

THE LEGALITES LEXSCRIPTA,
Volume 1, Issue 1 (Jan-March 2025)

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CASE COMMENTARY

Case Name : **In Re: Directions in the Matter of Demolition of Structures**[\[1\]](#)

Citation: **Writ Petition (Civil) No. 295 of 2022**

Bench: **Justices BR Gavai and KV Viswanathan**

- **By Nayan Varsha Greaves and Geonag Greaves**

Introduction:

“Power tends to corrupt, and absolute power corrupts absolutely,”

- *Lord Acton*[\[2\]](#)

This quote, which is often connected with administrative law, has a connection with the judgment of a case that has recently been delivered by the Supreme Court of India. In this case, the court has addressed the misuse of executive action, which is the core of administrative law. The misuse was about the demolition of structures belonging to a person, and it raises human rights implications as well. This case provided and stands as one that discussed the unbridled power of the executive and the need for checks and balances to protect individuals' fundamental rights.

The core of the case lies in the fact of demolition orders issued by the state authorities against individuals who are accused or convicted of criminal offenses, thereby violating the right to shelter, a right guaranteed under Article 21 of the Constitution of India.

This court marks a moment in the evolution of constitutionalism in which it has used its power of judicial review and provided detailed guidelines to curb the overreach of the executive in demolitions. This judgment reflects the court's duty to protect the dignity and life of individuals and emphasizes the tagline of the Supreme Court of India as the guardian of the Constitution of India.

Facts of the Case:

This case has come to the Supreme Court of India in the form of various reports and complaints made by individuals whose homes have been demolished by the state authorities because of their involvement in criminal activities. This action of destroying the lives of the persons by demolition was made not by any legal or judicial order but solely based on the executive order.

The petitioners of the cases argue that this action is not done by following the due process of laws and it was done by violating the fundamental rights guaranteed under Article 21 of the Constitution of India. Whereas the respondents of the case, the state authorities, justified these actions by arguing that these actions are an effort to curb illegal activities and maintaining public order, which often involves illegal structures. They asserted that these actions were necessary to ensure public safety and that this is part of the enforcement of law and order in the country.

Therefore, the court in this case is entrusted with the duty to consider the legality and constitutionality of the demolitions made and examine whether such actions were in conformity with the rights guaranteed under the constitution.

Issues:

- Whether demolitions based solely on accusations or convictions of criminal activity violate the fundamental right to shelter under Article 21 of the Constitution of India?
- Whether the executive has the authority to demolish properties without judicial approval or due process, and whether such actions amount to executive overreach?
- Whether demolitions that affect not only the accused but also their innocent family members amount to collective punishment, violating their fundamental rights.

Arguments Before Court:

Petitioner's Arguments:

The petitioners' arguments primarily focus on the violation of the right to shelter, as the state authorities carried out demolitions based solely on criminal charges or convictions. Using the demolition of petitioners' homes as a punitive measure infringes on their right to shelter, which is a basic human need and not only a fundamental right guaranteed under the constitution. Another argument raised is that the demolitions occurred without following due process of law, as the affected individuals were not given the opportunity to take necessary actions. This failure violated the principles of natural justice. They also argue that these demolitions amount to collective punishment, where the lives of innocent people have been destroyed, which is contrary to the constitution. Finally, they contend that such demolitions represent an arbitrary exercise of power by state authorities and assert that property should not be demolished merely because an individual has been accused or convicted of a crime.

Respondent's Arguments:

The state authorities, being the respondents, argued that the actions were necessary to maintain public order and the integrity of public spaces. The respondents have justified the demolitions as a preventive measure to maintain law and order, stating that criminal activities are becoming a threat to society by leading to illegal constructions. They also pointed out that the actions by the executive are under authority and control, where it has the authority to take actions in certain circumstances. They emphasized that the actions were not punitive measures, but rather administrative actions aimed at enforcing the law. They argued that where violations become grave, state authorities can look for an effective solution, and the effective solution in this case is the demolition of the houses of the petitioners, who have been engaged in criminal activities. Finally, they said the judiciary should not interfere in the actions of the executive unless they are unconstitutional and asserted that the actions are legitimate and do not violate the rights of the individuals involved.

Analysis :

This case involves the interpretation of constitutional law and fundamental rights under the Constitution of India, particularly Article 21. A home is not just a physical structure but a place where an individual's dignity, privacy, and family life are protected. Demolishing it without taking proper action beforehand violates the rights of the individuals involved.

India, being an accusatorial system, has its own principles for protecting the rights of the accused or those involved in criminal activities. The most important of these is the presumption of innocence until proven guilty. Demolishing a person's home solely because they are involved in criminal activities is not justified and undermines the dignity of the individual. Moreover, the demolition seems to have been carried out with malafide intent, as it targeted selected structures while leaving others untouched. These actions suggest that they are not legitimate, but arbitrary.

In the case of *Maneka Gandhi v. Union of India*^[3], the court held that the procedure established by law must be fair and reasonable. Likewise, in *Olga Tellis*^[4], the court emphasized the importance of fairness and a reasonable procedure before evicting or demolishing a person's home. Similarly, in the case of *KK Verma v. Union of India*^[5], the state has the authority to take actions to maintain law and order, and it has the duty to take swift action, including demolition, when public interest and lawful regulations are at stake. In the case of *Rajendra Singh v. State of Uttar Pradesh*^[6], the state has the duty to act in the absence of judicial proceedings, particularly when it involves unauthorized or encroaching constructions.

Decision:

The court has ruled in favor of the petitioners by declaring that demolitions of properties are solely on the basis of criminal accusations or convictions were unconstitutional.

The Court issued several important directives to ensure that any future demolitions would adhere to due process and respect for fundamental rights:

- The Court mandated that individuals subject to demolition orders be given sufficient time to file an appeal against the order.
- Authorities must issue a show-cause notice specifying the nature of the alleged violation and provide at least 15 days for the affected parties to respond.
- The District Magistrate and Collector must oversee the demolition process to ensure compliance with the law and fairness in execution.
- All demolition notices and orders must be displayed publicly on a designated digital portal.
- Property owners must be given 15 days to remove any unauthorized structures themselves, provided no stay has been issued by an appellate body.
- All demolitions must be recorded on video to ensure transparency and accountability.
- Officials who fail to follow these procedures will be held accountable and required to compensate the affected parties.

The Court made it clear that the government's actions must be subject to strict oversight, and any failure to comply with the guidelines could result in contempt of court charges and penalties.

Our opinion:

The ruling in *In Re: Directions in the Matter of Demolition of Structures* strongly affirms the constitutional protection against arbitrary state actions, especially the right to shelter. It emphasizes that constitutional rights cannot be disregarded by executive actions, regardless of criminal accusations. The judgment reinforces due process, transparency, and accountability, ensuring state actions are not arbitrary.

However, the real challenge lies in the enforcement of these guidelines. While the Court has provided comprehensive directives, local authorities may face difficulties in consistent implementation. Additionally, the ruling does not address the specific application of these safeguards to illegal structures, particularly in slum areas or public land, where demolitions are often justified for public safety or urban development.

The Court could have provided more guidance on handling illegal structures and explored options like slum rehabilitation or alternative housing. This would have ensured that the right to shelter is protected even in vulnerable communities. Furthermore, clearer distinctions between demolitions for criminal activity and those for urban planning would have helped balance executive power with public interest.

Future Impact and Extension:

The ruling in *In Re: Directions in the Matter of Demolition of Structures* is likely to have a significant long-term effect on administrative law in India. By curbing the unchecked powers of

the executive to carry out demolitions without following due process, the decision limits the scope of state actions that could infringe upon fundamental rights. This judgment could set a new legal benchmark for property rights, particularly in urban areas where illegal structures or encroachments are common. It also has the potential to influence future slum rehabilitation policies, urging authorities to consider the rights of individuals in informal settlements before taking punitive actions. The Court's emphasis on judicial oversight and accountability may lead to more stringent regulatory frameworks for demolitions, ensuring that individuals' rights are protected, and due process is followed in such actions.

Beyond its legal implications, the judgment holds a profound societal impact. It can empower vulnerable communities, particularly those living in informal housing or on public land, by ensuring that their right to shelter is not arbitrarily stripped away. The judgment enhances public awareness of citizens' constitutional rights and their ability to challenge executive actions that threaten their homes. In a broader sense, the ruling sends a clear message that arbitrary state actions that disregard fundamental rights will not be tolerated, reinforcing the importance of human dignity and due process in a democracy. The decision may lead to greater public scrutiny of government actions concerning property rights, urban development, and the treatment of marginalized groups, ultimately contributing to a more equitable society.

Conclusion:

As J.B.R. Gavai aptly said:

"अपना घर हो,
अपना आंगन हो,
इस ख्वाब में हर कोई जीता है।
इंसान के दिल की ये चाहत है,
कि एक घर का सपना कभी न छूटे।"

(To have one's own home, one's own courtyard — this dream lives in every heart. It's a longing that never fades, to never lose the dream of a home.)

The Supreme Court's decision in *In Re: Directions in the Matter of Demolition of Structures* (2022) marks a crucial moment in the balance between executive power and the protection of fundamental rights in India. The judgment emphasizes the need for judicial oversight in executive actions, especially when they affect an individual's right to shelter under Article 21 of the Constitution. By highlighting the importance of due process and transparency, the Court affirms that demolitions cannot be carried out without proper legal safeguards. The Court's directives, which require judicial scrutiny, public notice, and accountability for officials, ensure that demolitions are not arbitrary and that the presumption of innocence is upheld. This ruling strengthens human rights protections, particularly for vulnerable populations in urban areas. However, while the judgment is a significant step forward in safeguarding fundamental rights, its practical implementation will be key. Ensuring these guidelines are followed on the

ground, especially in cases involving marginalized communities or unlawful constructions, will present challenges.

Overall, the ruling provides much-needed clarity on the limits of executive authority and the protection of due process rights. It signals a commitment to ensuring the rule of law prevails over executive overreach, fostering a more just and equitable society. In conclusion, this decision not only impacts demolition laws but also represents a milestone in the evolution of constitutionalism in India.

[1] In Re: Directions in the Matter of Demolition of Structures, Writ Petition (Civil) No. 295 of 2022, Supreme Court of India (2024), https://api.sci.gov.in/supremecourt/2022/12239/12239_2022_2_1501_57147_Judgement_13-Nov-2024.pdf

[2] Lord Acton, *Lord Acton Quote Archive*, Acton Institute (2024), <https://www.acton.org/research/lord-acton-quote-archive#:~:text=%E2%80%9CPower%20tends%20to%20corrupt%20and,accompanied%20by%20corruption%20of%20morality.%E2%80%9DLord%20Acton%20Quote%20Archive>.

[3] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

[4] *Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545.

[5] *K.K. Verma & Anr. v. Union of India*, AIR 1954 Bom. 358.

[6] *Rajendra Singh & Anr. v. State of Uttar Pradesh*, AIR 1960 All. 387.