was taken only on 31st August, 1990 to remove the construction and was in fact served notice on the Society on June 13, 1991. It is contended that petitioners have spent lacs of rupees to purchase the shops in question and they ought not to be demolished by the Corporation. The learned Counsel Mr. Mehta appearing for the petitioners has contended that no notice as contemplated by Section 260(1) of the Act as given to the petitioners who have been in possession of the property from 1989 or immediately thereafter. He referred to the decision of this Court in Municipal Corporation of the City of Ahmedabad v. Sardar Preetam Singh reported in XVIII (1977) GLR 280, in which it was held that the ambit of Section 260(1) was not so wide as to cover transferees after transferees from the original person who constructed the unauthorised structure. It was held that if such a transferee after a long lapse of time was to be

called upon to demolish his structure, he could only be called upon after his contentions have been dealt with judicially and his rights have been adjudicated upon. Relying on this decision, he argued that the proper course for the Corporation ought to be to file suits in such cases to get the rights of the occupants judicially determined. He next argued that the respondent-Corporation and its officers were estopped from taking any action under the Act, in view of the fact that they had not taken any action for several years and there was a positive act of accepting Municipal taxes, which amounted to a recognition that everything was in accordance with law. He submitted that even after they found that super-structure violated the building bye-laws, they did not take any action for two years, i.e., till the demolition order came to be served on 13th June, 1991. He submitted that this enabled the builder to sell the shops. He finally contended that while enforcing the policy of demolishing illegal structures, the respondent-Corporation and its officers were acting arbitrarily by pick and choose method and those who were politically powerful and could share financial benefits, were spared while others were penalised.

6. The learned Counsel Mr. S.S. Belsare appearing in Special Civil Application Nos. 6167 to 6170 of 1993 adopted these contentions of Mr. Mehta and further argued that where construction could be regularised, demolition ought not to be resorted to by the Corporation. He contended that right to take action was waived by reason of the connivance of the officers at work, who allowed the work to be completed and also by virtue of recovery of taxes in respect of shops in question. He submitted that when the work which requires supervision of the Corporation Officers under the law and their periodic inspection was allowed to be completed; it would raise the presumption that things were properly done and therefore, the respondent-Corporation and its officers were estopped from now demolishing the structure. He finally submitted that demolition is a harsh step which ordinarily is to be taken when the structures are dangerous and in cases of change of user, regularisation would be the proper course to adopt.

7. Mr. D.M. Patel, learned Advocate appeared in Special Civil Application Nos. 5594 of 1993 to 5599 of 1993, in which group the petitioners have contended briefly that action was being taken against the shop owners of building known as

'Tulsi' without issuing any notice whatsoever, though they were in possession since 15 months prior to the filing of the petitions. He contended that the rule of 'audi alteram partem' was grossly violated by the respondent-Corporation, inasmuch as no notice whatsoever was given to these petitioners under Sections 260 or 478 of the Act. He argued that the fundamental rights of the petitioners guaranteed by Articles, 19(1)(g) and 21 were therefore, grossly violated. He also contended that respondent-Corporation cannot adopt pick and choose method of demolition of structures.

8. Mr. G.N.Desai, learned Counsel appearing for the respondent -Corporation in all these matters with Mr. P.G. Desai, learned Advocate, contended that chaotic condition would prevail if each among the series of transferees is to be heard. He submitted that persons who were in occupation at the relevant time when the notices were given under Section 260(1) alone would be entitled to be heard and those who subsequently came in picture, were not entitled to any hearing. He submitted that there were several disputed questions of facts involved inasmuch as even the sales were not prima facie established in these petitions and the petitioners have not disclosed by any authentic information as to the dates on which they acquired the shops in question. He submitted that it was even disputed as to when these persons acquired knowledge about the illegality of the constructions as well as about the action which was initiated by the Corporation for demolition of the illegal structures. He submitted that there could not be any question of estoppel on the basis of collection of taxes in respect of the shops in question, for even in case of unauthorised user, taxes would be payable under the law. He submitted that the allegation regarding conspiracy to cheat the citizens was vague and devoid of any substance. He submitted that the Court should not exercise the discretion in favour of these petitioners some of whom had, through their Association, filed a suit which came to be withdrawn. He placed heavy reliance on the decision of the Calcutta High Court in Ramavtar Agarwal v. Corporation of Calcutta and Ors. AIR 1982 Calcutta 314, in which it was held that an occupier not being a person responsible, can have no say against the order of demolition of an unauthorised structure. He submitted that in view of the bye-laws, open space was required to be kept for parking vehicles in these new complexes and there was no question of regularising illegal constructions by which the open

space came to be enclosed and converted into shops.

9. In the Vijay Plaza building group of petitions, it has come on record that on or about 10th July, 1989 it was found by the officers of the Corporation that the Society had carried on construction of 34 shops in the cellar meant for parking space. It was also noticed that the Society had carried out construction of 26 shops in the ground floor and converted the ground floor for a commercial purpose. It was also noticed that 24 shops were constructed on the first floor and 18 shops on 'ottas' and 16 shops in the passage. According to the Corporation, the Society had submitted plans in which parking space was shown in the cellar, shops and residence on the ground floor, nursing home on the first floor and residential flats on second to ninth floors. It appears that Deputy Town Development Officer made an enquiry and prima facie came to the conclusion that the construction was carried out without permission of the Corporation and therefore, notice under Section 260(1) was served on the Society on 16-12-1989, calling upon it to submit its explanation by 23rd December, 1989. It is stated that during inspection it was found that Jagdishbhai, Punjab Transport Company, Vijay Tea Stall and Mangal Pan House were in occupation of the shops unauthorisedly constructed by the Society. Therefore, notice was also given to these persons on 7-12-1989. There was no response to these notices and ultimately a decision was taken on 31st August, 1990 to remove the construction. A notice of the demolition order was served on the Society on 13th June, 1991. It was contended in the affidavit-in-reply that these occupiers had not carried out construction, but were 'mere purchasers' and therefore, were not entitled to notices under Section 260(1) of the Act. The fact that the possession of property was handed over to the petitioners to the knowledge of the officers of the Corporation was denied in the affidavit-in-reply. It was pointed out that no plans were produced for regularisation, despite the fact that status-quo was ordered to continue for six months from 16-3-1992 in the Civil Suit which came to be withdrawn.

10. The relevant provisions of Section 260 of the Act, which call for consideration, reads as under:

260. (1) If the erection of any building or the execution of any such work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or by-laws, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 264, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

11. It will be noticed from the above provision that Section 260(1) contemplates notice to be given only to the person who has erected the building or executed such work as is described in Section 254. This Section falls in the group of Sections under sub-head 'commencement of work'. It follows the provisions requiring notice to the Commissioner accompanied by documents and plans for erecting a new building under Section 253 or for executing work referred to under Section 254 of the Act. Section 260(1) by itself does not deal with the situation where the property has been constructed and has changed hands. It only deals with a situation where the building is erected or the work as referred to under Section 254 of the Act is executed by a person contrary to the provisions of the Rules and By-laws. The expression 'to erect a building' is defined in Sub-section (3) of Section 253 of the Act and inter alia includes any conversion into a stall, shop, warehouse or godown, of any building not originally constructed for use as

such. It is obvious that ownership of a building would crystallise only on its being constructed and while it is under construction, there would be no question of any occupier of a building. After the building comes into existence, it can be occupied either by the owner or by other occupier. Such occupying will be unauthorised if it is without obtaining a certificate under Section 263 of the Act. It is obvious that the person who has caused the building to be erected by getting it constructed, would be the person erecting such building. Therefore, a notice under Section 260(1) is required to be given even to the owner of the building who would be included within the meaning of the expression 'person who is erecting such building'.

12. In this context, we may refer to the decision of the Supreme Court in the case of *Municipal Corporation, Ahmedabad v. Hiraben Manilal* : [1983]2SCR676 , in which the provisions of Section 260(1)(a) and Section 478 of the Act came to be considered by the Supreme Court. In the case before the Supreme Court, the plaintiff-respondent had purchased the built up house on 26-3-1960. In 1965 there was some construction of walls without the sanction of the Municipal Corporation. On 21st July, 1965 a notice was issued by the Estate Officer of the Corporation under Section 260(1)(a) of the Act, in reply to which it was contended that the impugned construction was not made by the plaintiff, but was in existence when she had purchased the premises. In a suit which was filed for restraining the Corporation from removing the unauthorised construction, it was held by the High Court in a Letters Patent Appeal that notice under the said section could only be issued against a person who had constructed the building or who was constructing the building. The Supreme Court observed that the purpose of these regulations and their object was regulating the building construction in a municipal statute and held that it would have anomalous result if it be said that if a building is constructed illegally or in an unauthorised manner, action can only be taken against the person who is doing the unauthorised act or illegal act but after the construction of the building is passed over to others, the construction of the building enjoys immunity from any action in respect of the same. Reading the provisions of Section 260(1) in conjunction with Section 478 of the Act, it was held that even though the expressions in Section 260 are not quite explicit, the action for demolition or removal can be taken by the Corporation or Municipal Authorities exercising power under provisions of the Act against persons who had not

themselves built the infringing portion. It was held that keeping in background the facts of the case and the provisions of Section 478(1), the action taken by the Corporation was warranted by the provisions of the Act and the notice issued under Section 260(1) cannot be said to be unauthorised or illegal. Thus, the decision in Municipal Corporation v. Hiraben Manilal, (supra) would be an authority for the proposition that a notice under Section 260(1) can be validly issued by the Corporation against the transferee owner who has not himself built the infringing portion. Anything said to the contrary in the Municipal Corporation v. Preetam Singh (supra), which decision was considered by the Supreme Court, would therefore no longer be a good law.

13. Section 260(1) is to be read in conjunction with Section 478 of the Act, as held by the Supreme Court. Section 478 of the Act reads as follows:

78. (1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act or any rule, regulation or by-law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Commissioner.

(2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

14. It will be noticed from the above provision that a written notice is to be given to a person carrying out work or doing a thing and if such person is not the owner at the time of such notice, then the owner is liable for carrying out the requisition to remove or pull down the work or to undo the thing. This Section applies where the

work or thing is done without written permission of the Commissioner and is, therefore, deemed to be unauthorised. This provision contemplates change of hands and can be invoked against the subsequent owner. The owner is made liable to carry out the requisition. This Section does not specify the persons who are required to be heard when this course is adopted. It would be attracted only where permission required in writing is not obtained before the work or thing is done. It does not speak of show cause notice like Section 260 and a requisition is required to be sent by the Commissioner straightaway. However, this would not mean that while taking action under Section 478, no hearing may be given. The duty to hear would be implied even when action is taken under this provision.

15. Rights in property, personal liberty, status, immunity from penalties or other physical imposition, interests in preserving one's livelihood and reputation and reasonable expectations of preserving or even acquiring benefits such as licences, would be amongst the interests to which procedural protection in form of hearing may be accorded. Fair procedural standards must be observed where deprivation of a legally recognised interest is consequential. When the direct impact of a discretionary decision is so adverse that a refusal by the Court of the opportunity to be heard would be considered an affront to justice, the right to be heard becomes obvious. An administrative authority which fails to comply with a statutory duty to give prior notice or hold a hearing or make due enquiry or consider objections in the course of exercising discretionary powers effecting individual rights will seldom find the Courts casting an indulgent eye upon its omissions. Public authorities making demolition orders must either give the person concerned notice that they have intended to take this matter into their consideration with a view to coming to a decision or if they have come to a decision that they propose to act upon it and give him an opportunity of showing cause, why such steps should not be taken. In principle, a duty to give prior notice and opportunity to be heard arise when an individual would suffer a direct detriment from the act or a decision. Demolition of a structure entails serious consequences on the rights of the owners and occupiers and may affect livelihood if any vocation is carried out in such place. It would, therefore, be obvious that before making any demolition order, a hearing is required to be given to the persons concerned, viz., the owner and the occupier of the premises in question. From the provisions of Sections 260

and 478 of the Act, no Parliamentary intention can be culled out to exclude the rule of hearing. I, therefore, hold that a transferee of an unauthorisedly constructed premises would be entitled to be heard before a demolition order is passed.

16. If all the persons interested are duly heard and a demolition order comes to be passed in accordance with the statutory provisions in respect of the property, then such property becomes statutorily liable to be demolished. Under Section 8 of the Transfer of Property Act, unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interests which the transferee is then capable of passing in the property and the legal incidence thereof. Therefore, once a property is liable to be demolished under the law after proper procedural steps are taken, on its transfer the same incident would follow and the transferee will take the property subject to its being demolished under the demolition order already made. The effect of the demolition order validly made cannot be frustrated. If such a course is allowed the very purpose underlying the law would become illusive. The Supreme Court in context of unauthorised constructions has, in *Pratima Co-operative Housing Society Ltd. v. State of Maharashtra* reported in AIR 1991 SC 1454, held as under:

We are also of the view that tendency of raising unlawful constructions and unauthorised encroachment is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of Multi-storeyed buildings xxx xxx xxx xxx xxx xxx. Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of Society at large. The Rules, Regulations and Bye-laws are made by the Corporations or Development Authorities taking in view the larger public interest of the Society and it is bounden of the citizens to obey and follow such rules which are made for their own benefits.

17. The transferee who takes the property with the knowledge of a demolition order validly made, would not be entitled to any fresh process of hearing and the proceedings concluded against the transferor would remain binding on him. An

order of demolition made under the statute and served on the owner would ordinarily be disclosed to the transferee and the transferee cannot acquire a better right than the transferor. The building liable to be demolished under a demolition order made under a statute would not become not liable to be demolished by virtue of its transfer. Whether such knowledge can be attributed to the transferee would depend on the facts of each case. Proximity of transfer to the demolition order can be a relevant factor for attributing the knowledge. However, an order of demolition passed on the file would not be known until served on the person concerned and its knowledge cannot, therefore, be attributed to the transferor or the transferee until it is served. If a demolition order is not served and put in cold storage and a long time has elapsed before it is served, the transferee before service of the order would also be entitled to be heard. When the order is not implemented, uncertainty would be created which cannot be allowed to be perpetuated especially when there is no statutory embargo on transfer. In cases where the petitioners have acquired the premises before the service of the demolition order, they ought to be heard on the basis of the cardinal principle of natural justice since they cannot be attributed with the knowledge of the order while accepting the deal.

18. Much reliance was placed on the decision of Calcutta High Court in *Ramavtar v. Calcutta Municipal Corporation* (supra) for contending that a transferee would in no case be entitled to any notice for showing cause against the demolition proceedings. It was held in that case that an occupier not being a person responsible, i.e., a person who has something to do with the work of construction or who is in a position to comply with an order of demolition will have no say against the order of demolition of an unauthorised structure. It was held that it cannot be contended that no demolition order can be enforced without giving the occupier an opportunity of being heard. The observations were made in context of provisions of Section 414 of the Calcutta Municipal Act, 1951. It was held that on a proper consideration of the first proviso to Section 414(3) of the Calcutta Act, it seems that after a demolition order is passed and the copies of which are served on the owner and the occupiers for the time being of an unauthorised structure, the Corporation will be entitled to start the demolition work after the expiry of 30 days from the date of service of the demolition order. No further copy of the

demolition order is required to be served by me Corporation on any person who comes to occupy the unauthorised structure during the period of 30 days or during me period between the service of the copies of demolition order and me execution of work of demolition. In view that this Court is taking as above on the construction of me provisions of Section 260, the said decision of the Calcutta High Court cannot assist the respondent-Corporation.

19. It would appear from the record of these petitions that there have been disputes between the parties about the time when the transferees have acquired the premises, i.e., whether before the service of the demolition order or thereafter. There are no reliable particulars placed on record as to the nature of transactions entered into by me allottees or the transferees. It will be for the Municipal Authority to ascertain true facts to enable itself to proceed in accordance with law in light of the observations made in its judgment. In the process the Municipal Corporation may consider whether it could lawfully regularise the constructions already made, if request for regularisation is made. It may also keep in mind that the action taken or proposed to be taken in all similar cases should be such as it does not give any scope for allegations of discrimination against it.

20. It was pointed out that in Vijay Plaza Building group of petitions, there were no demolition orders for the ground and first floor shops and the demolition order dated 31st August, 1990 was only in respect of the shops which were constructed in the space in the cellar, which was intended for a parking plot. Since there is no demolition order in respect of those who are in occupation of the ground floor and first floor, it would be obvious that all the owners and occupiers thereof would be entitled to the procedural safeguard of hearing being given to them before any demolition order is being made.

21. As regards the contention that the respondent-Corporation and its Officers are estopped from demolishing the structures, it would be sufficient to observe that there cannot be any estoppel against the exercise of statutory powers. Mere collection of taxes in respect of the use of the unauthorised constructions would not estop the Corporation from discharging its statutory functions under the provisions of Sections 260, read with Section 478 of the Act. As held by the

Supreme Court in *Amrit Banaspati Co. v. State of Punjab* : 1992(59)ELT13(SC) , no legal relationship could arise by operation of promissory estoppel which would be contrary both to the Constitution and the law. The promissory estoppel cannot be used for compelling a public authority to carry out a representation or promise which is prohibited by law or which was devoid of any authority or power of the concerned officer or the public authority to make. As held by the Supreme Court in *Vasantkumar Radhakishan Vora v. Board of Trustees of the Port of Bombay* AIR 1991 SC 14, promissory estoppel should not be extended, though it may be founded on an express or implied promise stamped from the conduct or representation by an office of the State of public authority, when it was obtained to play fraud on the Constitution and the enforcement would defeat or tend to defeat the constitutional goals. Equally so when the conduct amounts to playing fraud on the statutory provisions. Therefore, the allegations that some officers had connived with the unauthorised constructions which would amount to fraud on statutory provisions, cannot create any equity in favour of the petitioners. If the officers have by connivance not taken action for some time, that would not debar the statutory authority from exercising its power.

22. Mere recovery of taxes in respect of unauthorised constructions would neither create any estoppel nor would it amount to waiver and an action can be taken under the provisions of the Act for removing the unauthorised construction even in respect of properties for which taxes are recovered. Proviso to Section 139(2) of the Act clearly envisages recovery of property taxes even in respect of buildings which are unauthorisedly erected. Therefore, the contentions raised on behalf of the petitioners on the basis of recovery of taxes fall to the ground.

22.1 It appears from the record that actions have been initiated against several unauthorised constructions in other buildings. These facts are brought on record in *Vijay Plaza Building* group of petitions, as also in the *Tulsi Building* group of petitions. If the owners have succeeded in thwarting the process of demolition by litigating against the Corporation, fault cannot be found with the Corporation. The record discloses that the Corporation has been making efforts to see that the structures which are unauthorisedly constructed are dealt with in accordance with law and there does not appear to be any pick and choose method adopted by the

Corporation as alleged on behalf of the petitioners. There is no sufficient material to come to a conclusion that the Corporation has meted out discriminatory treatment against a particular party or has acted with an ulterior motive against them. Therefore, the contentions raised on behalf of the petitioners on the ground that the Corporation has arbitrarily acted by adopting pick and choose method cannot be accepted.

23. Under the above circumstances, the respondent-Municipal Corporation is directed in these matters to ascertain true facts to enable itself to proceed in accordance with law and in light of the observations made in its judgment. This process it may complete within 4 months from today and until then, there should be no demolition made of the properties in question. In the process the Municipal Corporation may consider whether it could lawfully regularise the construction already made if request for regularisation is made by the concerned petitioners. The Corporation may also keep in mind that the action taken or proposed to be taken in all similar cases should be such as it does not give scope for allegations of discrimination against it. Rule made absolute accordingly in all these matters with no order as to costs.

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