

International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2024 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Scope of A State to Lawfully Demolish Structures: Case Comment of in Re: Directions in the Matter of Demolition of Structures

Kavya R^a Mega N^b

^aSchool of Excellence in Law, Tamil Nadu Dr Ambedkar Law University, Chennai, India ^bSchool of Excellence in Law, Tamil Nadu Dr Ambedkar Law University, Chennai, India

Received 03 November 2024; Accepted 04 December 2024; Published 07 December 2024

INTRODUCTION

It is tricky to understand ‘Bulldozer Justice’¹ simply by looking at the word. Etymologically, it means justice delivered by a bulldozer or a JCB. Alas, the term is ironic and contradictive. In India, the symbol of bulldozers has evolved to mean abuse of the power vested by law to create injustice with no one to stop the government authorities. Only the court has the authority to check administrative control to ensure no arbitrary state action is carried out. This has been established as the ‘Rule of Law’ by Professor A.V. Dicey².

Nevertheless, the media used the term ‘Bulldozer Justice’ to address the arbitrary demolition drives conducted by various states without following the due process of law. These demolitions

¹ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

² *Ibid*

were carried out without notice or, in some cases, without providing the prescribed amount of time for the eviction of residents. These demolitions occurred in Uttar Pradesh, Madhya Pradesh, Delhi, Assam, Rajasthan, Gujarat and many more states³. The common theme in these demolitions was not just the complete or partial failure to follow the municipal law but also the nexus between the owner of the demolished houses and recent community violence in the state. The houses torn down in the instances belonged to protestors or rioters linked to communal violence or someone related to them. Thus the demolished structures belonged to these alleged accused linked to some sort of communal violence. Though the states contested that the demolitions were ‘anti-encroachment drives’⁴, the state carried out an element of ‘vigilante justice’ for hurting the majority against the accused persons.

International organisations like Amnesty International view bulldozer justice as a human rights violation where states swiftly snatch away rights to shelter. A bulldozer would forever be regarded as the symbol of hate, hurt and injustice.

The aggrieved residents and concerned individuals moved the Supreme Court to stop this arbitrary display of power. The apex court finally passed a pan-India order to cease all demolitions without seeking court intervention except the demolition of “unauthorised structure in any public places 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”⁵.

FACTS OF THE CASE

The writ in W.P.No.295/2022 and other batch petitions addresses the grievance raised by the citizen whose residential and commercial buildings were demolished by the state machinery without following due process of law. All the victims in the above cases were accused in criminal cases and such buildings were destroyed because of their alleged involvement in a crime.

³ Sanjay Pandey et al., ‘From Yogi to Jahangirpuri: The rise of the Bulldozer Raj’ *Deccan Herald* (Bangalore, 24 April 2022) <<https://www.deccanherald.com/india/from-yogi-to-jahangirpuri-the-rise-of-the-bulldozer-raj-1103381.html>> accessed 01 November 2024

⁴ Joy Makhal, ‘Bulldozer Justice: An Analysis Into The Rule Of Law In India’ (2023) 5(1) *Indian Journal of Law and Legal Research* <<https://www.ijllr.com/post/bulldozer-justice-an-analysis-into-the-rule-of-law-in-india>> accessed 01 November 2024

⁵ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

The above petitions sought directions from the Hon'ble Apex court to restrain the state machinery from taking precipitative action on the residential or commercial properties of any accused in criminal proceedings. The petitioners further prayed that the officials who participated in demolition drives be held personally liable for bypassing due process of law.

ISSUES FRAMED BY THE COURT

The Apex court framed one primary issue since the scope of the case was limited. The primary issue identified by the court was:

1. Whether the state machinery demolished structures that belong to an accused or convict without observing due process of law.⁶

ARGUMENTS ADVANCED BY THE PETITIONERS

Abhishek Manu Singhvi, M.R. Shamshad, Sanjay Hegde, Nachiketa Joshi, C.U. Singh, Nizamuddin Pasha, Fauzia Shakil, and Rashmi Singh represented the petitioners. Separate applicants were present.

The counsel for petitioners began their arguments by emphasising the failure of state authorities to follow due procedures laid down by municipal law in each state. They criticised the deliberate abuse of power to bypass due process of law. Such state action has affected the petitioners' rights to property, shelter, and livelihood. They urged the court to intervene and curtail the state's arbitrary action.

The practice of state machinery to presume the petitioners' guilt without court proceedings and demolish their residence based on such presumption is challenged. They substantiated their claim that the state targeted certain accused by emphasising the timing of demolitions which happened to be after the petitioners were involved in protests or riots. The administrative authorities violated the principle of separation of power by taking up the powers of an ordinary court of law.

Thus, the officials violated several constitutional provisions. The counsel challenged the demolitions as they violated municipal law and the Constitution of India. The demolition drives

⁶ *Ibid*

violated Articles 13⁷ and 14⁸, overriding the rule of law that opposes arbitrariness. The petitioners' right to shelter and livelihood enshrined in Articles 19(1)(e)⁹ and 21¹⁰ was also grossly violated.

By the bench's order, the counsel presented the following suggestions for the judicial guidelines on the matters:

- Manner of delivery of show cause notice;
- Details such as the reason for demolition to be contained in the show cause notice;
- Online notification;
- Provide reasonable time to respond;
- Hearing to be held by concerned authorities;
- Details such as reason to be included in demolition order;
- Delivery of demolition order and appeal window;
- Court Examination of Demolition Notice;
- Personal liability of administrative official upon failure to adhere to the guidelines;
- Compensation was provided for unlawful demolitions.¹¹

ARGUMENTS ADVANCED BY THE RESPONDENTS

The Solicitor General of India, Tushar Mehta, was present before the bench arguing for the Union of India and the various states. It was expressed that the state officials conducted demolitions as per the municipal law on unauthorised structures encroaching on state land. It was argued that it was a coincidence that the demolished structures happened to belong to some of the accused. The administrative power vested by the local municipal law was duly applied to ensure that public property was used to develop the neighbourhood. Moreover, the state governments needed to establish an example of intolerance towards criminal activity, violence and public disorder. It was within the administrative power of the state to maintain law, order and security.

⁷ Constitution of India 1950, art 13

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 19

¹⁰ Constitution of India 1950, art 21

¹¹ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

By the court order, the solicitor general suggested rules to be included in the guidelines such as:

- Strict adherence to provision on notice of local municipal law;
- Exceptions where notice is not needed by law should continue to be legal demolition;
- Relevant municipal law providing the manner of delivery of notice to be followed;
- Existing provisions for hearings and demolition orders to be followed and natural justice; to be carried when no provision is present on the same;
- The final order to contain the specific violation counted as grounds for demolition;
- The period fixed for eviction in municipal laws to be followed;
- Guidelines only apply when there is no provision for the same in municipal law.¹²

JUDGEMENT

While the court analysed existing jurisprudence regarding the rule of law, separation of power and the constitutional right to shelter, housing and property, its ultimate objective was to fill the void in the administrative law exploited by the state.

The Apex Court held that the demolitions conducted by the state governments were unlawful and unjustified by their executive power. The court analysed the concept of the rule of law and its emphasis in Article 14¹³ of the Constitution of India. It reiterated the importance of observing the concept to uphold the spirit of the Constitution. The court concluded that the demolitions grossly violated the rule of law and due process of law by abusing executive powers vested in the state authorities.

The court thoroughly examined the constitutional rights of the accused, the core assumption of innocence before proven guilty by a fair trial and the fundamental right of shelter¹⁴ to all. The bench held that none of the legal concepts justified the pre-emptive justice delivered by bulldozers solely based on their criminal or alleged criminal activity.

Furthermore, the Hon'ble Court condemned the demolitions as executive overreach into judicial functions to deliver 'vigilante justice'. The court explained that this action of demolition to carry

¹² *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

¹³ Constitution of India 1950, art 14

¹⁴ *Olga Tellis v Bombay Municipal Corporation* (1986) SC 180

out a form of ‘collective punishment’ to a group of accused violated the basic structure¹⁵ of the constitution since it desecrated the separation of powers. The court applied the doctrine of public trust and accountability¹⁶ holding the erred government officials prospectively liable. Most importantly, the court laid down the pan-India guidelines to be followed by all states strictly in place of unclear or undefined state rules¹⁷. The guidelines would fail to apply to provisions laid down by the state legislatures with certainty, giving rise to no procedural lacunae.

THE RATIONALE BEHIND THE JUDGEMENT

The court held that all demolitions should be carried out by observing the due process of law, irrespective of the resident’s status as an accused or convicted criminal. Under no circumstance can the state be blind to the due process of law. The state cannot allow bias to unlawfully destroy the accused’s residence or property as a form of justice without the court’s intervention. Similarly, the state cannot demolish the property of a convict as the action would be violative of natural justice. One’s criminal conduct is not a legally justifiable ground to destroy property.

The state action to deliver bulldozer justice is unconstitutional. It implies rule by law; not rule of law. It shows symptoms of a sick society and state devolving back to times when might was right. Matters that are strictly adjudicated by courts cannot be taken up by the executives¹⁸. To do so would create a totalitarian mess where separation of power is disregarded. Even though separation of power is not strictly recognised in the constitution, it was interpreted by the apex court to be an essential part of the basic structure of the constitution¹⁹.

The court held that arbitrariness and misuse of power to override the constitution are not tolerated, and the constitution would cut down the greedy hands of executives.

Moreover, the apex court criticised the states’ use of collective punishment. They forcibly took the right to livelihood and shelter of every family member of the accused or convict through bulldozers. Thus the court expanded the scope of the right to shelter, as held in *Chemali Singh and Ors v State of UP and Anr*²⁰, to impose the duty on the state to rehabilitate residents before

¹⁵ *Kesavananda Bharati Sripadagalvaru v State of Kerala* (1973) SC 1461

¹⁶ *National Audubon Society v Superior Court* [1983] 33 Cal 3d 419

¹⁷ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

¹⁸ *Ibid*

¹⁹ *Indira Nehru Gandhi v Raj Narain* (1975) SC 2299

²⁰ *Chemali Singh v State of UP* (1996) 2 SCC 549

demolition of any property. This champions the right to shelter and protects the dignity of the resident.

The court imposed on the state to employ the test of proportionality²¹ to ensure that it does not disproportionately infringe on Article 21²².

The test of proportionality is as follows:

- Article 21 can be restricted for a proper and clear purpose;
- Demolition should be carried out to achieve that purpose only;
- No alternative method, with lesser infringement on Article 21, can be employed;
- The balance between the achievement of a clear purpose and the prevention of infringement of constitutional rights needs to be maintained.²³

The court also emphasised that demolitions should be the last resort to remove encroachment or obstruction. It should rarely be employed.

Finally, the court employed Article 142²⁴ to provide Pan-India guidelines to be followed when the law is silent or vague on the state's power to demolish certain structures²⁵. Refusal to follow the guideline would cause contempt of Court. The court finally places personal liability on public officers or servants who violate the court order²⁶.

ANALYSIS OF THE CASE

The judgement comprehensively analysed various principles invoked when a non-judicial organ performs a judicial function, thereby, upsetting the delicate balance of our constitutional democracy. The court has provided a progressive judgement considering its impact on the future. It has also anticipated several lacunae and has tried to fill in the gap to prevent and protect the fundamental rights of minorities. Despite laying down pan-India guidelines, the judiciary has neither overthrown local laws nor overreached into legislative territory. The main focus was

²¹ *Vivek Narayan Sharma v Union of India* (2023) 1 SCR 1

²² Constitution of India 1950, art 21

²³ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) INSC 267

²⁴ Constitution of India 1950, art 142

²⁵ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

²⁶ *Ibid*

providing sufficient time for residents. It is imperative to have the time to challenge, appeal or relocate without losing their dignity.

The judgement written by Justice B.R. Gavai is simple yet concise. Justice B.R. Gavai and Justice K.V. Viswanathan have journeyed through the rich jurisprudence fostered by the apex court to solve this historical administrative problem disguised as a modern issue. The bench divided the judgement into nine sections to connect to the key issue. All of these features made the judgement accessible to a layman. They provide the background and break down legal doctrines such as the rule of law, separation of power, public trust and accountability, rights of accused persons and illegality of collective punishment. The bench does not want anyone confused about its stance to fortify constitutional safeguards against administrative strongholds.

Any change in a civilisation requires tripartite effort. The legislature must lay the law and judiciary to protect the individuals while society is receptive to changes. The court warned the state of the danger of taking the law into their hands. It has recommended the test of proportionality further protecting the public from the shadow of bulldozers. This judgement should remind the administrative authorities how it is easy to fall into the steps of a totalitarian regime and the fear and devastation that spreads within a community from such a display of power.

Despite the many positive achievements of the judgement, there is one major criticism. No liability is placed on the states for the months of damage and violent constitutional infringement. While the court has acknowledged that institutional accountability²⁷ is triggered when states violate an individual's constitutional right, it does not direct any states to take action against the officials who participated in the arbitrary act of power. The apex court has directed states to take necessary action to repair the damage done by its officials in *Rudal Sah v State of Bihar*²⁸ expanding upon the deliberate abuse of public office observed in *Common Cause, a registered society v Union of India*²⁹. The judgement should have placed personal liability on the public officers and servants for abusing power and overriding constitutional safeguards during the bulldozer demolitions in many states.

²⁷ *In Re: Directions in the matter of demolition of structures* (2024) SC 3291

²⁸ *Rudal Shah v State of Bihar* (1983) SC 85

²⁹ *Common Cause, a registered society v Union of India* (1999) SC 2979

The authors agree with the direction of the judgement, but it should be noted that this judgement would be more beneficial for the future than for the petitioners.

CONCLUSION

As the guardians of the constitution, the apex court has restricted the overreach of judicial powers by the executive. After months of ‘bulldozer justice’, the rule of law has been restored on paper. All twenty-eight states have received a copy of the guidelines order passed by the bench to ensure the rule of law would never be removed during the lawful demolition of structures across the country. While the court could not prevent the injustice, it has emphasised clarifications on the issue so that it never happens. No government needs to seek vigilante justice when the courts continue to exist. The need to gain vigilante justice shows the issues within the justice delivery system. The long waits, expensive proceedings and intimidating procedures are some of the flaws present in the judicial system. It is prudent to tackle one of the symptoms of a sick society to set up a better future. While the judiciary works on fixing itself, we should focus on the general public and the law. Society and law are interconnected and dynamic. Any disconnect or rigidity of static law and culture can devastate reality. It becomes the antithesis of progress and change. Such disconnect starts with weeding out the hate planted in our communities. Let this judgement provide hope to people that the judiciary will continue to protect the individual as envisioned by our constitution.