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CASE COMMENTARY ON IN RE: DIRECTIONS IN THE MATTER OF DEMOLITION OF STRUCTURES (BAN OF BULLDOZER JUSTICE)

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ABSTRACT:

Every human being desires to have shelter above their head, a house or a shelter is the embodiment of an individual's safety and security. Maya Angelou once expressed a profound sentiment in her book, stating that "The ache for home lives in all of us, the safe place where we can go as we are and not be questioned."[1] This quote highlights the fundamental human need for security and belonging. However, a critical question arises in cases where authorities take drastic actions, such as demolishing homes, as a punitive measure against individuals accused of crimes.

A similar idea was echoed by Lord Denning in the case of *Southam v. Smout*[2], where he famously remarked that even the poorest individual has the right to protect their home from intrusion. He stated, "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter—the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement." However, he also acknowledged that such rights could only be overridden by lawful justification. In the context of India, the issue of home demolitions as a punitive measure has been a matter of legal and ethical debate. This practice, often referred to as "Bulldozer Justice," has been witnessed in states like Uttar Pradesh, Madhya Pradesh, Uttarakhand, and Rajasthan. It involves the demolition of properties belonging to individuals accused of crimes, often without due process[3]. The discussion extends to the powers exercised under Article 142 of the Indian Constitution, which grants the Supreme Court the authority to pass any order necessary for complete justice. However, using this power to justify punitive

[1] Maya Angelou, The ache for home lives in all of us, the safe place where we can go as we are and not be questioned, Fix quotes (Jan. 20, 2025, 8:00 P.M.), https://fixquotes.com/quotes/the-ache-for-home-lives-in-all-of-us-the-safe-26711.htm

[2] [1964] AIR 1 QB 308 (UK).

[3] CDNBBSR, https://cdnbbsr.s3waas.gov.in/s3ec049edda0fd4d983bf975935cfd492f/uploads/2024/12/2024120295.pdf (last visited Jan. 20, 2025).

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demolitions raises concerns about the fundamental right to shelter and the principles of natural justice.

1. BACKGROUND OF THE CASE:

A series of writ petitions have been filed under Article 32 of the Indian Constitution on behalf of citizens whose residential and commercial properties were demolished by state authorities without adhering to due legal process[4]. These demolitions were carried out based on allegations linking the property owners to criminal activities. The petitioners have sought directives from the Supreme Court to prevent the government, including the Union of India and respective state authorities, from taking arbitrary action against the properties of accused individuals. Additionally, they have demanded strict action against officials responsible for unauthorized demolitions. The case has been under continuous review by the court, which has examined the legality and fairness of such actions taken by the state. The state of Uttar Pradesh has contested the petition, filing an affidavit through the Special Secretary of the concerned department on behalf of the government. Given the seriousness of the issue, the court has proposed formulating a set of uniform guidelines applicable across India to regulate and address concerns regarding such demolitions. To ensure a fair and well-structured approach, the court has also invited suggestions from legal experts and researchers to contribute to the development of these guidelines.

2. ISSUES RAISED:

1. Whether the properties of the accused or the person convicted for that matter can be demolished by state machinery?
2. Whether individual rights are violated by such arbitrary state action?
3. Whether it violates the principle of the rule of law?
4. Whether such demolition disregard the principle of fairness in the criminal justice system, which mandates that the legal process should not judge the guilt of the accused?[5]

[4] V. Venkatesan, Supreme Court lifts the veil on demolition as extra-judicial punishment, Front line (Jan. 20, 2025, 8:05 P.M.), https://frontline.thehindu.com/columns/supreme-court-demolition-guidelines-right-to-shelter-due-process-officials-liability-justice-gavai-viswanathan-2024/article68874963.ece

[5] Law Web, https://www.lawweb.in/2025/01/supreme-court-guidelines-regarding.html (last visited Jan. 20, 2025).

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5. Whether it why is the concept of separation of power and doctrine of public trust in respect of government officials, holding their offices.

3. DECISION AND REASONING:

3.1 Decision made by the Hon'ble Court:

The court emphasized that upholding the rule of law, maintaining the separation of powers, safeguarding citizens' rights, and adhering to the doctrine of public trust are fundamental principles in any legal decision. If the executive exercises its power in a manner that disregards these constitutional principles, such actions would be deemed unconstitutional[6] on multiple grounds. Furthermore, if a citizen's home is demolished solely on the basis of being accused or convicted of a crime—without following the due process established by law—such an act must be declared unlawful and in direct violation of constitutional rights.[7] It was held by the honorable court that a person who is only accused of committing a crime or even convicted in any matter, cannot be inflicted with the punishment of demolition of his property or properties.

3.2 Principles or Doctrines Applied and reasoning made therein by the Court:

3.2.1 Rule of law:

The Rule of Law, as explained by A.V. Dicey, is based on three key principles: the supremacy of law, equality before the law, and the spirit of legal justice. According to this doctrine:

(a) No individual, regardless of their position or status, is above the law, ensuring that no special privileges are granted based on rank or authority.

(b) The state does not have unchecked power to impose punishment on individuals without following legal procedures.

In the case of Rojer Mathew v. South Indian Bank Ltd[8]., the Supreme Court observed that "if the Rule of Law is absent, there is no accountability, leading to abuse of power and corruption. Without the Rule of Law, governance is dictated not by laws but by the arbitrary decisions and whims of those in power."[9] Although the Indian Constitution does not explicitly define the principle of the Rule of Law, it remains a fundamental legal doctrine that the judiciary upholds. This principle ensures that state authorities do not misuse their powers or engage in arbitrary actions that could result in injustice for the citizens. The judiciary plays a crucial role in

[6] AIR 2020 SUPREME COURT 1363,
[7] ETV Bharat, https://www.etvbharat.com/en/!bharat/supreme-court-bulldozer-justice-demolition-of-properties-enn24111301959 (last visited Jan. 20, 2025).
[8] (2020) 4 AIR SC 517.
[9] Law Matics, https://thelawmatics.in/rule-of-law-concept-and-judicial-precedents-in-india/ (last visited Jan. 20, 2025).

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reinforcing this principle to maintain fairness and prevent the government from exceeding its constitutional limits. It is considered one of the important principles for protecting the constitutional democracy of the country. It is also embarrassing that by adopting the principle of the rule of law, the state can be devoid of arbitrary exercise of state power and it protects individuals their freedom, and their property in such a way that no individuals are subject to abuse of state power. It has been noted that if the executive takes the extreme step of demolishing a citizen's home solely on the basis of an accusation, without following proper legal procedures, such an action directly violates the fundamental principles of the Rule of Law.[10] This principle ensures that every individual, regardless of the allegations against them, is entitled to due process and legal protection. Arbitrary demolitions undermine justice and set a dangerous precedent where authority is exercised without accountability or adherence to established legal norms.

3.2.2 Doctrine of Separation of Power:

Another crucial aspect to consider in this matter is that the Indian Constitution upholds the doctrine of separation of powers, ensuring a balanced distribution of authority among the three branches of government. This doctrine is recognized as a fundamental part of the Constitution's basic structure.[11] As a result, the judiciary has the authority to issue directives to the executive and establish guidelines to safeguard both fundamental and statutory rights. It has been ruled that if the executive assumes the role of the judiciary by imposing penalties—such as demolishing the homes of individuals merely accused of a crime—it directly violates the principle of separation of powers. Such actions blur the distinct roles of governance, leading to an overreach of executive power and undermining the legal framework designed to protect citizens from arbitrary decisions.

3.2.3 Doctrine of public trust and public accountability:

Executives hold their authority as trustees of the citizens, meaning that every action they take must align with the principles of public trust and accountability. Their decisions should reflect fairness, justice, and adherence to the rule of law. The greater the power vested in them, the higher their responsibility to act in a just and lawful manner.

It has been emphasized that if executive authorities take the law into their own hands—such as in the present case—they overstep their legal boundaries and undermine democratic principles.

[10] Avishek Mehrotra, Rule of Law in India – An Analysis, I Pleaders (Jan. 20, 2025, 8:05 P.M.), https://blog.ipleaders.in/rule-of-law-india-analysis/.

[11] Byjus, https://byjus.com/free-ias-prep/separation-power-indian-constitution/ (last visited Jan. 20, 2025).

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In such instances, public officials responsible for such excessive and unlawful actions must be held accountable to prevent the misuse of power and ensure that governance remains transparent and just.[12]

3.2.4 Rights of the accused under the constitution:

In examining the present issue, it is evident that every individual—whether merely accused, undergoing trial, or even convicted—retains certain rights, just like any other citizen. Any punishment imposed on such individuals must strictly adhere to legal provisions and the principles enshrined in the Constitution. Even those accused or convicted of crimes are entitled to specific rights and safeguards that protect them from arbitrary state action. Government authorities and law enforcement officials are not permitted to take unilateral or unjust actions without following the due process of law. Upholding these legal protections is essential to maintaining justice, preventing misuse of power, and ensuring that the rule of law remains the foundation of governance.

3.2.5 Right to Shelter:

The impact of house demolitions extends beyond the accused individual, affecting their family members, including spouses, children, and elderly parents, who share the same residence. These innocent relatives face severe consequences without any involvement in the alleged crime, merely because of their association with the accused.[13] Such actions result in a grave violation of the fundamental right to life enshrined in the Constitution, which also guarantees the right to shelter.

In the case of *State of Karnataka v. Narasimhamurthy*[14], the Supreme Court affirmed that the right to shelter is a fundamental right under Article 19(1) of the Constitution. The judgment emphasized that to make this right meaningful for the underprivileged, the State must provide necessary facilities and opportunities for housing.[15] The acquisition of land to offer housing for the homeless serves a public purpose, aligning with the State's constitutional duty to ensure housing for those in need. Moreover, the right to shelter is recognized as a basic human right under international frameworks such as the Universal Declaration of Human Rights and other global conventions. It is not just about having a physical space to live but encompasses overall

[12] Indian Express, https://indianexpress.com/article/explained/explained-law/what-supreme-court-said-about-bulldozer-justice-9668571/ (last visited Jan. 20, 2025).
[13] Constitution simplified, https://constitutionsimplified.in/blog-post78 (last visited Jan. 20, 2025).
[14] (2006) 4 AIR SC 2817.
[15] (1996) 2 AIR SC 578.

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well-being, including physical, mental, intellectual, and spiritual growth.[16] The Supreme Court has observed that the right to shelter is an essential component of Article 21 of the Constitution. Therefore, forcibly removing individuals from their homes without due process directly infringes upon their fundamental right to life, making such actions unconstitutional and unjust.

4. GUIDELINES ISSUED:

A. Requirement of Notice:

i. A prior show cause notice should be served before any kind of demolition. Such notice should be responded to by the recipient within the time provided by local municipal loss or 15 days from the service date, whichever is later.

ii. It is essential that a notice be properly served to the owner or occupant of the property, preferably through registered post. In addition, a copy of the notice should be visibly attached to the exterior of the building to ensure it can be easily seen by anyone passing by.[17]

iii. The 15-day period for taking action or responding to the notice should begin only after it has been received by the intended recipient. This ensures that the affected party has ample time to address the matter.

iv. Once the notice is issued by the competent authority, they should send an email notification to the office of the collector or district magistrate. The collector or district magistrate shall issue an auto-generated acknowledgment of receipt. They shall also design a noodle officer to oversee all related communications, they are also obliged to communicate all these details to municipal and regulatory authorities within one month.

v. The notice must clearly outline the details of the unauthorized construction, including the reasons for the proposed demolition. It should also list the documents that the recipient needs to submit in their response, provide the date of the hearing, and specify the authority before whom the hearing will be held.[18]

vi. Additionally, each municipal and local authority should establish a dedicated digital portal within three months. This portal must include all relevant information, such as records of the notice service, responses submitted by the recipient, the show-cause notice, and the

[16] *Id* at 1988.
[17] Easy Legal, https://www.ezylegal.in/blogs/how-to-draft-a-legal-notice-to-evict-tenant (last visited Jan. 20, 2025).
[18] Law Matic, https://thelawmatics.in/bulldozer-action-judgment-explained/ (last visited Jan. 20, 2025).

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final order passed on the matter. This digital platform will ensure transparency and accessibility of information related to such proceedings.

B. Requirement of Personal Hearing:

i. The owner or the occupier must be provided with an opportunity to present their case in person.

ii. The minutes of the hearing must be recorded systematically and should serve as an official record of the proceedings.

C. Final Order:

i. Upon hearing both the sites, the resident authority shall pass a final order

ii. The final order shall contain

a) The Response made by the recipient against the notice.

b) If the designated authority disagrees with the content made with the notice, then the reasons for such this agreement should also be recorded in the final order.

c) It should answer whether the authorized construction is compoundable or not along with the reasons.

d) If the designated authority concludes that only part of the construction is authorized or uncomfortable then the details should be recorded in such required manner.

e) It should also mention why such an extreme type of demolition is the only option available.

D. An opportunity of appeal is a judicial scrutiny of the final order:

a. Even if the statute provides for appellate opportunity or not, the order shall not be implemented for a period of 15 days from the date of receipt. Additionally, such an order shall be displayed on the digital portal as well.[19]

ii. A thorough inspection report must be prepared and signed by two Panchas prior to demolition, and only unauthorized and non-compoundable structures will be demolished.

[19] English Express, https://english.jagran.com/india/bulldozer-justice-supreme-court-verdict-bulldozer-action-full-guidelines-uttar-pradesh-madhya-pradesh-rajasthan-demolition-illegal-structures-latest-news-10200672 (last visited Jan. 20, 2025).

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iii. The owner or occupier must be given 15 days to remove or demolish any unauthorized construction before the concerned authority acts if they do not comply and no stay is granted by an appellate authority or court.

E. Proceedings of Demolition:

i. A thorough report outlining the involved police and civil officials should be written, and the demolition process must be videotaped. It is necessary to preserve the video recording.

ii. The demolition report ought to be posted on the online portal and sent to the Municipal Commissioner via email.[20]

5. CONCLUSION:

The ruling in the given case plays a vital role in curtailing the arbitrary exercise of state power. It plays a vital role in balancing executives, discretion, and the fundamental rights of citizens. It strengthens the principle of natural justice and the role of the judiciary against state power. It also maintains checks and balances on the exercise of arbitrary executive actions.

[20] Sushovan Patnaik, Bulldozer demolitions remind of a "lawless, ruthless state of affairs", declares Supreme Court, as it issues pan-India guidelines, SCO (Jan. 20, 2025, 8:20 P.M.), https://www.scobserver.in/journal/bulldozer-demolitions-remind-of-a-lawless-ruthless-state-of-affairs-declares-supreme-court-as-it-issues-pan-india-guidelines/.

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