

2025 LiveLaw (SC) 421

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.

April 01, 2025.

CIVIL APPEAL NO.4590 OF 2025 (Arising out of S.L.P.(Civil) No.6466 of 2021)

ZULFIQUAR HAIDER & ANR. versus STATE OF UTTAR PRADESH & ORS.

Constitution of India; Article 21 - U.P. Urban Planning and Development Act, 1973; Section 27 and 43 - Right to Shelter - Illegal Demolition of Residential Structures – Compensation – Held, demolition of appellants’ residential structures by Prayagraj Development Authority (PDA) was illegal and arbitrary due to non-compliance with procedural safeguards under Sections 27 and 43 of the 1973 Act. Show-cause notice and demolition order affixed without multiple attempts at personal service, violating requirement to ensure person “cannot be found”. Demolition within 24 hours of serving subsequent communication denied appellants opportunity to appeal under Section 27(2). Action breached principles of natural justice, right to shelter under Article 21, and rule of law. PDA ordered to pay Rs. 10 lakh compensation to each of six individuals for illegal demolition of their homes. The Court directed the PDA to scrupulously follow the directions in the case of *In Re: Directions in the Matter of Demolition of Structures*, [2024 LiveLaw \(SC\) 884](#) which laid down guidelines for serving notices and carrying out demolitions, in the future.

WITH CIVIL APPEAL NO.4591 OF 2025 (Arising out of S.L.P.(Civil) No.6624 of 2021) CIVIL APPEAL NO.4592 OF 2025 (Arising out of S.L.P.(Civil) No.6818 of 2021) CIVIL APPEAL NO.4593 OF 2025 (Arising out of S.L.P.(Civil) No.6785 of 2021) CIVIL APPEAL NO.4594 OF 2025 (Arising out of S.L.P.(Civil) No.2376 of 2022)

[Arising out of impugned final judgment and order dated 08-03-2021 in WC No. 9355/2021 passed by the High Court of Judicature at Allahabad]

For Petitioner(s): Mr. Abhimanyu Bhandari, Sr. Adv. Ms. Rooh-e-hina Dua, AOR Mr. Atif Suhrawardy, Adv. Mr. Syed Mehdi Imam, AOR Mrs. Shamama Anis, Adv. Mr. Tabrez Ahmad, Adv. Mr. Pankaj Kumar, Adv.

For Respondent(s): Mr. R. Venkataramani, Attorney General for India Ms. Aishwarya Bhati, A.S.G. Mr. Rajeev Kumar Dubey, Adv. Mr. Ruchir Ranjan Rai, A.S.G. Mr. Ashiwan Mishra, Adv. Mr. Kamendra Mishra, AOR Mr. Yatindra Singh, Sr. Adv. Mr. Shyan Divan, Sr. Adv. Mr. Vibhav Mishra, Adv. Mr. Shaurya R Rai, Adv. Mr. Parmanand Gaur, AOR Ms. Megha Gaur, Adv.

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

Heard the learned senior counsel appearing for the appellants and the learned Attorney General for India appearing for the first respondent, State of Uttar Pradesh. We have also heard the learned senior counsel appearing for the second respondent, Prayagraj Development Authority (hereinafter referred to as “the PDA”).

These cases shock our conscience. The residential premises/buildings of the appellants have been highhandedly and illegally demolished in the manner set out in this judgment.

The demolition action is purportedly taken under Section 27 of the Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as the “1973 Act”) by the PDA.

Section 27 of the 1973 Act reads thus:

“27. Order of demolition of building.-

(1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or without the permission approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, in relation to the development area, then, without prejudice to the provisions of Section 26, [the Vice-Chairman or any officer of the Authority empowered by him in that behalf] may make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period not being less than fifteen days and more than forty days from the date on which a copy of the order of removal, with a brief statement of the reasons therefore, has been delivered to the owner or that person as may be specified in the order and on his failure to comply with the order, [the Vice-Chairman or such officer] may remove or cause to be removed the development, and the expenses of such removal as certified by [the Vice-Chairman or such officer] shall be recoverable from the owner or the person at whose instance the development was commenced or was being carried out or completed as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such expenses:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

(2) Any person aggrieved by an order under Sub-section (1) may appeal to the (Chairman) against that order within thirty days from the date thereof and the [Chairman] may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order.

(3) The [Chairman] may stay the execution of an order against which an appeal has been filed before it under Sub-Section (2).

(4) The decision of the (Chairman) on the appeal and, subject only to such decision, the order under Sub-section (1) shall be final and shall not be questioned in any Court.

(5) The provisions of this section shall be in addition to, and not in derogation of, any other provision relating to demolition of buildings contained in any other law for the time being in force.”

Now, we come to the facts of the case. There is no dispute that the facts of these cases are similar. We are, therefore, referring to the factual aspects in the first case in the group.

As can be seen from the counter affidavit filed by the PDA, a show-cause notice, as contemplated by the proviso to sub-section (1) of Section 27 of the 1973 Act, was issued on 18th December 2020 by the PDA. On the very day, the notice was allegedly affixed on the structure with the remark that it was attempted to be served on the appellants on the same day, but it could not be served. Thereafter, an order dated 8th January, 2021, was passed by the Zonal Officer of the PDA directing demolition of the structures of the appellants. We find from the counter affidavit that an identical endorsement was made on the said order of 8th January, 2021 and that a copy of the order was allegedly affixed. Thereafter, on 1st March, 2021, another communication of the order of demolition passed earlier was issued by the Zonal Officer of the PDA to the appellants. Even though the said communication was purportedly affixed on the same day, it was also sent by Registered Post, which was served upon the appellants on 6th March, 2021 and on 7th March, 2021, the demolition of residential structures of the appellants was carried out by use of bulldozers.

As far as service of notice is concerned, the law has been subsequently laid down by this Court in the case of ***In Re: Directions in the matter of demolition of structures***¹. Paragraph 91A of the said judgment reads thus:

“91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. **The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.**

iii. **The time of 15 days, stated hereinabove, shall start from the date of receipt of the said notice.**

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the notice is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.”

(emphasis added)

It is true that it is a subsequent decision. Therefore, we have examined the provisions of the 1973 Act as regards the service of notice. Section 43 reads thus:

“43. Services of notices, etc.-

(1) All notices, orders and other documents required by this Act or any rule or regulation made and there under to be served upon any person shall save as otherwise provided in this Act or such rule or regulation be deemed to be duly served -

(a) Where the person to be served is a company if the document is addressed to the secretary of the company at its registered Office or at its principal office or place of business and is either-

(i) sent by registered post, or

(ii) delivered at the registered office or at the principal office or place of business of the company,

¹ 2024 SCC OnLine SC 3291

(b) where the person to be served is a firm, if the document is, addressed to the firm at its principal place of business, identifying it by the name or style under which its business is carried on and is either-

- (i) sent by registered post, or
- (ii) delivered at the said place of business;

(c) where the person to be served is a public body or a corporation or society or other body, if the document is addressed to the as secretary, treasurer or other chief officer of that body, corporation or society at its principal office, and is either-

- (i) sent by registered post. Or
- (ii) delivered at that office.,

(d) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found is affixed on some conspicuous part of his last known place of residence or business, if within the development area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of land or building to which it relates, or

(iii) Is sent by registered post to that person.

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed 'the owner' or 'the occupier' as the case may be of that land or building (naming, that land or building) without further name or description, and shall be deemed to be duly served-

(a) If the document so addressed is sent or delivered in accordance with Clause (d) of Sub-section (1), or

(b) If the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building.

(3) Where a document is served on a firm in accordance with Clause (b) of Sub-section (1), the document shall be deemed to be served on each partner of that firm.

(4) For the purpose of enabling any document to be served on the owner of any property, the secretary to the Authority may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a minor the service upon his guardian or any adult member of his family be deemed to be service upon the minor.

(6) A servant is not a member of the family within the meaning of this section."

(emphasis added)

Clause (d) of sub-Section (1) of Section 43 will apply in this case. It provides that if a person to whom the document is addressed is not found, it shall be affixed on some conspicuous part of his last known place of residence or business, or it should be tendered to some adult member of his family. There is also an option provided to send the document by registered post. Clause (d)(2) uses the words "if such person cannot be found". The words are not "if such a person is not found". It is clear that only after genuine multiple efforts are made to find the person on more than one day, one can say that "the person cannot be found". It cannot be that the person entrusted with the job of serving notice goes to the address and affixes it after finding that on that day, the person concerned is unavailable at a given time. The words "if such a person cannot be found" cannot be given

any other interpretation. As stated earlier, it is evident that repeated efforts have to be made to effect personal service. Only if those efforts fail, can the other two options be resorted to. One is of affixing and the second is of sending by registered post. Considering the drastic consequences provided in Section 27, recourse should usually be taken to both modes. The officers of the PDA must understand that before a structure is demolished, every possible effort should be made to effect a proper service of the show-cause notice.

It is their duty to do so. Moreover, after proper and effective service of the order of demolition, at least 15 days' time must be provided to the owner or occupier to avail the remedy of an Appeal under Section 27(2) of the 1973 Act.

The notice issued on 18th December, 2020, was a show cause calling upon the addressee to show cause why action of demolition should not be taken. On page 168 of the counter affidavit of the third respondent, a copy of the notice dated 18th December, 2020 has been annexed which records that the notice was pasted on that day. Multiple efforts were not made to personally serve the notice. The requirement of the proviso to sub-section (1) of Section 27 is to grant a reasonable opportunity for the person whose structure is sought to be demolished to show cause. This is no way of granting a reasonable opportunity.

The authorities, especially the development authority, must remember that the right to shelter is also an integral part of Article 21 of the Constitution of India. This right can be taken away only by following due process of law. Moreover, our country is governed by the rule of law, which is an integral part of the basic structure of the Constitution. The residential structures of citizens cannot be demolished in such a summary manner without following the principles of natural justice. As stated earlier, no efforts were made to make the personal service of the show cause notice. Although the option of sending it by registered post was available, it was not exercised. The same is the case with the order dated 8th January, 2021, directing the demolition. On the very day, it was stated to be served by affixing. A copy thereof was not sent by the registered post. Only the communication dated 1st March, 2021, was sent by the registered post, which was served upon the appellants on Saturday, 6th March, 2021. Within twenty-four hours of the service of the said communication, the structures were brazenly demolished.

As noted by this Court in the order issuing notice, against an order of demolition made under sub-section (1) of Section 27 of the 1973 Act, an appeal has been provided under sub-section (2) of Section 27. The demolition order passed on 8th January, 2021, was not served upon the appellants. It was allegedly served by affixing only. What was served was a subsequent communication dated 1st March, 2021. Within 24 hours of the service of the said communication, an action of demolition was taken on a Sunday. This deprived the appellants of their opportunity to avail of the remedy of appeal under sub-Section (2) of Section 27 of the 1973 Act.

Therefore, the demolition action is completely illegal, which violates the appellants' right to shelter guaranteed by Article 21 of the Constitution of India. The action is completely arbitrary. Moreover, carrying out demolition of residential structures in such a highhanded manner shows insensitivity on the part of the statutory development authority. This is one more case of bulldozer justice. The officers of the PDA have forgotten that the rule of law prevails in our country. Unfortunately, the State Government has supported the PDA.

On the earlier occasion, we suggested to the learned counsel for the appellants that we may permit them to reconstruct the structures, subject to giving an undertaking that in the event the appeal filed under subSection (2) of Section 27 is dismissed, the same will have to be demolished at their own cost.

Today, the learned senior counsel and the learned counsel appearing for the appellants, on instructions, stated that the appellants are not in a position to reconstruct the structures. In view of this statement, there is now there is no occasion to direct the planning authority to follow the due process of law in these cases. However, considering the inhuman and illegal action of demolition carried out, the planning authority must be saddled with costs. We quantify the costs of Rs. 10,00,000/- (Rupees ten lakhs) in each case.

We, therefore, set aside the impugned order dated 8th March, 2021, passed by the High Court of Judicature at Allahabad and dispose of these appeals by passing the following order:

- 1) We direct the PDA to scrupulously follow the directions in the decision of this Court in *Re: Directions in the matter of demolition of structures*¹;
- 2) We direct the PDA to pay costs of Rs.10,00,000/- (Rupees ten lakhs) in each appeal to the appellants within a period of six weeks from today. On the failure to pay the amount within the stipulated time, it will carry interest at the rate of 6% per annum from the date of the filing of the present Special Leave Petitions till the payment;
- 3) Even assuming that a copy of the order referred to in paragraph 6 of the counter affidavit of the third respondent is already served upon the appellants, we direct the third respondent to provide a copy thereof to the appellants; and
- 4) We leave it open to the appellants to file appropriate proceedings to establish their rights in respect of the land subject matter of these appeals. They will also be entitled to file proceedings to claim compensation on account of illegal demolition.

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