2006 (4) CTC 483

IN THE HIGH COURT OF MADRAS

A.P. Shah, C.J. and K. Chandru, J.

W.P. Nos. 18898 of 2000, 19998 of 2001; 24316 of 2002 and 17646 of 2006 and W.M.P. Nos. 27383 & 27384 of 2000, 29477 & 29478 of 2001, 33424 & 33425 of 2002 and M.P. Nos. 1, 2 & 3 of 2006

23.8.2006

Consumer Action Group, rep. by its Trustee, Tara Murali, No.7, 4th Street, Venkateswara Nagar, Adyar, Chennai-600 020 and others .....*Appellant*

Vs.

The State of Tamil Nadu, rep. by its Secretary to Government, Law Department, Fort St. George, Chennai-600 009 and others ....*Respondents*

Constitution of India, 1950, Articles 14 and 21 — Tamil Nadu Town & Country Planning Act, 1971, Section 113-A — Application, Allocation and Assessment of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999 — Constitutional validity of Regularization Scheme for regularizing unauthorized constructions — Section 113-A by offering priced amnesty to violators at the cost of public interest and scientific town planning reduces Statues of such regulations to purchasable privilege from that of mandatory safeguards designed to ensure orderly growth of the city — Application and observance of Development Control Rules are vital for proper and planned growth and development of city — Impugned amendments to Section 113-A and Schemes are in gross violation of Articles 21 and 14 of Constitution of India and they arbitrarily affect the constitutional guarantee of ensuring decent and planned environment — State Government was not justified in extending cut off date to cover violations made after 28.2.1999 when Supreme Court has upheld validity of Section 113-A as a one time measure — Extension of date for making Applications for regularization and reduction in fees cannot be said to be illegal in respect of buildings constructed prior to 28.2.1999 provided Application for regularization has been submitted before extended date 30.6.2002 — Encroachments are also noticed on busy streets and thoroughfare and mandatory safeguards relating to car parking area and fire safety measures have not been observed — Municipal Authorities are directed to clear encroachments to ensure smooth flow of traffic on these streets and roads — No notice for removal and demolition of encroachment in public streets and roads need be given as such encroachments shall be liable to be removed forthwith — Electricity connection and sewerage

connection facilities shall be liable to be disconnected forthwith — Monitoring Committee appointed to oversee demolition of unauthorized construction put up in violation of planning permit, master plan, Coastal Regulation Zone and other Laws — Professional builders should be identified to enable flat purchasers to proceed against the builders for recovery of damages — CMDA and Corporation should identify officers responsible for failure to enforce FSI laws and to initiate disciplinary action against them — Regularisation fee collected should be kept aside in a separate fund and not merged with general account of State of Tamil Nadu and its Agencies — Such regularization fee should be used for purpose of alleviating sufferings caused to public by violations committed by builders — Violations like failure to provide adequate car parking area, fire safety measures within building premises should be viewed seriously and these violations cannot be condoned by collecting fees — Owners of all such buildings must be directed to demolish unauthorised construction and provide parking area and safety measures within the premises — Violations of FSI should not be condoned particularly in commercial complexes as such violation would result in massive strain on existing infrastructure facilities like road net work, drainage, water, etc. and also impact neighbourhood — Violations in Open Space Reservation or illegal buildings put up on lake-beds, water catchments, flood plains, CRZ Zones, etc. have ecological repercussions and must not be condoned and violations in such cases must be demolished — Power of Extension/ Regularisation cannot operate to destroy substantive provisions of State and power of exemption can be applied only to excessive and genuine hardship and not to allow builders to violate laws enacted in public interest and for orderly development of city. (Paras 26, 27, 29, 30 & 31)

Building Rules and Regulations — Unauthorised construction and development — When and to whom exemption and condonation can be granted — Power of High Court — Growth of illegal constructions pose serious threat to ecological and environmental imbalances besides water, sewerage, electricity and traffic facilities — Such ecological and environmental imbalances cause serious hardship to every resident in the city — Municipal Laws permitting deviations from sanctioned constructions being regularized by compounding can only be by way of exception — Compounding is permissible where deviations deserve to be condoned as *bona fide* or are attributable to some misunderstanding or are such deviations as where benefit gained by demolition would be far less than disadvantage suffered — Deliberate deviations do not deserve to be condoned and compounded — Compounding of deviations ought to be kept at bare minimum — Distinction should be made between Professional builders and individual constructing his own building — Professional builder should know Laws better and deviation by such builder should be assumed to be deliberate and done with

intention of earning profit and deserve to be dealt with sternly so as to act as a deterrent for future — Applications made by Professional Builders for compounding deviations should be dealt with at higher level by multi-membered High Power Committee so that builders cannot manipulate — Officials who had connived at unauthorized or illegal constructions should not be spared — High Court may *suo moto* register Public Interest litigation if it feels that illegal/unauthorized building activities are so rampant as to be noticed judicially and commence monitoring same by issuing directions so as to curb such tendency and fixing liability and accountability. (Para 16)

Building Laws — Municipal Laws relating to Buildings — Object of — Protection of Ecology and Environment — Duty of Citizens, State Government and Local Bodies — Every citizen should maintain hygienic environment — Constitutional obligation is imposed on State Government and Municipalities not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote and protect both man made and natural environment — Building construction regulations are aimed to achieve larger purpose of public health, safety and general welfare — Violation of Zoning and Regulation Laws takes a toll in terms of public welfare and convenience being sacrificed apart from risk, inconvenience and hardship posed to occupants of buildings — Regularisation of deviations by Municipal Laws are only by way of exception — Regularising constructions erected in violation of regulations has serious consequences — Regularisation relating to violation of front setback will not make it feasible for Corporation to widen abutting road in future and bring incumbent closer to danger of road — Waiver of requirement of side set back will deprive adjacent buildings and their occupants of light and air and make it impossible for fire engines to fight fire in high-rise buildings — Violation of Floor Space Index will result in undue strain on civil amenities such as water, electricity, sewage collection and disposal — Waiver of requirements regarding fire stair case and other fire prevention and fire fighting measures would seriously endanger occupants to varitable death trap — Waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to public at large — Such grant of exemption and regularization would spell ruin affecting lives, health, safety and convenience of all its citizens — Court cannot remain mute spectator when violations also affect environment and healthy living of law abiders — Power to regularization/exemption cannot operate to destroy substantive provisions of Statute and these provisions can be applied only to remove excessive and genuine hardship and not to allow builders free hand in violating rules which are enacted in interest of community and for orderly development of the city. (Paras 26 & 27)

Constitution of India, Article 226 — Building Regulations — Buildings constructed in violation of sanctioned plan or Building Rules and Regulations — Monitoring Committee constituted to take up Multi-commercial complexes for consideration which should cover all buildings which have more than four floors — Construction of entire building should be demolished if such construction is illegal — Extra floors should be demolished if such floor has been put up illegally — Necessary modifications/demolitions must be done for satisfying norms for fire safety and car parking facilities within building premises — Special Buildings should be categorized as those with actual construction of ground plus three floors — Commercial Special Buildings should be treated on par with multi-storyed buildings and same measures should be applied and followed wherever violations are found — Monitoring Committee may suggest less stringent measures in respect of Multi-storyed residential buildings and special buildings, bearing in mind impact of retaining the building — Professional builders of illegal multi-storeyed and special buildings should be identified for imposition of heavy penalties — Such penalty amounts should be used to compensate unwary purchasers and to take remedial measures for alleviating the harm caused to society — Monitoring Committee should identify Officers at CMDA and Corporation who are responsible for failure to enforce planning laws and make appropriate recommendation for prosecution and/or disciplinary action CMDA and Corporation should take action against illegal multi-storeyed and special buildings as per recommendation of Monitoring committee and Commissioner of Police, Chennai, directed to provide necessary police protection for taking action against illegal constructions — In future, buildings should be certified as having been constructed in compliance of planning permit and applicable laws — Certifying Officer will be personally responsible if any illegal building is certified — Electricity, Water connection and occupation should be contingent on such Certificate — Constructions put up by Builders who have been identified by Monitoring Committee as having put up illegal buildings should be certified by Chief Planner who shall bear personal responsibility — Chief Planner is directed to decide applications for exemption pertaining to constructions prior to cut off date and dispose of all Applications within a period of three months — Applications claiming exemption under amended provisions of Section 113-A of Act in respect of constructions made after 28.2.1999 shall stand dismissed and those Applications shall not be entertained by Government — Chief Secretary is directed to allot hearing of Appeals at least to two Officers in addition to Housing and Urban Development Secretary — Monitoring Committee to evolve criteria to identify unauthorized deviated constructions eligible for regularization and to determine veracity of claims which are: (a) date of planning permission and proof of completion; (b) Electricity service connection and water connection;

and (c) Registration of Sale Deed conveying constructed area — Monitoring Committee shall be consulted for Applications claiming exemption under Section 113-A as well as Appeals under Section 113-A(6) Monitoring Committee shall also be consulted for changes in Master Plan and Development Control Rules which affect construction activity in the city — Corporation is directed to forthwith take steps to remove encroachments on all busy streets like Ranganathan Street, Natesan Street, Madley Road, etc. and Commissioner of Police directed to provide adequate police force for purpose of carrying work of removal of encroachments — No Civil Court shall entertain any Suit or proceedings or Application in respect of action taken by CMDA or Corporation in respect of illegal construction and encroachments on roads and pavements — All pending and future petitions against CMDA or Corporation relating to illegal and unauthorized construction of buildings and/or encroachment and demolition notice shall be placed before Special Bench to be nominated by Chief Justice (Para 32)

Tamil Nadu Town & Country Planning Act, 1971, Section 113-A — Application for regularization of unauthorized construction of buildings — Directions issued — Applications claiming exemption under amended provisions of Section 113-A of Act in respect of constructions made after 28.2.1999 shall stand dismissed and those Applications shall not be entertained by Government — Chief Secretary is directed to allot hearing of Appeals at least to two Officers in addition to Housing and Urban Development Secretary — Monitoring Committee to evolve criteria to identify unauthorized deviated constructions eligible for regularization and to determine veracity of claims which may include - (a) date of planning permission and proof of completion; (b) Electricity service connection and water connection; and (c) Registration of Sale Deed conveying constructed area — Monitoring Committee shall be consulted for Applications claiming exemption under Section 113-A as well as Appeals under Section 113-A(6) Monitoring Committee shall also be consulted for changes in Master Plan and Development Control Rules which affect construction activity in the city. (Para 32)

Code of Civil Procedure, 1908, Section 9 — Illegal constructions and encroachments on roads and pavements — Suit against CMDA or Corporation — Maintainability — No Civil Court shall entertain any Suit or proceedings or Application in respect of action taken by CMDA or Corporation in respect of illegal construction and encroachments on roads and pavements — All pending and future Petitions against CMDA or Corporation relating to illegal and unauthorized construction of buildings and/or encroachment and demolition notice shall be placed before Special Bench to be nominated by Chief Justice. (Para 32)

CASES REFERRED

Mr. Sriram Panchu, Senior Counsel for Mr. T. Mohan, Advocate for Petitioner in WP. Nos. 18898 of 2000, 19998 of 2001 and 24316 of 2002; Mr. Elephant G. Rajendran, Advocate for Petitioner in W.P. No. 17646 of 2006.
Mr. R. Viduthalai, Advocate General assisted by Mr. Raja Kalifulla, Government Pleader for State assisted by Mr. J. Ravindran, for CMDA, TNEB and CMWSSB assisted by Mr. L.N. Praghasham, for Chennai Corporation for Respondents.

W.Ps. ALLOWED — W.M.Ps. CLOSED

ORDER

A.P. Shah, C.J.

1. W.P. Nos. 18898 of 2000, 19998 of 2001 and 24316 of 2002 have been filed by the Consumer Action Group challenging the constitutional validity of the amended provisions of Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, hereinafter be referred to as 'the Act' as also the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999, hereinafter be referred to as 'the Rules'.

2. Section 113-A was introduced through the Tamil Nadu Town and Country Planning (Amendment) Act, 1998 (Tamil Nadu Act 58 of 1998), whereby the Government is empowered, on an application being made by the person affected, to exempt any land or building developed immediately before the date of commencement of this Amending Act, from all or any of the provisions of the Act or Rules or Regulations made thereunder, by collecting regularisation fee at such rate not exceeding Rs.2,000/- per square metre. The constitutional validity of Section 113-A was upheld by the Supreme Court in ***Consumer Action Group v. State of Tamil Nadu,*** 2000 (4) CTC 181 : 2000 (7) SCC 425 as a one-time measure. By the Tamil Nadu Town and Country Planning (Amendment) Ordinance 7 of 2000 (Tamil Nadu Act 31 of 2000), Section 113-A was further amended, whereby all buildings constructed on or before 31st August 2000 were made eligible to

be considered for such regularisation on payment of reduced regularisation fees. Thereafter, Tamil Nadu Town and Country Planning (Amendment) Ordinance 5 of 2001 (Tamil Nadu Act 17 of 2001) was promulgated putting off the date for regularisation of the unauthorised constructions to 31st July 2001. Thereafter, the cut-off date for regularisation was again extended to 31st March 2002 by the Tamil Nadu Town and Country Planning (Amendment) Act, 2002 (Tamil Nadu Act 7 of 2002). The validity of these amending Acts is sought to be challenged as they being *ultra vires* Articles 14 and 21 of the Constitution of India.

3. W.P. No. 17646 of 2006 is filed by the petitioner - K.R. Ramaswamy, in public interest highlighting the violations of the Rules in construction of shopping complexes at T. Nagar and at N.S.C. Bose Road in Parrys area without allotting Car and Two Wheeler parking spaces in the multi-storied buildings. The petitioner is seeking a direction to the authorities to enforce the provisions of the Tamil Nadu Multi-storied Buildings Act, 1973 and Tamil Nadu Multi-storied Buildings Rules of 1973 as well as the Chennai City Municipal Corporation Act, 1919 and the Rules framed thereunder in respect of the buildings in the city of Chennai to ensure public safety and effective free flow of traffic.

4. In order to appreciate the challenge and to adjudicate the issues involved, it is necessary to scan through the periphery, scope and object of the Act and the Rules. The Preamble of the Act states that this is an Act to provide for planning, the development and use of rural and urban land in the State of Tamil Nadu and for the purposes connected therewith. Section 2(13) defines *'development'* to mean carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under the Act, which includes the carrying out of building, engineering, mining or other operations in, or over, or under the land and also includes making of any material change in the use of any building or land. Sub section 15 of Section 2 defines *'development plan'* to mean the plan for the development or redevelopment or improvement of the area within the jurisdiction of a planning authority and includes a regional plan, master plan, detailed development plan and new town development plan prepared under the Act. The Act is an elaborate piece of legislation consisting of 14 Chapters, which contain 125 sections. The Act provides for incorporation of the Metropolitan Development Authority for the metropolitan area. In pursuance of the powers set out in Chapter IIA of the Act, the Chennai Metropolitan Development Authority was formed. This Authority shall hereinafter be referred to as 'the CMDA'. The control and development plan of the Madras Metropolitan area is listed with CMDA. Chapter III deals with the planning authorities and its plan, Chapter IV deals with the acquisition and disposal of that land, Chapter V contains special provision regarding new town development authority and Chapter VI refers to control of development and use of land. This chapter gives clear guidelines to the appropriate authority in which manner it has to

perform its statutory functions. Sub-section 2 of Section 49 gives guidelines to enable the appropriate planning authority to grant or refuse permission in respect of an Application made under Section 49(1) by any person intending to carry out any development on any land or building. Under Section 54 the CMDA has the power of revocation or modification of the permission which has been granted and this Section contains guidelines as to when such revocation or modification can be made. Section 56 confers power on the planning authority to require removal of unauthorized development. Section 57 provides for power to stop unauthorized development. The Act also provides for the constitution of a Tribunal under Chapter IX and provisions under Chapter X for an Appeal, Revision or Review. It is under Chapter XII the impugned Section 113-A is placed. This Section as indicated earlier provides for regularization of illegal constructions on payment of a fee. Section 113 confers power on the State Government and states that notwithstanding anything contained in the Act the Government may subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of the Act or Rules or Regulations made thereunder.

5. Section 122 of the Act confers power upon the State Government to make rules to carry out the purposes of the Act. Section 123 obligates the Government to place its rules before the legislature. Section 124 empowers the planning authority with the previous approval of the Government to make regulations prospectively or retrospectively not inconsistent with the Act and the Rules. Pursuant to the powers conferred under Section 122 of the Act, the Development Control Rules have been framed for the Madras Metropolitan area. The present Development Control Rules were substituted for the former Rules by G.O. Ms. No. 328, Housing and Urban Development, dated 18.2.1983. Under the Development Control Rules, the Madras Metropolitan area is divided into nine zones as per Rule 3 of the said Rules. The rules provide for elaborate guidelines as to the limitations in respect of each such zone. For example, in each zone, the Development Control Rules have set out in a tabular form, the requirements relating to Floor Space Index (FSI), maximum height, minimum set back, front set back, side set back, rear setback, etc. For the commercial zones, further restrictions are imposed in relation to the horsepower rating of electric motors and provisions have also been made to regulate storage of explosives as well as to regulate effluents, smoke, gas or other items which are likely to cause danger or nuisance to public health. The Development Control Rules have been framed with great care to ensure that the use of land or development of any building is regulated in a proper manner. The said Rules have been framed on a scientific basis and norms have been set out on the basis of specific standards keeping in mind the public interest (especially public health and safety) as well as the requirements of land owners.

6. In the year 1988, after learning from press reports that 73 orders of exemption came to be passed in a day, the petitioner Consumer Action

Group approached the Supreme Court in W.P. (C) No. 926 of 1988 seeking a declaration that Section 113 of the Act was *ultra vires* Articles 14 and 21 of the Constitution and for quashing the 62 G.Os. granting exemption. While the said Writ Petition was pending in Supreme Court, the State of Tamil Nadu amended the Tamil Nadu Town and Country Planning Act, 1971 by the Amending Act, 1998 (Tamil Nadu Act 58 of 1998) by inserting Section 113-A to the Act, which reads as follows:-

> "*113-A. Exemption in respect of development of certain lands or buildings.*—
>
> *1.* Notwithstanding anything contained in this Act or any other law for the time being in force, the Government or any officer or authority authorised by the Government, by notification, in this behalf may, on application, by order, exempt any land or building or class of lands or buildings developed immediately before the date of commencement of the Tamil Nadu Town and Country Planning (Amendment) Act, 1998 (hereafter in this Section referred to as the said date), in the Chennai Metropolitan Planning Area, from all or any of the provisions of this Act or any rule or regulation made thereunder, by collecting regularisation fee at such rate not exceeding twenty thousand rupees per square metre, as may be prescribed. Different rates may be prescribed for different planning parameters and for different parts of the Chennai Metropolitan Planning Area.
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> *2.* The application under sub-section (1) shall be made within ninety days from the said date in such form containing such particulars and with such documents and such application fee, as may be prescribed.
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> *3.* Upon the issue of the order under sub-section (1), permission shall be deemed to have been granted under this Act for such development of land or building.
>
> *4.* Nothing contained in sub-section (1) shall apply to any Application made by any person who does not have any right over the land or building referred to in sub-section (1).
>
> *5.* Save as otherwise provided in this Section, the provisions of this Act, or other laws for the time being in force, and rules or regulations made thereunder, shall apply to the development of land or building referred to in sub-section (1).
>
> *6.* Any person aggrieved by any order passed under sub-section (1) by any officer or authority may prefer an Appeal to the Government within thirty days from the date of receipt of the order."

7. Section 122(2)(cc) was added to the Act to provide the procedure for the collection of regularisation fee and the prescription, calculation, assessment and collection of such fee.

8. The Statement of Objects and Reasons for the Amendment Act reads as follows:

"As of today in Chennai as well as in other metropolitan cities of India, many aberrations in the urban development are noticed. Huge disparities between people's income and property value, together tempt the builders to violate the rules and the buyers to opt for such properties in the city of Chennai. A rough estimate of about three lakh buildings (approximately 50% on total number of buildings) will be violative of Development Control Rules or unauthorised structures. However, according to the Tamil Nadu Town and Country Planning Act, 1971 (Act 35 of 1972), the demolition action cannot be pursued on any of them unless a notice issued within 3 years of completion. The Chennai Metropolitan Development Authority has booked five thousand structures on which demolition action could be taken. Number of such cases booked by the Chennai City Municipal Corporation within its jurisdiction is nearly one thousand. Administratively also, demolition of such a large number of cases is neither feasible nor desirable as it will result in undue hardship to the owners and occupants. Considering this and the practice followed in other metropolitan cities of the country to deal with violated constructions, the State Government have taken a policy to exempt the lands and buildings developed immediately before the date of commencement of the proposed legislation by collecting regularisation fee provided that the development has been made by a person who has right over such land or building".

9. The petitioner-Consumer Action Group filed W.P. (C) No.237 of 1999 in the Supreme Court challenging the vires of Section 113-A of the Act. The Supreme Court vide a common order, dated 18.8.2000 in W.P.(C) No. 926 of 1988 upheld the validity of both Section 113 and Section 113-A of the Act. However, the Court set aside the 62 G.Os. granting exemption under Section 113 of the Act, but left it open to them to apply afresh under Section 113-A of the Act. The Supreme Court while upholding the validity of Section 113-A of the Act clearly stated that Section 113-A as a *'one-time measure'* was a valid piece of legislation and underscored the need for taking effective steps to check at the root level, at the very nascent stage, such violations/deviations.

10. The grievance of the petitioner is that in spite of the order of the Supreme Court, no administrative schemes to enforce Town Planning law and to demolish deviations have been formulated till date. On the contrary, the Governor of Tamil Nadu promulgated Tamil Nadu Ordinance No.7 of 2000 (Tamil Nadu Act 31 of 2000) to amend Section 113-A of the Act. By virtue of the amendment, all the buildings constructed on or before 31st August 2000 were made eligible to be considered for regularisation and such Application for regularisation had to be made on or before 31st October 2000. In the Statement of Objects and Reasons to the impugned Ordinance, it was stated that the expected number of Applications were not received during the period of 90 days and only 5,474 Applications had been received. It was further stated that it had been brought to the notice of the Government that the poor receipt of the Applications was due to various reasons mainly

because of the high rate of regularisation fee and in view of the order of the Supreme Court upholding Section 113-A, it had been decided to reduce the rate and extend the scheme covering all buildings constructed upto 31st August 2000 by amending the Act and the Rules. The Rules were also subsequently amended and now the fee has been reduced to only a fraction of what it was originally. Section 113-A of the Act was further amended by Tamil Nadu Act 17 of 2001. By virtue of Tamil Nadu Act 17 of 2001 all buildings constructed on or before 31st July 2001 became eligible to be considered for regularisation and such applications for regularisation were to be made on or before 30th November 2001. Further, by subsequent amendment (Tamil Nadu Act 7 of 2002), the cut-off date for regularisation was once again extended to 31st March 2002.

11. We have heard Mr. Sriram Panchu, learned Senior Counsel appearing for the Consumer Action Group, the petitioner in W.P.Nos.18898 of 2000, 19998 of 2001 and 24316 of 2002; Mr. G. Rajendran, learned counsel appearing for the petitioner in W.P. No. 17646 of 2006; Mr. R. Viduthalai, learned Advocate General appearing for the State of Tamil Nadu; Mr. J. Ravindran, learned counsel appearing for the CMDA and Mr. L.N. Praghasham, learned counsel appearing for the Chennai Corporation.

12. The affidavits filed by the authorities, documents and other materials brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorised constructions in the City of Chennai. It is seen that the builders have violated with impunity the sanctioned building plans, and the Rules relating to FSI, fire safety and parking facilities to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Such wayward growth in illegal constructions has posed a serious threat to ecology and environment and affected water supply, sewerage and traffic movement facilities in the city. The violations of regulatory rules on such massive scale can result in development plan becoming merely a scrap of paper. On the one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the regulations also to tackle the problem of unauthorized constructions and misusers, and on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having respect for the law and other citizens. There is no gainsaying that the Application and observation of the Development Control Rules is vital for the proper and planned growth and development of the city. If these rules are given a go-by, the inevitable result would be shortage of water and electricity, choked roads and ecological and environmental imbalances causing serious hardship to every resident of the city.

13. In ***Consumer Action Group's case,*** cited supra, the Supreme Court while upholding the validity of Section 113-A as a one-time measure, has warned that before such pattern becomes cancerous and spreads to all parts

of the country, it is high time that remedial measures were taken to check this pattern, as it retards development, jeopardises all purposeful plans of any city and liquidates the expenditure incurred in such development process. Misra, J. speaking for the Bench, observed in paragraphs 37 and 38 as follows:

> "*37.* Mere reading of this reveals administrative failure, regulatory inefficiency and laxity on the part of the authorities concerned being conceded which has led to the result, that half of the city buildings are unauthorised, violating the town planning legislation and with staring eyes the Government feels helpless to let it pass; as the period of limitation has gone, so no action could be taken. This mess is the creation out of the inefficiency, callousness and the failure of the statutory functionaries to perform their obligation under the Act. Because of the largeness of the illegalities it has placed the Government in a situation of helplessness as knowing the illegalities, which are writ large, no administrative action of demolition of such a large number of cases is feasible. The seriousness of the situation does not stay here when it further records, this is the pattern in other metropolitan cities of India. What is the reason ? Does the Act and Rules not clearly lay down, what constructions are legal, what not ? Are the consequences of such illegal constructions not laid down ? Does the statute not provide for controlled development of cities and rural lands in the interest of the welfare of the people to cater to public convenience, safety, health, etc. ? Why this inaction ? The Government may have a gainful eye in this process of regularisation to gain affluence by enriching coffers of the State resources but this gain is insignificant compared to the loss to the public, which is State concern also as it waters down all preceding developments. Before such pattern becomes cancerous and spreads to all parts of this country, it is high time that remedial measure was taken by the State to check this pattern. Unless the administration is toned up, the persons entrusted to implement the scheme of the Act are made answerable to the laches on their failure to perform their statutory obligations, it would continue to result with wrongful gains to the violators of the law at the cost of the public, and instead of development bring back cities into the hazards of pollution, disorderly traffic, security risks, etc. Such a pattern retards development, jeopardises all purposeful plans of any city, and liquidates the expenditure incurred in such development process.
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> *38.* We may shortly refer to the possible consequences of the grant of such exemption under Section 113-A by collecting regularisation fees. Regularisation in many cases, for the violation of front setback, will not make it easily feasible for the corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirements of side setback will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight a fire in a high-rise building. The violation of Floor Space Index will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The

waiver of requirements regarding fire staircase and other fire prevention and fire-fighting measures would seriously endanger the occupants resulting in the building becoming a veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens. This provision, as we have said, cannot be held to be invalid as it is within the competence of the State Legislature to legislate based on its policy decision, but it is a matter of concern. Unless check at the nascent stage is made, for which it is for the State to consider what administrative scheme is to be evolved, it may be difficult to control this progressive illegality. If such illegalities stay for long, waves of political, humanitarian, regional and other sympathies develop. Then to break it may become difficult. Thus this inflow has to be checked at the very root. The State must act effectively not to permit such situation to develop in the wider interest of the public at large. When there is any provision to make illegal construction valid on that ground of limitation, then it must mean that the statutory authority in spite of knowledge has not taken any action. The functionary of this infrastructure has to report such illegalities within the shortest period, if not, there should be stricter rules for their non-compliance. We leave the matter here by bringing this to the notice of the State Government to do the needful for salvaging the cities and country from the wrath of these illegal colonies and construction."

14. The Court also cautioned that the State's power of exemption under Section 113 of the Act has to be exercised with greater circumspection. Even if the Section is silent about recording of reasons, it is obligatory on the Government while passing orders under Section 113, to record the reasons and the power of exemption could be exercised only in furtherance of the development of that area. The Court further observed that—

"When such a wide power is vested in the Government, it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra-statutory field. Entrustment of such a power is only for the public good and for the public cause. While exercising such a power, the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both, *viz.,* the public and the individual. SO long as it does not materially affect the public cause, the grant would be to eliminate individual hardship which would be within the permissible limit of the exercise of power. But where it erodes the public safety, public convenience, public health, etc. the exercise of power could not be for the furtherance of the purpose of the Act. Minor abrasion here and there to eliminate greater hardship, may in a given case, be justified but in no case affecting the public at large. So every

time the Government exercises its power it has to examine and balance this before exercising such power. Even otherwise, every individual right including fundamental right is within, reasonable limit but if it makes inroads into public rights leading to public inconveniences it has to be curtailed to that extent. So no exemption should be granted affecting the public at large. Various Development Rules and restrictions under it are made to ward off possible public inconvenience and safety. Thus, whenever any power is to be exercised, the Government must keep in mind, whether such a grant would recoil on the public or not and to what extent. If it does then exemption is to be refused. If the effect is marginal compared to the hardship of an individual that may be considered for granting. Such an Application of mind has not been made in any of these impugned orders. Another significant fact which makes these impugned orders illegal is that Section 113 empowers it to exempt but it obligates it to grant subject to such condition as it deems fit. In other words, if any power is exercised then the Government must put such condition so as to keep in check such person. We find that in none of these sixty-two orders any condition is put by the Government. If not this then what else would be the exercise of arbitrary power ?

15. In ***Friends Colony Development Committee v. State of Orissa,*** 2004 (8) SCC 733, Lahoti, C.J. stressing the importance of the planned development of cities in developing countries observed thus:

"*22.* In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth,

stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. (For a detailed discussion reference may be had to the chapter on "Zoning and Planning" in *American Jurisprudence,* 2Ed, Vol. 82.)."

16. The Court held that though the Municipal Laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Only such deviations deserve to be condoned as are *bona fide* or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. The Application for compounding the deviations made by the builders should always be dealt with at a higher level by a multi-membered High Power Committee so that the builders cannot manipulate. The officials who had connived at unauthorised or illegal constructions should not be spared. In developing cities, the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorised constructions. The Court observed that the High Court if it feels that illegal/unauthorised building activities are so rampant as to be noticed judicially, may *suo motu* register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.

17. In ***Cantonment Board, Jabalpur v. S.N. Avasthi,*** 1995 Supp (4) SCC 595, the Court observed that construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of the mandatory requirements of law. There the Cantonment Board had granted permission for construction of a building which was later on cancelled, as the resolution of the Board granting permission was suspended by the GOC-in-Chief.

18. In ***Pratibha Co-operative Housing Society Ltd. v. State of Maharashtra,*** 1991 (3) SCC 341, the Court came down heavily on the housing society which made construction in violation of the Floor Space Index. The Court said that such unlawful construction was made by the Housing Board in clear and flagrant violation and disregard of FSI and upheld the order of demolition of all the eight floors as ordered by the Bombay Municipal Corporation. While dismissing the Special Leave Petition, the Court observed as under:

> "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 the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

19. In ***Dr. G.N. Khajuria v. Delhi Development Authority,*** 1995 (5) SCC 762, the Supreme Court observed as under:

> "Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of Courts, the illegality is not taken care of fully inasmuch as the officer of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot-free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

20. In ***Mrs. Manju Bhatia v. New Delhi Municipal Committee,*** AIR 1998 SC 223, the builder, after obtaining requisite sanction to build 8 floors, constructed more floors, sold the flats and gave possession to the respective

buyers. Subsequently, it was found that the builder constructed the building in violation of the building regulations and consequently flats on the top four floors were ordered to be demolished. The demolition was challenged in the High Court by way of a Writ Petition which was dismissed. Special Leave to Appeal to the Supreme Court was also dismissed. The question before the Supreme Court was whether the appellants who had purchased the flats without the builder informing them of the illegal construction, should be compensated for the loss suffered by them. The High Court in the impugned judgment directed the return of the amount plus the escalation charges. The Supreme Court noticed that the escalated price as on the date was around Rs.1.5 crores per flat. Taking into consideration the totality of the circumstances, the Supreme Court directed the builder to pay Rs.60 lakhs including the amount paid by the allottees.

21. In an unreported decision of the Supreme Court in ***Ram Awatar Agarwal v. The Corporation of Calcutta,*** C.A. No. 6416 of 1981, decided on August 20, 1996, an unauthorised construction in the City of Calcutta was allowed to be demolished by the Corporation of Calcutta. It was a multi-storied building. The Court observed as under:

> "We share the feeling of the Deputy City Architect when he states in paragraph 18 of his affidavit that this is a case in which an unscrupulous builder took advantage of the Court's order up to a point of time and after he failed in the legal process up to this Court, the tenants were set up to delay the inevitable and thus in this matter the unauthorised structure hazardous and unsafe has stood all these years. We have, therefore, no manner of doubt that this is a case in which exemplary costs should be awarded."

22. In ***M.C. Mehta v. Union of India,*** 2006 (3) SCC 399, Y.K. Sabharwal, C.J., taking note of the flagrant violations of various laws in large number of immovable properties including municipal laws, master plan and other plans besides environmental laws, observed that the court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. The things cannot be permitted to go on in this manner forever. The Court cited with approval the observations of R.C. Lahoti, Chief Justice of India (as he then was) in the case of ***ANZ Grindlays Bank v. Commissioner, MCD,*** 1995 (34) DRJ 492, that the word "environment" is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but is also an

imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. The Court also cited with approval the observations of the division Bench of the Delhi High Court (to which Y.K. Sabharwal, C.J. was a party) in the case of ***Anil Kumar Khurana v. MCD,*** 1996 (36) DRJ 558, which reads as follows:

"*59.* In the concluding paragraph it was stated that:

> "In the end, I regret to notice that despite warning and caution given by the Apex Court and also this Court, from time to time, that stern action will be taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings have fallen on deaf ears without any effect on the unscrupulous builders and purchasers of these spaces. It is, therefore, necessary to once again send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that Courts will not come to the aid of persons who indulge in such blatant unauthorised constructions and misuser of the properties. It is also the duty of the courts to examine these matters carefully before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the Courts before issuing injunctions in such matters should insist upon filing of the sanctioned plans and details about the existing structures to *prima facie* find out whether the existing structures are in accordance with the sanctioned plan and building bye-laws, etc. or not. The Courts may also consider appointment of independent person to verify correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due co-operation from all citizens including the media and the press. It is the duty of all to expose these lawbreakers. I hope the media would bring to the notice of public in general that unauthorised constructions and misuser have been severely dealt with by this Court and henceforth also no leniency would be shown in such matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised activities are against public interest. These activities have to be stopped forthwith. If in spite of this warning any one indulges in such unauthorised construction or misuse or in purchase of these unauthorised constructions, he would be doing it at his own risk and peril and would not be heard to say that he has made large investments. I hope that at least now this message would be taken with all seriousness.
>
> In view of the above, in my opinion, all the petitions and appeals deserve dismissal with costs quantified at Rs.10,000 in each case. These costs would be utilised by MCD for creating a special cell which should be set up to curb unauthorised construction and misuser of the immovable properties so that at least a beginning is made now to promptly check these illegal activities. The officials

and officers manning this cell will have to be informed that any dereliction of duty would be severely dealt with".

The Court further observed in para 61 thus:

"*61.* Despite passing of the laws and repeated orders of the High Court and this Court, the enforcement of the laws and the implementations of the orders are utterly lacking. If the laws are not enforced and the orders of the Courts to enforce and implement the laws are ignored, the result can only be total lawlessness. It is, therefore, necessary to also identify and take appropriate action against officers responsible for this state of affairs. Such blatant misuse of properties at large-scale cannot take place without connivance of the officers concerned. It is also a source of corruption. Therefore, action is also necessary to check corruption, nepotism and total apathy towards the rights of the citizens. Those who own the properties that are misused have also implied responsibility towards the hardship, inconvenience, suffering caused to the residents of the locality and injuries to third parties. It is, therefore, not only the question of stopping the misuser but also making the owners at default accountable for the injuries caused to others. Similar would also be the accountability of errant officers as well since, *prima facie,* such large-scale misuser, in violation of laws, cannot take place without the active connivance of the officers. It would be for the officers to show what effective steps were taken to stop the misuser."

As regards the Ad hoc Trade Registration Scheme, 2004, which was introduced by the MCD for regularisation of the unlawful constructions, the Court observed in paragraphs 65 and 66 as follows:

"*65.* The areas and the colonies abovereferred themselves show that the so-called Registration Scheme, 2004 can have no applicability to the nature of misuse under consideration. It deserves to be noted that it is implicit in the Scheme that a person to get benefit of the Scheme has himself to be resident of such premises.

66. The introduction of the Ad hoc Registration Scheme would not only regularise the illegalities but further encourage more illegalities to take place by sending a wrong message underlying the press release. This Ad hoc Scheme has been stayed by this Court. A similar scheme was also sought to be introduced by DDA as well for grant of temporary permission for commercial use in industrial plots and for condonation of misuse of industrial premises for offices and other commercial purposes on payment of requisite charges. On learned *Amicus Curiae* filing I.A. No.1816 of 2002, seeking stay of the said Scheme, the Scheme was given up and an affidavit filed that no action is being taken by DDA upon the Scheme or the notice, subject-matter of the application. The introduction of such schemes by MCD and DDA show the extent of the apathy and lack of concern of these bodies."

The Court ultimately concluded that rule of law is the essence of democracy. It has to be preserved and Laws have to be enforced.

23. In ***Mahendra Baburao Mahadik v. Subhash Krishna Kanitkar,*** 2005 (4) SCC 99, a two Judge Bench of the Supreme Court held that a purported resolution of the Municipal Council in terms whereof all unauthorised constructions within the municipal area were sought to be regularised upon imposition of penalty and compounding of offences in terms of Section 43 of the MRTP Act, is wholly unsustainable in law and offences relating to unauthorised or illegal constructions cannot be compounded and, therefore, the structures have to demolished. The Court held that regularisation of such unauthorised structures would defeat the very purpose of introducing the rules of planned development of the city and, thus, cases of such unauthorised constructions must be dealt with sternly.

24. We may also mention that this Court in ***The Chairman, MMDA v. S. Radhakrishnan,*** 2006 (1) CTC 241, to which one of us (A.P. Shah, C.J.) was a party, held that under the Tamil Nadu Town and Country Planning Act, 1971, mere lapse of time, *viz.,* three years from the date of completion of unauthorised construction would not stand legalized. The appropriate authority has got power *de hors* Section 56 to order demolition of unauthorised development under Section 85(1)(c) of the Act. The planning authority is, therefore, within its right to issue notice against unauthorised construction even after expiry of three years and take appropriate steps for demolition of unauthorised development.

25. In ***Rani v. Krishnan,*** 1994 (2) MLJ 186, K.A.Swami, C.J. has held that in view of express provisions of Sections 48 and 56 of the Tamil Nadu Town and Country Planning Act, 1971, unauthorised construction cannot be allowed to be used by owner or lessee pending consideration of Application for permission submitted by the owner.

26. The catena of decisions referred to above unwaveringly show that the word "environment" is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. There is constitutional obligation on the State Government and the Municipalities, not only to ensure and safeguard proper environment, but also an imperative duty to take adequate measures to promote, protect and improve both man-made and natural environment. The Municipal Laws regulating the building construction activities have been enacted to achieve a larger purpose of public health, safety and general welfare. Any violation of zoning and regulation laws, takes a toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. Though Municipal Laws permit deviation from sanctioned constructions being regularised by compounding but that is by way of exception. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate

deviations do not deserve to be condoned and compounded. At the time of planning, experts in the field of town planning take into account various aspects, such as, healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, the need of household industries, etc. Regularising the constructions erected in violation of the regulations has serious consequences. Regularisation in many cases for the violation of the front setback, will not make it easily feasible for the Corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirement of side set back will deprive adjacent buildings and their occupants of light and air and also make it impossible for a fire engine to be used to fight fire in a high-rise building. The violation of the floor space index, will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire stair case and other fire prevention and fire fighting measures would seriously endanger the occupants resulting in the building becoming a very veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads causing severe inconvenience to the public at large. Such grant of exemption and the regularisation is likely to spell ruin for any city as it affects the lives, health, safety and convenience of all its citizens. The Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. If the laws are not enforced and the orders of the Court to enforce and implement the laws are ignored, the result can only be total lawlessness.

27. In ***Consumer Action Group's case***, cited supra, the Supreme Court upheld the constitutional validity of section 113-A of the Act on the premise that it was a power to be exercised as a one-time measure and the legislature cannot extend the scheme contrary to the order of the Supreme Court. It is not open to the Government to keep on amending schemes or bring new schemes by frequently extending the cut-off date thereby virtually making a complete mockery of the provisions of the Act. As pointed out by the Supreme Court, the exemption clause may properly apply only to excessive and genuine hardship and not to exempt the violators from the application and control of the Act thereby allowing them a free hand to violate the rules which are enacted in the interest of the community and for the orderly development of the city. By virtue of amended Section 113-A of the Act, buildings which have been constructed after 1999 in violation of the Town Planning Law, zoning regulations and the Development Control Rules, are now eligible to get those violations regularised and this would in effect defeat the object of the legislation itself and the order of the Supreme Court directing the respondents to nip the violations in the bud. To repeatedly enable an authority to grant dispensation of the application of the Rules is to create a situation which would virtually encourage the consistent pattern of abuse of the provisions of the Act and the Rules. The objective of the Act is

to promote planned development in the city. The frequent amendments effected to Section 113-A suggest that the Government expects to check and curb unplanned development only by imposing a fee. The power of exemption cannot operate to destroy the substantive provisions of the statute and these exemption clauses can be applied only to remove excessive and genuine hardship and not to virtually allow the builders a free hand in violating the rules which are enacted in the interest of the community and for the orderly development of the city.

28. We are unable to find either in the exempting provision or in the method of its application, any discernible reason as to why the exemption should be granted in favour of the violators. Having regard to the purpose of the Act, Rules and the necessity for their observance in regulating building growth in the city, it is imperative that the Rules should be scrupulously and strictly applied. Section 113-A by offering priced amnesty to violators at the cost of public interest and scientific town planning reduces the status of such regulations to a purchasable privilege from that of mandatory safeguards designed to ensure the orderly growth of the city. All violations are grouped together and the Rules only provide for different categorisation for differential pricing only. The application and observance of the Development Control Rules is vital for the proper and planned growth and development of the city. If these rules are given a go-by, the inevitable result will be shortage of water and electricity, choked roads and ecological and environmental imbalance. Such hardship would be suffered by every resident of the city. The impugned amendments to the section are thus in gross violation of Articles 21 & 14 of the Constitution of India, inasmuch as they arbitrarily affect the constitutional guarantee of ensuring a decent and planned environment.

29. Learned Advocate General submitted that pursuant to the scheme framed under Section 113-A, not enough Applications were received by the authorities as the fees were highly excessive and, therefore, the State Government with an intention to enable the people to apply for regularisation considered it necessary to extend the cut-off date from time to time. He submitted that since it was not possible for the authorities to ascertain the exact date of construction, having regard to the large number of Applications, and also having regard to the fact that it was not possible for the authorities to ascertain as to whether the construction was before the cut-off date *i.e.,* 28.2.1999, it was necessary to enact a law to cover all the violations up to the extended dates as per the scheme. It is not possible to accept the submission of the learned Advocate General. If enough Applications were not received by the State Government, then the State Government could have extended the date of making applications. But there was no justification for extending the cut-off date so as to cover the violations after 28.2.1999. This is especially so when the Supreme Court has upheld the validity of Section 113-A, as a one-time measure. We hasten to add that the extension of date for making applications for regularisation, as

well as the reduction in fees cannot be said to be illegal and the construction made prior to 28.2.1999 may be regularised, provided the Application for regularisation has been preferred before the extended date *i.e.* 30.06.2002.

30. Both the C.M.D.A and Corporation have submitted elaborate charts to show that the provisions of the Act and the Rules have been grossly violated by the builders and buildings have been constructed in total violation of the Rules. Buildings have been either constructed without any permission or additional floors have been raised in violation of the FSI Regulations. In none of these buildings, the mandatory safeguards relating to the car-parking area and fire safety measures have been observed. On the other hand, the basement and stilt portions, which are exclusively made for car parking, have been illegally converted into shops for commercial use. It appears that in some cases the authorities have taken action and demolition notices have been issued. However the builders have obtained stay on the ground that their Applications for regularisation are pending before the competent authority. It is also seen that some of the violators have encroached upon the roads by constructing steps, platforms, etc. right on the pavements or on the roads. It is brought to our notice that there are encroachments on busy streets like Ranganathan Street, Natesan Street, Madley Road, etc. It is necessary to direct the municipal authorities to clear the encroachments in order to ensure smooth flow of traffic on these streets and roads. It is needless to say that there is no necessity of issuing notice for the removal and demolition of the encroachment in public streets and roads, as such encroachment shall be liable to be removed forthwith. So also the electricity connection or sewerage connection facilities shall be liable to be disconnected forthwith.

31. We are inclined to appoint a Monitoring Committee with sufficient staff and infrastructure to oversee the demolition of unauthorised construction put up in violation of the planning permit, master plan, CRZ and other laws. It is also necessary to identify professional builders of such buildings so as to enable the flat purchasers to proceed against the builders for recovery of damages. It is also high time that the CMDA and the Corporation should identify the officers responsible for the failure to enforce the FSI laws and to initiate disciplinary action against them. It is also necessary to direct that the regularisation fee collected should be kept aside in a separate fund and not merged with the general account of the State of Tamil Nadu and its agencies. These funds should be used for the purpose of alleviating the sufferings caused to the public by the violations committed by the builders. Further certain violations like failure to provide adequate car parking area, fire safety measures within the building premises, should be viewed seriously as it has a larger societal impact and these violations cannot be ordinarily condoned by collecting the fees, especially in regard to the commercial buildings. Owners of such premises must be directed to demolish the unauthorised construction and provide parking area and fire safety measures within the premises. Similarly, violations in FSI potentially

impact the larger community and must not be condoned particularly in commercial complexes. Violation in FSI result in a massive strain on the existing infrastructure facilities like road network, drainage, water, etc. and also impact the neighbourhood. Similarly, the violations in Open Space Reservation (OSR) or illegal buildings put up on lake-beds, water catchments, flood plains, CRZ areas, etc. have ecological repercussions and must not be condoned and violations in such cases must be demolished

32. In the result, in view of the foregoing discussion, we pass the following order:

(i) The amendments to Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971 by Amending Acts 31 of 2000, 17 of 2001 and 7 of 2002 and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999 as far as applicable to the constructions made after 22.2.1999 are hereby declared *ultra vires* Articles 14 and 21 of the Constitution. All orders for regularisation of such buildings (constructed after 28.2.99) passed pursuant to the amending provisions stand quashed.

(ii) A Monitoring Committee is hereby constituted consisting of the following:

(a) The Vice Chairman, CMDA;

(b) The Commissioner, Corporation of Chennai;

(c) The Managing Director, Chennai Metro Water Supply and Sewerage Board;

(d) The Chairman, Tamil Nadu Electricity Board;

(e) The District Collector, Chennai;

(f) The Director of Fire Services;

(g) Mr. Louis Menezes (former Commissioner, Corporation of Chennai);

(h) Mr. M.G. Devasahayam (IAS retd.) (former Secretary, Housing and Urban Development);

(i) P.T. Krishnan, (Architect);

(j) Prof.Suresh Kuppuswamy (School of Architecture and Planning, Anna University);

(k) Durganand Balsaver (Architect and Urban Planner); and

(l) Dr. A. Srivatsan (Architect and Urban Planner).

(iii) The Monitoring Committee shall be provided with sufficient staff and infrastructure and all files pertaining to illegal constructions to be placed before it.

(iv) The Committee shall first take up the multi-storied commercial complexes for consideration. This should cover all buildings which are more than four floors in height. Where the construction of the entire building is illegal, the building has to be demolished. Where an extra floor has been put up illegally, the same should be demolished. Necessary modifications/demolitions must be done for satisfying the norms for fire safety and car parking facilities within the building premises.

(v) Special buildings should be categorized as those with actual construction of ground plus three floors. In the case of commercial special buildings, the same measures that apply to multi-storied buildings as above should be followed. In the case of residential multi-storied buildings and special buildings, the monitoring committee may suggest less stringent measures, bearing in mind the impact of retaining the building.

(vi) The professional builders of illegal multi-storied and special buildings should be identified for imposition of heavy penalties. This amount should be used to compensate the unwary purchasers and to take remedial measures for alleviating the harm caused to the society.

(vii) The Committee shall identify the officers at the CMDA and the Corporation, who are responsible for the failure to enforce the planning laws and make appropriate recommendation for prosecution and/or disciplinary action.

(viii) The CMDA and the Corporation are directed to take action against the illegal multi-storied and special buildings, as per the recommendation of the Monitoring Committee. The Commissioner of Police, Chennai is directed to provide necessary police protection for taking action against illegal constructions.

(ix) To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

(x) The Chief Planner is directed to decide the applications for exemption pertaining to constructions prior to the cut-off date, *i.e.* 28.2.1999 and dispose of all the Applications within a period of three months. It is needless to say that all the Applications claiming exemption under the amended provisions of Section 113-A of the Act in respect of constructions made after 28.2.1999 shall stand dismissed and those Applications shall not be entertained by the Government and/or the authority or officer authorised by the Government under Section 113-A of the Act. The Chief Secretary is directed to allot the hearing of

Appeals atleast to two officers in addition to the Housing and Urban Development Secretary.

(xi) Where claims are made that the unauthorised/deviated constructions were eligible for protection under the 1999 scheme - to determine the veracity of claims and evolve criteria for such identification which may include the following:

(a) Date of planning permission and proof of completion;

(b) Electricity service connection and water connection; and

(c) Registration of sale deed conveying constructed area.

(xii) The Monitoring Committee shall be consulted for applications claiming exemption under Section 113-A of the Act as well as Appeals under Section 113-A(6). The Monitoring Committee shall also be consulted for changes in the Master Plan and Development Control Rules, which affect construction activity in the city.

(xiii) The regularisation fee collected should be kept aside in a separate fund and not to be merged with the general account of the State of Tamil Nadu or its Agencies and this fund shall be used to alleviate the sufferings of the affected citizens in consultation with the Monitoring Committee.

(xiv) The Corporation is directed to forthwith take steps to remove the encroachments on all busy streets like Ranganathan Street, Natesan Street, Madley Road, etc. and the Commissioner of Police is directed to provide adequate police force at the disposal of the Corporation for the purpose of carrying out work of removal of encroachments.

(xv) No Civil Court shall entertain any suit or proceedings or Application in respect of the action taken by the CMDA or Corporation in respect of the illegal construction and encroachments on roads and pavements. All pending and future petitions filed/to be filed against CMDA and the Corporation relating to the illegal and unauthorised construction of buildings and or encroachment, and the demolition notice shall be placed before the special bench to be nominated by the Chief Justice.

33. The Writ Petitions are accordingly allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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