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'Executive can't become judge... decide person is guilty': SC slams demolition of properties of accused, issues directives

No demolition should be carried out without prior notice, the Supreme Court said on Wednesday, adding that affected parties should also be given time to challenge the demolition order.

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New Delhi | Updated: November 13, 2024 21:11 IST



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The Supreme Court was hearing applications challenging house demolitions carried out by the state government in Rajasthan and Madhya Pradesh. (Photo: PTI)

Supreme Court on Bulldozer Justice: The Supreme Court on Wednesday held that demolishing the properties of citizens without following due process for the sole reason that they may be involved in some crime is contrary to the rule of law and directed that officials indulging in such “high-handed actions” be made accountable. The court also issued certain directions that have to be complied with before properties are demolished.

A bench of Justices B R Gavai and K V Viswanathan ruled that “the executive cannot become a judge and decide that a person accused is guilty and, therefore, punish him by demolishing his residential/commercial property/properties. Such an act of the executive would be transgressing its limits”.

The Supreme Court was hearing a batch of petitions which raised the issue of demolition of properties by some state authorities as a punishment for the alleged involvement of the property owner in some crime.

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“We have concluded if the executive in an arbitrary manner demolishes the house of a citizen only on the ground that they are accused of a crime, then it acts contrary to the principles of rule of law...We are of the view that in such matters, the public officials who take the law in their hands should be made accountable for such high handed actions,” the bench said.

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The ruling said that “the chilling sight of a bulldozer demolishing a building, when authorities have failed to follow the basic principles of natural justice and have acted without adhering to the principle of due process, reminds one of a lawless state of affairs, where ‘might was right’. In our Constitution, which rests on the foundation of ‘the rule of law’, such high-handed and arbitrary actions have no place. Such excesses at the hands of the executive will have to be dealt with the heavy hand of the law. Our constitutional ethos and values would not permit any such abuse of power and such misadventures cannot be tolerated by the court of law.”



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The bench added that “if the executive acts as a judge and inflicts penalty of demolition on the citizen on the ground that he is an accused, it violates the principle of separation of powers”.

The Supreme Court said, “Right to shelter is one of the facets of Article 21. Depriving such innocent people of their right to life by removing shelter from their hands, their heads in our considered view would be wholly unconstitutional...”.

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The judgment said that “even the accused or the convicts have certain rights and safeguards in the form of constitutional provisions and criminal law”.

The “state and its officials cannot take arbitrary and excessive measures against the accused or for that matter, even against the convict without following the due process as sanctioned by law”, the bench said, adding that “when the right of an accused or a convict is violated on account of illegal or arbitrary exercise of power by the state or its official, or on account of their negligence, inaction or arbitrary action, there has to be an institutional accountability”.

The Supreme Court said that “while considering the issue with regard to the demolition of the house which are required to be demolished for breach of local laws, we find that the principles of the rule of law need to be considered even in the municipal laws. There may be certain unauthorised constructions which could be compoundable. There may be certain constructions wherein one part of the construction is required to be removed. In such cases, the extreme step of demolition of the property, house property would be disproportionate.”

It said that before embarking on demolition, “the concerned authorities must satisfy themselves that such an extreme step of demolition is the only available [option] and the other options including compounding and demolition of only part of the house property are not available.”

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“For the executive to act in a transparent manner, so as to avoid the vice of arbitrariness, we are of the view that certain binding directives need to (be) formulated. This will ensure that public officials do not act in high-handed, arbitrary and discriminatory manner. Further, if they indulge in such acts, accountability must be fastened upon them,” the judgment said.

Accordingly, the bench exercised its power under Article 142 of the Constitution and issued certain directions to be complied with before demolitions of properties are carried out.

It said that “even after orders of demolition are passed, the affected party needs to be given some time for us to challenge the order of demolition before an appropriate forum”.

“Even in cases of persons who do not wish to contest the demolition order, sufficient time needs to be given to them to vacate and arrange their affairs. It is not a happy sight to see women, children, and the young persons dragged to the streets overnight,” the court added.

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“No demolition should be carried out without prior 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. The notice shall be

served upon the owner occupied by registered post acknowledgement due. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question,” the court said.

The SC said “the time of 15 days...shall start from the date of receipt of the same notice”.

To prevent any allegations of backdating, the court also directed that “as soon as show cause notice is duly served, intimation thereof shall be sent to the office of the collector, district magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail could also be issued from the office of the collector, system magistrate. The collector system magistrate shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authority in charge of building regulations and demolitions within 1 month from today.”

The court, however, clarified “that these directions will not be applicable if there is any unauthorised structure in any public place such as road, street, footpath, abutting railway line, or any river body or water body, and also to cases where there is an order for demolition made by the court of law.”

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First uploaded on: 13-11-2024 at 11:00 IST

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