BLOGS

In Re: Directions in the Matter of Demolition of Structures

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In Re: Directions in the Matter of Demolition of Structures addresses the issue of arbitrary demolition of buildings by authorities. Read a detailed case analysis here!

The Supreme Court's Demolition Guidelines

In November 2024, the Supreme Court of India **issued a set of detailed guidelines to regulate the practice of bulldozer demolitions by the government**. The Court ruled that bulldozer demolitions in their current form were 'extreme' and 'disproportionate'. They were held to be violative of several rights, and there was a need to frame pan-India guidelines that would protect the rights of the affected individuals and society at large.

Background of the Case

In April 2022, there was an incident of violence during a Hanuman Jayanti procession in Jahangirpuri, Delhi. Following this incident, a demolition drive was scheduled by the local authorities. Eventually, the drive was stalled.

However, a batch of petitions were filed wherein the petitioners prayed for a declaration that authorities cannot resort to bulldozer actions as a form of punishment.

Similar petitions were filed in the states of Madhya Pradesh, Uttar Pradesh, and Gujarat. In September 2024, the petition was taken up for hearing after urgent applications were filed in the Supreme Court following the demolition of Rashid Khan's home in Rajasthan.

The case was heard by a division bench of Justices B.R. Gavai and K.V. Viswanathan. On the first day of hearings, the bench had noted that they would create 'pan-India' guidelines against bulldozer demolitions.

The bench expressed in no uncertain terms that bulldozer action cannot be taken even against the house of a convict, let alone a person merely accused of a criminal offense, as a punitive measure.

Justice Gavai observed that accused individuals and even convicts could not be subjected to excessive measures.

Invoking its special authority under **Article 142 of the Constitution**, the Court issued an interim order on September 17 stating that no demolition may occur in the nation without its consent, with the exception of encroachment on public roads, walkways, railroad tracks, or water bodies.

Judgement Given in the Case

It was ruled by Justices B R Gavai and K V Viswanathan that bulldozer demolitions infringed the right to shelter that were guaranteed under Articles 19 and 21. Additionally it was held that such demolitions as a means of punishment were “wholly impossible in our constitutional setup”.

The court observed that they gave the state authority the power to punish an individual before their guilt had been determined. It thus vitiated the separation of powers, and violated the right of an accused to be presumed innocent before proven guilty.

Exercising its power to do complete justice under Article 142, the Court issued the following directions.

Notice

The Court held that a 15-day notice period must be given to the tenants to either challenge the demolition order or to sort their affairs before being evicted. This 15 day period will begin from the day the notice is received by the tenant.

The notice must indicate the following :

(a) nature of the unauthorised construction,

(b) the grounds, and specific violations for which demolition is being ordered

(c) a list of the documents that have to given alongside the reply,

(d) date on which personal hearing is fixed

(e) before which designated authority hearing will take place.

It was ruled that the notice must be attached visibly on the building which is to be demolished. Additionally, in order to ensure that no ‘back-dating’ of notices occurs, the collectors office and

the district magistrate must be emailed the information right after a notice is served.

The office of the collector and district magistrate should produce an auto-generated reply stating that they have received the information. Additionally, the collector or district magistrate must appoint a local officer who will be provided an email handle.

This designation must be communicated to all municipal and local authorities that deal with building rules and demolitions. A digital site that contains information regarding service, notice posting, reply, show-cause notice, and the order passed must be established by each municipal local authority.

Personal Hearing

If the occupier challenges the order, they must be provided a personal hearing by a designated authority. The minutes of this meeting must be recorded.

Final Order

After the hearing, the designated authority will pass a final order. It must contain the contentions raised in the notice and the authority's reasoned conclusions on them. The designated authority has the right to order compounding, partial or complete demolition.

In the final order it must state whether compounding or partial demolition of the property was viable in the circumstances, and what reasons led them to conclude that the "extreme step of demolition was the only option available." The final order of the designated authority can be scrutinised by an appellate authority.

The demolition can only be carried out after fifteen days following the date of the final order (which will be shown on the digital portal), regardless of whether the tenant decides to challenge the order.

Proceedings of Demolition

Within 15 days of receiving the warning, the owner-occupier will have the opportunity to dismantle or demolish the illegal property on their own. If the owner has not removed the property on his own and partial demolition or compounding is not feasible, the demolition of the property will be permitted after 15 days.

A thorough inspection report must be created by the relevant authority and signed by two Panchas (witnesses) before the process takes place. The relevant authorities will prepare a report and videotape the demolition. The list of law enforcement and civil servants who took part in the demolition should be included. The video will be uploaded to the online portal after being emailed to the Municipal Commissioner.

The Court stated that a violation of these guidelines could lead to contempt proceedings. Officials engaging in illegal demolitions could be asked to pay for the restitution of the property as well as compensation.

The court also put forth a caveat that these directions will not apply to the tenants of unauthorized structures in public places such as roads, streets, footpaths, railway lines, water bodies, etc. The guidelines will also not apply to cases where the demolition has been ordered by a Court of law.

Conclusion

The Supreme Court's guidelines are an important step towards ensuring that law and order is maintained in an equitable manner, and not through arbitrary measures such as that of bulldozer justice. The Court declared that Bulldozer justice was violative of several constitutional rights. The guidelines put forward by the Court mandate the provision of a legal notice, a personal hearing, a final order and lawful demolition proceedings to ensure that the defendant has a fair chance to protect their home.

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