CONSTITUTIONAL WRIT
Present : The Hon'ble Mr. Justice Soumitra Pal
W.P. 18259(W) of 2009
Judgement on : 21st May, 2010.
SRI RAJU CHANDA AND ANOTHER
VERSUS
STATE OF WEST BENGAL AND OTHERS

POINTS

Unauthorised Construction – Unauthorised Additional Construction – Sanction – Fine deposited – Accepted by municipality – Statute not permitting regularising unauthorised construction on payment of fees or penalty or fine – Whether Action of municipality in accepting fees towards unauthorised is bad in Law and illegal – Refund of money – West Bengal Municipal Act 1993, S 16(5) ,119,203,204,220.

FACTS :-

Petitioner no.1 stated to be the owner of said premises submitted a site plan for construction of the ground floor and first floor ("G+1" for short) with the municipal authorities which was sanctioned on 6th January, 2009. Thereafter, G+1 construction was made. After completion of the first floor, the petitioner carried out additional construction by constructing the second and the third floor and the 'chile-kotha' admittedly without any sanctioned plan. According to the petitioners, though there might have been minor deviations, the area and the height of the building did not exceed as mentioned in the site plan which could be regularised by payment of fine. Incidentally, on 17th April 2009 the petitioner submitted the site plan for additional construction along with the requisite fees. According to them, for the unauthorised construction the municipal authorities imposed a fine or penalty of Rs. 21,000/- which was deposited on 2nd May, 2009. On 8th May, 2009 the plan for additional construction was furnished. Fee of Rs. 5,400/- was deposited. It has been stated that the petitioners, who are business partners, started business on the said premises after obtaining

Certificate of Enlistment for the year 2009-10 and have been carrying on the business. However, on 21st September, 2009 the petitioners came to learn that on 8th September, 2009 the said respondent had published a notice in a local weekly newspaper cancelling the Certificate of Enlistment as the construction was allegedly made without following the due procedure of law. Being aggrieved by such cancellation, on 23rd September, 2009 a representation was made before the said respondent and prayer was made to hand over the original sanctioned building plan for the additional construction including the 'chile-kotha'. Thereafter, the said respondent issued the impugned notice dated 8th October, 2009 directing the petitioner no.1 to appear on 21st October, 2009 before her regarding the alleged illegal construction. On receiving the said notice, a letter dated 15th October, 2009 was issued on behalf of the petitioner intimating, inter alia, that the actions were illegal, unlawful and were in violation of the principles of natural justice.

HELD

The argument of the petitioner to regularise the additional construction since fees have been accepted and *"in the locality there are other buildings having similar additional construction and the Municipal authority by accepting fine permitted them to retain the said additional construction .."* (paragraph 5 of the affidavit in reply) cannot be a ground for relief as the entire action was in violation of the provisions in the statute particularly section 204 thereof. It has to be kept in mind raising construction in violation of provisions of the Act also attracts the consequences under section 204A.

Para 11

As the statute does not permit regularising an unauthorized construction by acceptance of money, be it fees or penalty or fine, the action of the municipality in accepting Rs. 21,000/- towards unauthorised construction is bad in law and illegal and thus the question of grant of sanction for the additional construction does not arise at all .

Para13

In a case of unauthorized construction, under section 220 the Chairman has an emergency power to issue stop work notice. Though it was contended on

behalf of the Municipality that the letter dated 8th October, 2009 by the said respondent was in essence a stop work notice under section 220, the said argument cannot be accepted as it does not direct the petitioner no.1 to stop work. In view of the specific provision in section 220 the alternative argument on behalf of the Municipality that it could be deemed to be a notice under section 16(5) cannot be accepted as the said subsection relates to "execution of any work", that is a job, say, relating to execution of a project.

Para 16

Permitting the petitioners to carry on business in a building having unauthorized additional construction cannot be permitted as it is fraught with dangers since there is likelihood of an accident on a business premises which is frequented by the citizens.

Para17

A citizen should approach the Writ Court, a Court of Equity, with clean hands. In the instant case, as evident from paragraph 4 of the petition, the petitioner has admittedly raised an additional construction unauthorisedly which cannot be regularised for the reasons noted in this judgement. Moreover, while moving the petition the petitioners have, as noted, suppressed three –letters. Of the three, in two letters dated 10th June, 2009 and 16th June, 2009 the petitioners have admitted to having undertaken illegal construction, have apologized and have prayed for sanction of the building plan. However, by the letter dated 21st August, 2009, the petitioners have sought to give an impression as if except the 'chilekotha' the second and the third floors were validly erected. These three letters clearly show that the petitioners have not come up with clean hands and, for that reason their petition cannot be entertained apart from the reasons which have already been noted in this judgement.

Para 18

CASES CITED

1.Mahendra Babu Rao Mahadik and others versus Subhas Krishna Kanitkar and others : (2005) 4 SCC 99

2.Vishal Properties(P) Limited versus State of Uttar Pradesh and others : (2007)11 SCC 172
3.Susanta Tagore versus Union of India: (2005) 3 SCC 16

4.Madan Mohan Pal and another versus State of West Bengal and others : 2007(4) CHN 394

5.Purusottam Lalji and others versus Ratan Lal Agarwalla and others : AIR 1972 Calcutta 459

6.M/s. Rajatha Enterprises versus S.K. Sharma and others : AIR 1989 SC 860

7.Bhavnagar University versus Palitana Sugar Mill(P) Ltd. and others : (2003) 2 SCC 111

For the Petitioner(s) : Mr. Aloke Kr. Ghosh
Mr. Rabindra Narayan Dutta
Mr. Arun Kr. Ghosh
Mr. Ravi Sankar Dutta
Mr. Hare Krishna Halder
Mr. Koushik Bhattacharyya

For the Respondent
Nos. 2 and 3 : Mr. Arabinda Chatterjee
Mr. Dwaipayan Sengupta
Ms. Kakali Dutta

THE COURT. 1)In this writ application the petitioners have prayed for a direction on the respondents particularly on the Chairman, Habra Municipality, the respondent no.3 (for short 'the said respondent') to act in accordance with law and to hand over the original building plan relating to the construction of the second and third floors (hereinafter referred as 'the

additional construction') at premises no.1/1 Kanchari Para Road, Habra, North 24 Parganas (for short the "said premises") treating it to be as sanctioned since requisite fees have been paid and to withdraw the decision of the said respondent cancelling the Certificate of Enlistment regarding the business carried on by them in the name and style of M/s. Meena Bazar at the said premises since it was passed without their knowledge. Prayer has also been made for a direction upon the Board of Councillors of the Habra Municipality, the respondent no.2, and the said respondent to regularise the construction in excess of permissible floor area ratio for which fine has been paid and to cancel the notices dated 8th October, 2009 and 9th October, 2009 issued by the said respondent. Prayer has been made for a writ in the nature of Certiorari for production of the papers, records and documents.

2)The facts as stated in the petition are that the petitioner no.1 stated to be the owner of said premises submitted a site plan for construction of the ground floor and first floor ("G+1" for short) with the municipal authorities which was sanctioned on 6th January, 2009. Thereafter, G+1 construction was made. After completion of the first floor, the petitioner carried out additional construction by constructing the second and the third floor and the 'chile-kotha' admittedly without any sanctioned plan. According to the petitioners, though there might have been minor deviations, the area and the height of the building did not exceed as mentioned in the site plan which could be regularised by payment of fine. Incidentally, on 17th April 2009 the petitioner submitted the site plan for additional construction along with the requisite fees. According to them, for the unauthorised construction the municipal authorities imposed a fine or penalty of Rs. 21,000/- which was deposited on 2nd May, 2009. On 8th May, 2009 the building plan for additional construction was furnished. Fee of Rs. 5,400/- was deposited. It has been stated that the petitioners, who are business partners, started business on the said premises after obtaining Certificate of Enlistment for the year 2009-10 and have been carrying on the business. However, on 21st September, 2009 the petitioners came to learn that on 8th September, 2009 the said respondent had published a notice in a local weekly newspaper cancelling the Certificate of Enlistment as the construction was allegedly made without following the due procedure of law. Being aggrieved by such cancellation, on 23rd September, 2009 a representation was made before the said respondent and prayer was made to hand over the original sanctioned building plan for the additional construction including the 'chile-kotha'. Thereafter, the said respondent issued the impugned notice dated 8th

October, 2009 directing the petitioner no.1 to appear on 21st October, 2009 before her regarding the alleged illegal construction. On receiving the said notice, a letter dated 15th October, 2009 was issued on behalf of the petitioner intimating, inter alia, that the actions were illegal, unlawful and were in violation of the principles of natural justice.

3)The matter was moved on 30th October, 2009 when besides issuing the directions for filing of affidavits, submission of the municipality was also recorded in the order that the Trade Licence though kept in abeyance was not yet cancelled. Pursuant to the directions affidavits have been exchanged and are on record.

4)In course of hearing the learned advocate for the Municipality by an order was directed to produce the records and to give inspection to the petitioner. Records were produced and inspection was given. Photocopies of the relevant documents which were furnished to the petitioner, are also on record.

5)Learned advocate for the petitioner relying on the petition and the affidavit in reply had submitted that in the month of January, 2009 the site plan and the building plan of G + 1 were sanctioned by the authorities of the Habra Municipality. Accordingly, construction was made. Thereafter, the petitioners completed the additional construction. However, on 17th April, 2009 the site plan for the additional construction was furnished. On the same day requisite fees were deposited. On 2nd May, 2009 the municipality also accepted a fine of Rs. 21,000/- for the additional construction. On 4th May, 2009 the site plan for the additional construction was sanctioned. On 8th May, 2009 the building plan for additional construction was furnished along with the fees of Rs. 5,400/-. According to the petitioners since site plan was sanctioned and fine for the unauthorised additional construction was accepted it amounted to deemed
sanction of the additional construction. Hence, the said respondent was estopped from raising any question with regard to the additional construction as has been done in the letter dated 8th October, 2009. Argument was since the site plan for the additional construction wherein the proposed

construction had been shown has been approved, sanction of the building plan is automatic. Submission was though the ingredients of section 218 of the West Bengal Municipal Act, 1993 (for short 'the Act') are absent, however, in the letter dated 8th October, 2009 opinion regarding unauthorised construction has already been formed. As the power under section 218 is to be exercised by the respondent no.2, the action of the said respondent in issuing the letter dated 8th October, 2009 was without jurisdiction. On a query it was submitted that the letters dated 10th June, 2009 and 16th June, 2009 addressed to the said respondent, in which there was an admission of unauthorised construction, were written by the petitioner no.1. So far as keeping the Certificate of Enlistment in abeyance, which is a fallout of the alleged illegal construction, submission was since under section 119 of the Act action, if any, should have been by the Executive Officer of the Municipality, the notice in the newspaper as evident from page 52 of the petition, was without jurisdiction and illegal.

6)Learned advocate appearing on behalf of the Municipality relying on the affidavit in opposition affirmed on behalf of the respondent no. 2 and the said respondent and the records produced had submitted that the writ petition proceeds as if proceedings under section 218 had been initiated. Submission was though in the month of January, 2009 sanction for G + 1 was granted, however, it is evident from the statements in paragraph 4 of the petition that construction of the additional floors including 'chilekotha' had been undertaken without any sanction. Referring to the records it was submitted that on 17th April, 2009 site plan was submitted and inspection was fixed on 8th May, 2009. Prior to the said date, on 28th April, 2009, site inspection was held. On that day a report was prepared. Though in the said report 'chilekotha' finds no mention, it is evident not only 2nd and the 3rd floors, that is the additional construction had been built unauthorisedly, but there had been unauthorised construction in G + 1 too. In the report the Overseer of the Municipality had observed in writing that fine might be imposed, which the Vice Chairman on 30th April, 2009 in writing
had allowed. Thereafter, fine for unauthorised construction and sanction fees for building plan for additional construction were accepted on 2nd May, 2009 and 8th May, 2009 respectively. Referring to the statutory provisions it was submitted that approval of a site plan and sanction of a building plan are two different aspects. Sanction of a site plan does not mean automatic approval of the building plan. Besides there is no provision in the Act or in the Rules for regularising an unauthorised construction on payment of fees.

Referring to the plan for additional construction which was part of the records produced, it was submitted that sanction has not been granted by the said respondent. Submission was pursuant to the letter dated 21st August, 2009 by the petitioner no.1, the said respondent by her letter dated 28th August, 2009 requested him to appear on 11th September, 2009 for showing cause as to why suitable steps should not be taken for carrying out illegal construction, which was refused. Subsequently, a similar letter dated 8th October, 2009 was issued requesting the petitioner no.1 to appear on 21st October, 2009 for hearing. Thereafter, by letter dated 9th October, 2009, Officer-in-Charge, Habra Police Station was requested by the said respondent to provide police help on 14th October, 2009 during inspection of the premises regarding unauthorised construction. According to the Municipality the letters dated 8th October, 2009 and 9th October, 2009 were in consonance with sections 16(5) and 220 of the Act. According to him since additional constructions have been carried out on the premises unauthorisedly by the petitioners wherein business is being carried on by them, the said respondent was justified in keeping the Certificate of Enlistment in abeyance.

7)Learned advocates for the parties during argument had relied on several judgements which shall be referred to appropriately.

8)The questions which are to be considered are :- i) Whether an unauthorised construction in a municipality governed by the provisions of the West Bengal Municipal Act, 1993, can be regularised on payment of fees or penalty or fine. ii) Whether the Chairman was competent to issue the letters dated 8th October, 2009 and 9th October, 2009 and iii) Whether the action of the said respondent in keeping the Certificate of Enlistment in abeyance was proper.

9)In order to answer the first question it is necessary to refer to section 204, which is as under :-

“**204. Prohibition of building without sanction**.- No person shall erect or commence to erect any building or execute any specified building work, except with the previous sanction of the Board of Councillors and in accordance with the provisions of this Chapter and of the rules and the

regulations made under this Act in relation to such erection of building or execution of work."

10)As seen from the plain language of section 204, that it creates an absolute bar in erecting a building without sanction. The words "*No person shall erect or commence to erect any building or execute any specified building work except with the previous sanction of the Board of Councillors"* and in accordance with the provisions of Chapter XIV of the Act or the Rules or Regulations leave no manner of doubt in that regard. In the instant case as evident from the records after the submission of the site plan, on 28th April, 2009 site inspection was held. A "Site Inspection Report" was prepared by the Overseer of the Municipality wherein he had put a note in writing that "Fine may be imposed", as it appears, for the unauthorised construction. Thereafter, on 30th April, 2009 the Vice Chairman had in writing "allowed" it. On 2nd May, 2009 the petitioner had deposited a sum of Rs. 21,000/ with regard to the unauthorised construction and consequently in the petition prayer has been made for regularising the same. In this context it is to be noted that though in paragraph 7 of the affidavit in opposition filed on behalf of the Municipality it has been emphatically stated that under the Act there is no provision for regularising the illegal construction, the said submission has not been countered by the petitioner either in the reply or during submission. In fact I find there is no provision in the Act which permits
regularising an unauthorised construction on payment of fees or fine or penalty. Hence, in my view, since the language in section 204 is clear and unambiguous, regularising an unauthorised construction on payment of fees or fine or penalty as contended by the petitioner is illegal. Therefore, in view of the position of law, the note dated 28th April, 2009 by the Overseer of the Municipality in the Report that "fine may be imposed" with regard to the unauthorised construction which was "allowed" on 30th April, 2009 is not warranted under the provisions of the Act and thus arbitrary, without jurisdiction and illegal. The argument of the petitioner that sanction of the plan is deemed to have been granted under section 208 of the Act by the Board of Councillors of the Municipality as neither the order granting sanction or refusing it after submission of the plan for additional construction has been passed under section 207, cannot be accepted as the section does not apply to a case where building has already been constructed unauthorisedly contravening the provisions of the Act or Rules, since it postulates that "……*so, however, that nothing in the section shall be deemed to have permitted the applicant to contravene any of the provisions of this*

Act or of the Rules made under section 198 or of any rules or regulations applying to such work". Besides the argument that the sanction of a site plan would automatically result in the sanction of a building plan cannot be accepted on a perusal of section 203, the relevant portion of which is as under :

"203. Approval of building-sites and sanction of plan for erection of buildings.- No piece of land shall be used as a site for the erection of a building unless such site has been so approved within the prescribed period, and no building shall be erected unless a building plan has been sanctioned for such erection in accordance with the provisions of this Chapter and of the rules and the regulations made under this Act:…."

11)Evidently section 203 contains two parts – i) that no piece of land shall be used as a site for the erection of a building unless the site has been approved and ii) no building shall be raised unless a building plan has been sanctioned. It has to be noted approval of a site depends on certain criteria as laid down in Rule 3 of the West Bengal Municipal (Building) Rules, 2007 framed under the Act. So a person intending to erect a building has to submit a site plan. After approval of the site plan comes the question of submission of a building plan. Thus, sanction of a building plan is preceded by the approval of the site plan. Therefore, as approval of a site plan and approval of a building plan are two distinct and separate aspects, the submission of the petitioner that approval of a site plan automatically leads to the sanction of a building plan cannot be accepted. The argument of the petitioner to regularise the additional construction since fees have been accepted and *"in the locality there are other buildings having similar additional construction and the Municipal authority by accepting fine permitted them to retain the said additional construction .."* (paragraph 5 of the affidavit in reply) cannot be a ground for relief as the entire action was in violation of the provisions in the statute particularly section 204 thereof. It has to be kept in mind raising construction in violation of provisions of the Act also attracts the consequences under section 204A. In this context it is appropriate to refer to the judgement of the Apex Court in Mahendra Babu Rao Mahadik and others versus Subhas Krishna Kanitkar and others : (2005) 4 SCC 99 wherein while dealing with the question of regularisation of unauthorised construction in the context of the provisions in the Maharashtra Regional and Town Planning Act, 1966 it was held *"The Municipal Council being a creature of statute was bound to carry out its functions within the four*

corners thereof. Being a statutory authority, it was required to follow the rules scrupulously. Concededly, the Municipal Council is not possessed of any statutory power to regularise the unauthorised constructions." (paragraph 38) It had been further held *"Payment of development charges itself, therefore, did not lead to exoneration from the consequence of commission of an offence or regularisation of unauthorised constructions"* (paragraph 42). Similarly in Vishal Properties(P) Limited versus State of Uttar Pradesh and others : (2007) 11 SCC 172 the Apex Court while dealing with the provision in U.P. Industrial Area, Development Act, 1976 had noted with approval the judgement in Susanta Tagore versus Union of India: (2005) 3 SCC 16 wherein it was held "O*nly because some encroachment has been made and unauthorised building have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachment, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality."* (paragraph 13) Thereafter, the Supreme Court went to hold "*Any action/order contrary to law does not confer any right upon any person for similar treatment*" (paragraph 17).

12)Since it is evident that the petitioner has erected additional floors in violation of section 204, the judgement in Madan Mohan Pal and another versus State of West Bengal and others : 2007(4) CHN 394 relied on by the petitioner is not applicable as therein challenge was regarding legality of the impugned notice of demolition which the Chairman alone was not competent to pass under section 218(1) and (5). The principles of law laid down in the Full Bench judgement in Purusottam Lalji and others versus Ratan Lal Agarwalla and others : AIR 1972 Calcutta 459 are not applicable as the High Court therein while dealing with the power of discretion enjoyed by the Commissioner under section 414 of the Calcutta Municipal Act, 1951 and Rules framed thereunder particularly with regard to Rules 30 and 31 came to a conclusion that "*It appears to us that the Section 414 vests upon the Commissioner a discretion. The discretion is, for the purpose of facilitating the scheme and the object of the Calcutta Municipal Act, 1951. That discretion must be used bona fide and not on any extraneous ground. The section also enjoins that the Commissioner should exercise discretion quasi judicially, that is to say, by giving the parties an opportunity to show cause"* (paragraph 5) and found that the Commissioner did not act in excess of his jurisdiction in passing an order in not ordering demolition which *"it appears to us that it was a very small infraction…."(*paragraph 6), whereas

in the instant case sanction of the building plan has been sought for the additional construction already undertaken in complete violation of section 204. The judgement in M/s. Rajatha Enterprises versus S.K. Sharma and others : AIR 1989 SC 860 is not applicable as therein the Apex Court while setting aside the order of demolition passed by the High Court had observed that "*the High Court was not justified, at the instance of the 1st respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder*"(paragraph 20) whereas in the petition under consideration not only had the petitioner raised construction illegally but had also suppressed the three letters - the letters dated 10th June, 2009, 16th June, 2009 and 21st August, 2009 and thus cannot claim equity. The principles of law laid down in Bhavnagar University versus Palitana Sugar Mill(P) Ltd. and others : (2003) 2 SCC 111 though cited by the petitioner supports the stand of the Municipality that it was justified in withholding sanction as the additional construction has been raised giving section 204 a complete go- by. It is to be kept in mind that though the provisions of the Act confers on a citizen a right to erect a building, however, there lies on him a corresponding duty or obligation to adhere to the provisions of law before undertaking such construction. In the instant case as the petitioners have raised the additional construction brazenly, they cannot seek equity and pray for enforcement of fundamental rights.

13)Therefore, as the statute does not permit regularising an unauthorized construction by acceptance of money, be it fees or penalty or fine, the action of the municipality in accepting Rs. 21,000/- towards unauthorised construction is bad in law and illegal and thus the question of grant of sanction for the additional construction does not arise at all and the prayer is, hence, rejected.

14)In order to answer the second issue it is necessary to refer to sections 16(5) and 220 of the Act. Section 16(5) is as under :-

"**16. Powers and functions of the Chairman.-(5**) The Chairman shall, if he is of opinion that immediate execution of any work is necessary and the same ordinarily requires the approval of the Board of Councillors or the

Chairman-in- Council, as the case may be, direct the execution of such work: Provided that the Chairman shall report forthwith to the Board of Councillors or the Chairman-in-Council, as the case may be, the actions taken
under this section and the reasons thereof."

15) Section 220 is set out herein below:-
"**220. Power of Chairman to stop unauthorised construction.-**
(1) In any case in which the erection of a building or any other work connected therewith has been commenced or is being carried on unlawfully, the Chairman may, by written notice, require the owner or the person carrying on such erection or unlawful work to discontinue the same forthwith, pending further proceedings as respects such unauthorised construction.
(2) If any notice issue under sub-section (1) is not duly complied with, the Chairman may, with the assistance of the police or any employee of the Municipality, if necessary, take such steps as he may deem fit to stop the continuance of the unlawful work.
(3) If it appears to the Chairman that it is necessary, in order to prevent the continuation of the unlawful work, to depute any police or employee of the Municipality to watch the premises, the cost of providing the same shall be borne by the person to whom the said notice was addressed."

16)As noted, section 220 of the Act empowers the Chairman to issue written notice to the owner who is carrying on with the erection of a building unlawfully requiring him to discontinue the same forthwith. Thus in a case of unauthorized construction, under section 220 the Chairman has an emergency power to issue stop work notice. Though it was contended on behalf of the Municipality that the letter dated 8th October, 2009 by the said respondent was in essence a stop work notice under section 220, the said argument cannot be accepted as it does not direct the petitioner no.1 to stop work. In view of the specific provision in section 220 the alternative argument on behalf of the Municipality that it could be deemed to be a notice under section 16(5) cannot be accepted as the said subsection relates to "execution of any work", that is a job, say, relating to execution of a project. Therefore, as the letter dated 8th October, 2009 does not appraise the petitioner determinatively to stop work, it cannot be sustained and is, thus, set aside and quashed. The consequential letter dated 9th October, 2009

is also set aside and quashed. However, this shall not prevent the respondent no.2 and or the said respondent from proceeding in accordance with law.

17) With regard to the third issue it is to be noted that though prayer has been made to withdraw and/or recall the decision of the respondent no.3 cancelling the Trade Licence or Certificate of Enlistment, however, I find from the order dated 30th October, 2009 passed by the learned Single Judge recording the submission of the Municipality, that it has been kept in abeyance. Now the question is whether the Chairman was justified in doing so. Though it has been correctly contended by the petitioner that section 119 authorises the Executive officer of the Municipality to grant Certificate of Enlistment, however, as in the instant case it is clear that additional construction has been raised unauthorisedly by the petitioners where they are carrying on business under the name and style of 'M/s. Mina Bazar', the said respondent was justified in issuing the order keeping the Certificate of Enlistment in abeyance since allowing the
to continue on such premises would give premium to such illegal construction. Though it was submitted by the petitioner that business is being carried on in G+1 which was constructed upon valid sanction, in my view permitting the petitioners to carry on business in a building having unauthorized additional construction cannot be permitted as it is fraught with dangers since there is likelihood of an accident on a business premises which is frequented by the citizens.

18)It is to be kept in mind that a citizen should approach the Writ Court, a Court of Equity, with clean hands. In the instant case, as evident from paragraph 4 of the petition, the petitioner has admittedly raised an additional construction unauthorisedly which cannot be regularised for the reasons noted in this judgement. Moreover, while moving the petition the petitioners have, as noted, suppressed three –letters. Of the three, in two letters dated 10th June, 2009 and 16th June, 2009 the petitioners have admitted to having undertaken illegal construction, have apologized and have prayed for sanction of the building plan. However, by the letter dated 21st August, 2009, the petitioners have sought to give an impression as if except the 'chilekotha' the second and the third floors were validly erected. These three letters clearly show that the petitioners have not come up with clean hands and, for that reason their petition cannot be entertained apart from the reasons which have already been noted in this judgement. Hence, the writ petition is dismissed. Since the respondent nos. 2 and 3 had accepted a sum

of Rs. 21,000/- towards unauthorised construction which, as held, has no legal sanction and as the respondent no.2 and the said respondent in their affidavit have stated that the Habra Municipality is prepared to refund the said amount, the said respondent is directed to refund the said sum of Rs. 21,000/- forthwith. In the facts and circumstances the respondent nos. 2 and 3 are entitled to costs of Rs. 8,500/-.

19)Urgent photostant certified copy of this judgement and order, if applied for, be furnished to the appearing parties on priority basis.

(Soumitra Pal, J.)