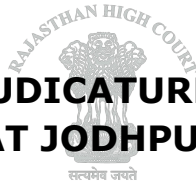




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Civil Writ Petition No. 6350/2026

CNR: RJHC010282242026 | URN: CW / 11637U / 2026

Durga Shankar Alias Durgesh S/o Shri Kishanlal Suthar, Aged About 44 Years, R/o Badi, Tehsil Badgon, District Udaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through The Tehsildar, Udaipur Development Authority, Udaipur.
2. The Chairman, Udaipur Development Authority, Udaipur.
3. The Deputy Commissioner, Udaipur Development Authority, Udaipur.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 3272/2025

CNR: RJHC010124672025 | URN: CW / 5195U / 2025

Ayub Maulana Alias Ayub Mohammed S/o Ayub Mohammed, Aged About 51 Years, R/o 471, Otc Scheme, Hotel Sheration Road, Near Yog Seva Samiti, Udaipur, Rajasthan

-----Petitioner

Versus

1. Urban Development Authority, Udaipur, Rajasthan Trough The Commissioner
2. The Commissioner, Urban Development Authority Udaipur, Rajasthan.
3. The Tehsildar, Urban Development Authority Udaipur, Rajasthan.
4. Assistant Engineer, Zone Urban Development Authority Udaipur, Rajasthan.
5. Revenue Inspector, Zone-Ii, Urban Development Authority Udaipur, Rajasthan.

-----Respondents

S.B. Civil Writ Petition No. 5844/2025

CNR: RJHC010251802025 | URN: CW / 9524U / 2025

1. Sulochana Kataria W/o Late Shri Madan Kataria, Aged



About 77 Years, Resident Of 1797/1798, Shree Sailam, Opposite Verdia Farms, Near Sajjngarh Main Road, District Udaipur, Rajasthan.

2. Rajasha Hotels And Resorts Pvt. Ltd., Through Its Director Rakesh Kumar Katara S/o Late Shri Madan Kataria, Aged About 50 Years, Having Its Registered Address At 1797 Shree Selam, B Block, Restorant Ke, Udaipur, Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Urban Development And Housing Department, Government Of Rajasthan, Jaipur, Rajasthan.
2. Commissioner, Udaipur Development Authority, Udaipur.
3. Deputy Commissioner, Udaipur Development Authority, Udaipur.
4. Tehsildar, Udaipur Development Authority, Udaipur.

----Respondents

For Petitioner(s) : Mr. J.L. Purohit, Sr. Advocate, assisted by Mr. Rajeev Purohit
Dr. Sachin Acharya, Sr. Advocate assisted by Mr. Samyak Dalal
Mr. Ansarul Hak Mansuri
Mr. Hassan Raza

For Respondent(s) : Mr Bharat Vyas, Sr. Advocate - cum- ASG (through VC), assisted by
Mr. Vaibhav Bhansali
Mr. Mahaveer Bishnoi, AAG
Mr. Shyam Sunder Paliwal, Dy. SG
Mr. Vijay Purohit
Mr. Hanuman Singh Gour
Mr. Ayush Gehlot and Ms. Pratyksha Rajpurohit, for Mr. Rajesh Panwar, Sr. Advocate-cum-AAG
Mr. Jogendra Singh
Mr. Pradeep Singh Rajpurohit
Mr. Nirmal Jain

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

1	Arguments concluded on	23/07/2026
2	Judgment Reserved on	23/07/2026



3	Full Judgment or Operative Part Pronounced :	Full Judgment
4	Pronounced on	1/09/2026

REPORTABLE :



1. In the present batch of writ petitions, the ambit of the controversy, albeit not exhaustively circumscribed, is broadly and predominantly delineated by the challenge laid to the correctness and/or validity of the impugned orders whereby the respondents have given directions for seizure of property-premises of the petitioner’s Hotel/Resorts, for the reason that the same has been constructed in eco-sensitive zone of the Sajjangraha Wildlife Sanctuary/other prohibited area. In view of the fact that the instant writ petitions necessitate adjudication upon common and overlapping questions of law, the findings and observation of the Court is noted *in commune*. It is, however, cautiously clarified that any dissimilarities or variances in the present batch of petitions are confined strictly to the individual factual matrices and shall not impinge upon, nor bear relevance to, the uniform questions of law that fall for determination before this Court; and that the instant judgment shall be applicable on *mutatis mutandis* basis on all the connected petitions.
2. Learned counsel appearing for the petitioner, in **SBCWP No. 5844/2025** while assailing the impugned orders/actions of the respondents, submitted that the petitioner is the owner of land bearing Khasra Nos. 1797 and 1798 situated at Village Sisarma, Udaipur. It was submitted that the land was duly converted from agricultural to non-agricultural purposes under Section 90-B of the Rajasthan Land Revenue Act, 1956, vide order dated 19.09.2008.



Thereafter, the existing construction upon the land was regularized by the then UIT, Udaipur, and allotment for resort purposes was issued on 18.12.2009, followed by issuance of a registered lease deed/*patta* dated 25.02.2010. Thus, the petitioner's resort was an existing and duly approved establishment much prior to issuance of the Sajjangarh Eco-Sensitive Zone Notification dated 13.02.2017.

3. Learned counsel further submitted that on 11.10.2022, the petitioner submitted an application seeking permission for extension of the already existing resort and not for establishment of any new hotel or resort. The competent authority accepted the prescribed scrutiny charges and processed the application, but failed to take a final decision thereon within the prescribed period. It was contended that, upon such failure, the petitioner invoked the statutory mechanism relating to deemed permission by issuing the requisite communication under Section 17 of the Udaipur Development Authority Act, 2023 (hereinafter referred to as "the UDA Act"), corresponding to the erstwhile Section 73 of the Rajasthan Urban Improvement Act, and proceeded with the construction *bona fide* and in accordance with the statutory framework.

4. It was argued that the proposed construction was, in any event, permissible under Clause 2.3 (Provisions for Sajjangarh Wildlife Sanctuary ESZ Notification) of the Zonal Master Plan relating to the Eco-Sensitive Zone and that, at the very least, the application ought to have been placed before the Monitoring Committee constituted under the applicable Eco-Sensitive Zone



Notification. It was further contended that the competent authority could not have unilaterally treated the construction as impermissible without first determining the nature and status of the existing establishment in accordance with the Zonal Master Plan.

5. Learned counsel submitted that the subsequent proceedings against the petitioner arose pursuant to a complaint made by an adjoining landowner, whereupon the UDA issued a show-cause notice dated 22.11.2024 alleging, *inter alia*, that construction was being undertaken without requisite permission and land-use change. It was submitted that the said show-cause notice did not allege that the petitioner's land fell within the Eco-Sensitive Zone or that the construction was prohibited on account thereof. The petitioner duly appeared and submitted its interim reply, asserting that the construction had been undertaken pursuant to the statutory provisions relating to deemed permission and on the strength of the permissions and *patta* already granted in its favour. A principal contention raised by learned counsel was that the impugned orders travel beyond the scope of the show-cause notice. It was submitted that the respondents, while passing the impugned orders, introduced a new ground by holding that the land falls within the Eco-Sensitive Zone, although no such allegation was contained in the show-cause notice. Learned counsel urged that an authority cannot travel beyond the allegations contained in the notice and cannot sustain an order by subsequently supplementing the grounds which were never put to the affected party. Reliance in this regard



was placed upon the ratio passed in **Mohinder Singh Gill v. Chief Election Commissioner** reported in **(1978) 1 SCC 405**, to contend that the validity of an administrative order must be tested on the reasons contained therein and that such reasons cannot subsequently be supplemented.

6. It was next submitted that the petitioner's resort was established and operational since the year 2009 and had been duly regularized by the competent authority. The petitioner, therefore, could not be treated as establishing a new resort merely because certain further construction was undertaken subsequently. Learned counsel referred to Clause 2.3 of the Sajjangarh Zonal Master Plan, which recognizes an existing hotel/resort on the basis of, *inter alia*, electricity connection for non-agricultural use, approval by the Tourism Department, conversion order/*patta*, building plan approval, change of land-use order, payment of taxes as a hotel/resort or commercial establishment, and requisite environmental permissions. It was contended that the petitioner possesses several such documents and approvals, including the conversion order dated 19.09.2008, allotment letter dated 18.12.2009 and registered lease deed/*patta* dated 25.02.2010. Thus, the establishment in question squarely falls within the concept of an "existing resort" and that the construction undertaken by the petitioner ought to be viewed as an extension of such existing establishment rather than as establishment of a new hotel or resort. It was argued that the mere use of the expression "expansion" in the application cannot alter the substantive character of the project, particularly when



the underlying establishment had admittedly come into existence prior to issuance of the Eco-Sensitive Zone Notification.

7. Learned counsel further submitted that the application submitted by the petitioner was never placed before the Monitoring Committee constituted under the Eco-Sensitive Zone Notification. The application been forwarded to the said Committee, the competent statutory authority could have examined and determined whether the proposed extension was permissible, regulated or required modification. The respondents, however, proceeded against the petitioner without following such mechanism. It was further urged that the petitioner possesses the requisite statutory permissions and regulatory approvals issued by different Government departments, which demonstrate that the establishment was an operational and approved resort and that the petitioner merely sought extension thereof. The respondents, according to learned counsel, failed to properly consider these prior permissions and proceeded on an erroneous assumption that the construction undertaken after issuance of the Eco-Sensitive Zone Notification necessarily constituted establishment of a new unit.

8. Learned counsel placed reliance upon the judgment rendered by this Court in **Kanha Hotels and Spa Pvt. Ltd. v. Union of India and ors. : S.B. Civil Writ Petition No. 5863/2024**, wherein, the Court dealt with a similar controversy concerning construction within an Eco-Sensitive Zone. It was submitted that in the said case the authorities had incorrectly treated an existing hotel project as a fresh proposal requiring





fresh wildlife clearance, whereas the Court emphasized the necessity of correctly determining the nature of the project, considering the prior statutory approvals and examining the complete factual matrix before classifying an establishment as a "new unit". Learned counsel submitted that the ratio of the said judgment squarely applies to the present case, since the respondents have similarly failed to consider the petitioner's prior approvals and the fact that the resort existed much prior to the Eco-Sensitive Zone Notification.

9. It was contended that instead of first determining whether the petitioner's resort constituted an existing establishment under the applicable Zonal Master Plan, the respondents proceeded on the assumption that every construction undertaken subsequent to 13.02.2017 necessarily amounted to establishment of a new hotel. According to learned counsel, such approach amounts to application of an incorrect legal test and consequently vitiates the impugned proceedings. Learned counsel also submitted that the petitioner invoked the principle of legitimate expectation. It was submitted that the petitioner had acted throughout in accordance with the statutory procedure by submitting an application for extension, depositing the prescribed scrutiny fee, furnishing the requisite documents and thereafter issuing the statutory communication under Section 17 of the UDA Act, 2023.

10. The competent authority not only accepted the application and scrutiny charges but also processed the proposal and, in the year 2023, forwarded the same to the Deputy



Conservator of Forests and the Chief Conservator of Forests for obtaining the requisite environmental approvals. According to learned counsel, the conduct of the respondents legitimately led the petitioner to believe that its proposal was under consideration within the statutory framework. It was further submitted that the respondents themselves had forwarded the petitioner's proposal to the competent Forest Authorities for consideration of the requisite environmental/wildlife clearance. Consequently, the respondents could not subsequently contend that the proposed construction was inherently prohibited or *void ab initio*. Learned counsel submitted that the very act of forwarding the proposal demonstrated that the respondents considered the matter capable of examination under the applicable statutory mechanism.

11. It was argued that the matter remained pending before the competent Forest Authorities and that the petitioner had no control over the time taken in such proceedings. Whether the project could ultimately be permitted, regulated, modified or rejected was a matter falling within the domain of the competent environmental authorities. Therefore, the UDA could not have presumed that the requisite approval would necessarily be refused and proceeded to take coercive action, including demolition, without awaiting the outcome of the statutory process. Learned counsel submitted that the impugned action was consequently premature and arbitrary, particularly when the competent Forest Authorities had not rejected the petitioner's proposal. The respondents had themselves invoked the statutory approval mechanism and were therefore required to await its outcome



rather than proceed on a presumption that the project could never receive approval.

12. It was further submitted that the respondents cannot be permitted to approbate and reprobate. Having themselves forwarded the petitioner's proposal to the DCF and CCF for consideration, they could not simultaneously contend that the construction was inherently illegal and liable to demolition. Learned counsel contended that demolition during the pendency of the statutory approval process amounts to prejudging the issue and is contrary to the respondents' own conduct. Learned counsel also submitted that the petitioner had already invested substantial amounts in the project and had completed approximately 90% of the construction. The petitioner, therefore, would suffer grave and irreparable prejudice if the construction were demolished without determination of the petitioner's rights and entitlement by the competent statutory authorities.

13. Lastly, learned counsel alleged that the action of the UDA was arbitrary and discriminatory, inasmuch as several other constructions, stated to be approximately 400 in number, had allegedly been raised within the Eco-Sensitive Zone, whereas the petitioner alone had been subjected to coercive action. It was submitted that such selective action amounts to a "pick and choose" approach and constitutes an abuse of the process of law. On the aforesaid grounds, learned counsel for the petitioner submitted that the impugned action/orders are legally unsustainable, having been passed by travelling beyond the scope of the show-cause notice, without properly appreciating the status



of the petitioner's pre-existing resort and its prior statutory approvals, without consideration of the applicable provisions of the Zonal Master Plan and without awaiting the outcome of the environmental approval process initiated by the respondents themselves. It was, therefore, prayed that the impugned orders/actions be quashed and set aside and appropriate consequential relief be granted in favour of the petitioner.

14. Learned counsel appearing in **SBCWP No. 6350/2026** after endorsing the submissions made by insofar had submitted that the said petition has been filed assailing the impugned orders dated 23.07.2025 and 06.01.2026 issued by the Udaipur Development Authority in relation to the petitioner's property located in Eco-sensitive Zone of Sajjangarh Wildlife Sanctuary. It was submitted that the petitioner has a four floor property regarding which *patta* no. 7.86 was issued on 13.08.1985; and subsequently the petitioner took consent from Gram Panchayat, Badi to run hotel business, and Udyam Registration Certificate dated 15.02.2025 and FASSAI certificate dated 07.09.2025. It was further contended that the petitioner's premise is about 1,400-1,600 m. from the Sajjangraha Wildlife Sanctuary and as per the Notification dated 13.10.2015 [Point 4(10)] the alleged prohibition is only upto 1 km. from the said Sanctuary.

15. It was further averred that to utter shock of the petitioner, respondents instituted a case bearing no. 174/2025, wherein vide order dated 23.07.2025 in proceedings under Section 32 of the Udaipur Development Authority Act, 2023 declared the G-4 construction of the petitioner as encroachment and directed



the petitioner to remove the construction. It was contended that the petitioner was not aware of passing of the said order, and thus, he could not remove/rebut to any of the allegations made therein.

16. Learned counsel for the petitioner appearing in **SBCWP No. 3272/2026** upon endorsing the submissions made insofar had additionally submitted that the petitioner herein is the lawful owner/*patta*-holder of the land bearing Khasra Nos. 56, 3053/56 and 3054/56 situated at Revenue Village Upali Badi, Udaipur. It was submitted that the petitioner acquired the property from Puna Ram, who was the recorded Khatedar thereof, and that after execution of the sale deed, Puna Ram applied for conversion of the land under Section 90-A of the Rajasthan Land Revenue Act, 1956 and also furnished an affidavit nominating the present petitioner as the *Patta*-holder.

17. It was further submitted that after taking into consideration the documents furnished by Puna Ram as well as the present petitioner, the UIT, Udaipur allotted the land in favour of the petitioner vide order dated 04.04.2013 and thereafter issued *patta* in her favour under Section 90-B of the Rajasthan Land Revenue Act, 1956 on 17.05.2013. Learned counsel submitted that, subsequent to issuance of the *patta*, the petitioner applied before the competent authority for permission to construct a Farm House over the subject land, which permission was duly sanctioned by UIT, Udaipur vide order dated 15.12.2014. It was thus contended that the petitioner's possession and construction over the subject land did not originate from any unauthorized



occupation or clandestine activity, but were founded upon documents and permissions issued by the competent statutory authority.

18. It was further submitted that, subsequently, upon receipt of a complaint made by one Madan Pandit, stated to be the Sarpanch of Gram Panchayat, Badi, through the E-Sampark Portal, UIT, Udaipur initiated proceedings in relation to the petitioner's property and prepared a Mauka Report dated 07.09.2021. Learned counsel contended that the said report was prepared behind the back of the petitioner and without affording her any prior opportunity of participation or hearing. The Mauka Report alleged unauthorised development and construction without requisite permission under the Urban Improvement Trust Act, 1959 and the Rajasthan Municipalities Act, 2009, and purported to refer to violations of Sections 91-A and 92-A of the UIT Act. It was submitted, however, that the conclusions recorded in the Mauka Report were disputed by the petitioner and did not correctly reflect the actual position existing at the site.

19. Learned counsel specifically submitted that the allegation that approximately 70% of the land had been constructed upon was factually incorrect. According to the petitioner, the construction had not exceeded the permissible area and the requisite setbacks had been maintained. It was further submitted that the Mauka Report had not been prepared after proper measurement of the property by a competent official and, therefore, could not constitute a reliable basis for passing adverse orders against the petitioner. It was submitted that the petitioner



had appeared before the Tehsildar, UIT, on 21.09.2021 and had explained the entire factual position. Learned counsel submitted that, despite the aforesaid circumstances, the petitioner subsequently came to know that a notice bearing No. F16(223/2021)/Unauth./ Sec.32 dated 19.06.2024 had been issued. It was contended that the said notice was served upon the house-keeping staff of the petitioner and was not personally brought to the petitioner's knowledge.

20. A significant submission advanced by learned counsel was that the notice dated 19.06.2024 introduced an entirely new factual and legal basis, namely, that the petitioner's land was situated within the Eco-Sensitive Zone of Sajjangarh Wildlife Sanctuary. According to learned counsel, this aspect had not formed part of the earlier proceedings in the manner now sought to be relied upon by the respondents. It was argued that the petitioner was thus confronted with a new allegation concerning the Eco-Sensitive Zone without being afforded a meaningful opportunity to meet or controvert the same. Learned counsel submitted that an adverse order could not validly be founded upon a new ground without first putting the affected person to notice of such ground and granting an effective opportunity to submit a response.

21. Learned counsel further submitted that immediately after the notice dated 19.06.2024, the respondents proceeded to pass an order dated 24.06.2024 directing seizure of the property. It was contended that the extremely short interval between the notice and the consequential action demonstrated that the



petitioner was not afforded a reasonable or effective opportunity to defend her case. It was particularly urged that the order dated 24.06.2024 was executed in the absence of the petitioner and that the respondents proceeded to seize the property without providing her a meaningful opportunity to answer the newly introduced allegation concerning the Eco-Sensitive Zone.

22. Learned counsel further submitted that the respondents had undertaken proceedings over a considerable period, allegedly commencing from the year 2021, but the petitioner was never properly associated with the entirety of those proceedings. It was contended that several order sheets were subsequently brought on record for the period from 2021 to 2024, which raised serious questions concerning the manner in which the proceedings had been conducted. According to learned counsel, an order sheet dated 22.11.2021 and subsequent order sheets were stated to have been signed and sealed in the name of Udaipur Development Authority, despite the Udaipur Development Authority having been constituted only pursuant to the Udaipur Development Authority Act, 2023, which received the assent of the Governor on 12.09.2023.

23. It was submitted that the alleged proceedings relating to the year 2021 could not, therefore, have been undertaken or authenticated in the name of an authority which came into existence only subsequently. Learned counsel contended that this circumstance raises a serious question regarding the genuineness, legality and manner of preparation/authentication of the proceedings and order sheets relied upon by the respondents. On



this basis, learned counsel submitted that the proceedings suffer from serious procedural irregularity and that the subsequent orders cannot be sustained merely by treating the entire proceedings as one continuous exercise undertaken by the competent statutory authority.

24. It was further submitted that the petitioner had earlier approached this Court by filing S.B. Civil Writ Petition No.11881/2024 challenging the order dated 24.06.2024. The said writ petition was subsequently withdrawn pursuant to an application seeking liberty to file a fresh writ petition with better particulars, and this Court, vide order dated 17.01.2025, permitted such withdrawal with liberty to file a fresh petition. Learned counsel submitted that the present writ petition has accordingly been instituted pursuant to the liberty granted by this Court and is not an attempt to reopen proceedings which had been finally adjudicated. It was further contended that during the pendency of the earlier writ proceedings, the petitioner sought copies of the proceedings conducted from 09.09.2021 to 19.06.2024 and was allegedly shocked to discover the existence of various order sheets pertaining to the proceedings which had not been brought to the petitioners' knowledge earlier.

25. Learned counsel submitted that the entire action of the respondents suffers from procedural illegality, violation of natural justice and non-application of mind. It was urged that the petitioner cannot be deprived of her property or subjected to demolition/sealing proceedings without a proper adjudication of the legality of the construction after granting her an effective



opportunity to meet each and every allegation relied upon by the respondents. It was, accordingly, prayed that the impugned notice dated 19.06.2024 and consequential order dated 24.06.2024, together with the proceedings culminating therein, be quashed and set aside and the respondents be restrained from taking coercive action against the petitioner's property without following due process of law.

26. *Per contra*, learned counsel appearing for the respondents-Udaipur Development Authority, while opposing the writ petitions, submitted that the petitions are devoid of merit and are liable to be dismissed, as the petitioners seek to claim a right to undertake construction in an area where development/construction activities are expressly restricted and regulated under the applicable environmental and statutory regime.

27. At the outset, learned counsel submitted that the petitioners cannot claim any benefit of deemed permission in respect of construction undertaken in an area falling within the restricted/no-activity zone. It was contended that the statutory concept of deemed permission cannot be invoked so as to override or nullify the restrictions imposed under the environmental notifications, the Eco-Sensitive Zone (ESZ) framework and the Zonal Master Plan applicable to the Sajjangarh Wildlife Sanctuary. A deemed permission, even if otherwise available under the municipal/development law, cannot confer an authority to undertake an activity which is prohibited under a superior or special statutory environmental regime.



28. Learned counsel further submitted that the petitioners have admittedly participated in the proceedings before the competent authority and had submitted a detailed reply to the notice issued to them. The said reply was duly taken into consideration before passing the order under Section 32 of the UDA Act, 2023. Therefore, the contention that the petitioners were condemned unheard or that the impugned order was passed in violation of the principles of natural justice is wholly misconceived. The petitioners were afforded adequate opportunity to place their case before the competent authority and, after consideration of the material available on record, the authority proceeded to pass the impugned order. It was specifically contended that the petitioners have not merely undertaken an innocuous or minor construction activity, but have raised substantial illegal and unauthorised construction within the restricted area falling within one kilometre of the Sajjangarh Wildlife Sanctuary. The location of the property assumes significance, since the construction is situated in an environmentally sensitive and restricted area where the regulatory regime is considerably more stringent than that applicable to ordinary urban development.

29. Learned counsel submitted that the statutory and environmental restrictions applicable to the area do not permit establishment of any new hotel or resort, nor do they permit fresh commercial activities in the restricted zone. It was argued that no activity contrary to the notified Eco-Sensitive Zone regime can be permitted merely by obtaining or relying upon an approval under the general development law. The petitioners, therefore, cannot





seek regularisation of an activity which is inherently impermissible under the governing environmental framework.

30. It was further submitted that the petitioners are attempting to portray the construction as an extension or expansion of an existing establishment, whereas the material available on record demonstrates that substantial fresh commercial construction has been raised in an area where such activity is prohibited/restricted. According to learned counsel, the nomenclature assigned by the petitioners to the construction cannot determine its legal character. The authority is required to examine the substance and nature of the activity actually undertaken and not merely the description given to it by the petitioner.

31. Learned counsel placed reliance upon the fact that the petitioner's land/hotel/resort falls within one kilometre of the Sajjangarh Wildlife Sanctuary and submitted that the said circumstance, by itself, attracts the stringent restrictions governing the area. It was contended that the petitioner's construction is consequently required to be tested against the specific environmental restrictions applicable to the Sanctuary and its Eco-Sensitive Zone rather than merely against the general provisions governing urban development. It was submitted that the order directing demolition and sealing of the unauthorised construction is fully justified in the facts and circumstances of the case. Learned counsel urged that once the construction is found to be unauthorised and contrary to the applicable environmental restrictions, the competent authority is not required to perpetuate



the illegality by granting an opportunity for regularization, where regularisation itself is impermissible in law.

32. It was further contended that environmental law must prevail over ordinary development and municipal laws wherever the two operate in a field concerning protection of an environmentally sensitive area. Learned counsel submitted that the provisions governing development permission, building sanction, deemed permission or regularisation cannot be interpreted in isolation so as to defeat the object and purpose of environmental legislation and notifications. The development authorities are bound to ensure that their statutory powers are exercised consistently with the environmental restrictions governing the area. Therefore, even assuming that the petitioner possesses or relies upon certain permissions under the development laws, such permissions cannot legitimise construction which is prohibited under the environmental regime. Any permission granted contrary to the governing environmental restrictions would not confer an indefeasible right upon the petitioner to continue or complete the offending construction.

33. It was further submitted that the petitioner cannot derive any advantage from the alleged non-consideration of the matter by the Impact Assessment Committee/Monitoring Committee, particularly when the construction itself is found to be unauthorised and in violation of the applicable restrictions. According to learned counsel, the petitioner cannot rely upon the absence of approval from the competent environmental/monitoring authority as a ground to claim





continuation of construction; rather, the absence of such approval reinforces the respondents' case that the petitioner proceeded with the construction without obtaining the requisite permission from the competent authority.

34. Learned counsel also submitted that the petitioner has not impleaded the concerned Impact Assessment Committee/Monitoring Committee as a necessary or proper party, despite the controversy directly concerning the environmental restrictions and the regulatory mechanism applicable to the Eco-Sensitive Zone. It was argued that any adjudication concerning the legality of construction vis-a-vis the said environmental regime, in the absence of the concerned statutory/regulatory body, would be incomplete and may adversely affect the functioning and statutory obligations of such authority.

35. In this regard, learned counsel had referred the Building Inspection Report, particularly the report placed at page 150 of Annexure R/2, and submitted that the inspection report clearly demonstrates the nature and extent of the deviations and violations committed by the petitioner. The inspection was not founded upon a mere technical or procedural irregularity; rather, the physical inspection revealed substantial construction violations, thereby providing an independent factual basis for the coercive action taken by the competent authority. It was argued that the contents of the inspection report belie the petitioner's attempt to characterise the dispute as one involving only a procedural failure on the part of the respondents to grant permission. The material inspection report, according to learned



counsel, establishes that the petitioner had proceeded with construction despite the absence of requisite approvals and despite the restrictions governing the site.

36. Learned counsel further pointed out that the petitioner herself has referred to earlier instances of allegedly illegal construction having been compounded. It was submitted that such assertion cannot assist the petitioner in the present proceedings.

The fact that some construction may have been compounded or regularised on an earlier occasion does not create a perpetual right in favour of the petitioner to raise further unauthorised construction. Each construction activity has to be tested against the law applicable at the time when such construction is undertaken. It was contended that no principle of equality can be invoked to perpetuate an illegality; even if the petitioner is able to demonstrate that certain other constructions were allegedly permitted, regularised or compounded in the past, the same cannot confer a legal right upon her to demand identical treatment in respect of construction which is otherwise prohibited under the prevailing environmental regime.

37. Learned counsel submitted that the present case involves a much more serious environmental concern, since massive unauthorised construction has been raised within one kilometre of the Sajjangarh Wildlife Sanctuary. The restrictions applicable to the area have been introduced with the object of preserving the ecological character of the Sanctuary and preventing unregulated commercial and construction activities in its immediate vicinity. It was argued that the notification dated





13.02.2017 and the Zonal Master Plan governing the Eco-Sensitive Zone of the Sajjangarh Wildlife Sanctuary constitute the relevant regulatory framework against which the legality of the petitioner's construction is required to be examined. Thus, the construction raised by the petitioner is contrary to the restrictions contained in the said notification and the Zonal Master Plan and has not been authorised either by the competent Monitoring Committee or by the UDA in accordance with the applicable environmental framework.

38. Learned counsel specifically submitted that the petitioner cannot contend that an approval under the development law, by itself, overrides the restrictions contained in the Eco-Sensitive Zone notification. The Zonal Master Plan is intended to regulate development in the sensitive area and to ensure that activities having an adverse environmental impact are either prohibited or subjected to strict scrutiny. Consequently, the petitioner cannot invoke the general provisions relating to building permissions or deemed permissions to circumvent the special restrictions applicable to the area. It was further urged that the one-kilometre location of the petitioner's property from the Sajjangarh Wildlife Sanctuary is not an incidental circumstance but goes to the root of the matter. The very purpose of imposing restrictions in the vicinity of a protected wildlife area would be defeated if commercial establishments were permitted to undertake substantial construction merely by relying upon permissions under general development legislation.



39. Learned counsel submitted that the expression "no activity area" occurring in the applicable regulatory framework is of particular significance. Where an area has been earmarked as a restricted/no-activity zone, the petitioner cannot claim a vested right to undertake commercial construction therein. Any construction contrary to such prohibition is liable to be removed irrespective of the amount allegedly invested by the petitioner or the stage to which the construction has progressed. It was further submitted that the respondents' action of sealing and directing demolition of the offending structure is consequently not disproportionate. Rather, such action is necessary to enforce the statutory and environmental restrictions and to prevent an unauthorised construction from acquiring legitimacy merely by virtue of its completion or continued use.

40. Learned counsel placed reliance upon a catena of judgments, *inter alia*, in **D.B. Civil Misc. Contempt Petition No. 90/2010** as well as the judgments of the Kerala High Court in **Kerala Coastal Zone Management Authority v. P.M. Sukilesh** reported in **2025 (0) KER 1**, and **Abdul Jalil v. Kongallur Municipality, 2016 Supreme Online (KER) 9360**. It was submitted that the aforesaid authorities reinforce the principle that statutory/environmental restrictions governing ecologically sensitive areas cannot be diluted merely on the strength of permissions or equities claimed under ordinary development laws.

41. Reliance was also placed upon the judgment of the Hon'ble Supreme Court in **Rajendra Kumar Barjatiya & Anr. v. U.P. Avas Evam Vikas Parishad : Civil Appeal No.**





14604/2024, particularly paragraphs 19(iii), (iv), (v), (vi), (vii) and paragraph 20; and it was submitted that the principles enunciated therein demonstrate the Court's approach towards unauthorised construction and the inability of an individual to claim equitable protection in respect of construction raised contrary to the statutory development regime. Reference was also made to **Kaniz Ahmed v. Sabuddin & Ors., SLP (C) Nos. 12199-12200/2025**, particularly paragraphs 6 and 7, to contend that an unauthorised construction cannot acquire legitimacy merely because it has been raised or allowed to remain for some period and that the statutory authorities are entitled, and indeed obligated, to take appropriate action in accordance with law.

42. Learned counsel thus submitted that the present matter cannot be viewed merely as a dispute concerning grant or refusal of a building permission. The controversy concerns construction within the immediate vicinity of a protected wildlife sanctuary and, therefore, involves larger questions of environmental protection and statutory compliance. The Court, while exercising jurisdiction under Article 226 of the Constitution, ought to bear in mind that environmental restrictions are intended to protect public and ecological interests extending beyond the individual rights of the petitioner.

43. It was lastly submitted that permitting the petitioner to continue with the construction or directing the respondents to regularise the same would have the effect of defeating the very object of the Eco-Sensitive Zone notification and the Zonal Master Plan. Such an approach would also set an undesirable precedent



whereby persons undertaking unauthorised construction in restricted areas could claim protection on the ground that substantial construction has already been completed. On the aforesaid grounds, learned counsel for the respondents submitted that the petitioner has failed to establish any enforceable legal right to continue with the impugned construction; that the principle of deemed permission cannot operate against an express environmental prohibition; that the petitioner was afforded adequate opportunity of hearing and her reply was duly considered before passing the order under Section 32 of the UDA Act, 2023; that the construction is situated within one kilometre of the Sajjangarh Wildlife Sanctuary and falls within the area governed by stringent environmental restrictions; and that the inspection report demonstrates substantial violations and unauthorised construction.

44. Therefore, it was prayed that the writ petition be dismissed and the action of the respondents, including sealing and demolition of the unauthorised construction, be upheld in the larger interest of preservation of the Eco-Sensitive Zone and in faithful implementation of the notification dated 13.02.2017 and the applicable Zonal Master Plan.

45. Qua **SBCWP No. 6350/2026** learned counsel for the respondents categorically submitted that as per the notification dated 13.02.2017 the State Government was required to prepare a Zonal Master Plan within a period of two years, from the date of publication of the notification in the official gazette. In pursuance thereof, the state prepared the said plan which was approved by



the State Government on 22.10.2024, wherein list of activities were enumerated in three parts i.e. (i) Prohibited Activities (ii) Regulated Activities and (iii) Promoted Activities. Thus, making the actions of the petitioner fall under the purview of "Regulated Activities". It was contended that the Sajjangrah Wildlife Sanctuary, as on date has no illegal constructions, and if there are any the same are ordered to be removed, as the said Sanctuary and Sajjangrah Fort is a heritage property located inside he Sanctuary; the land on which the Fort stands and the buildings are mutated, is in favor of the Forest Department as per the revenue records. Therefore, the actions of the respondents are apparently lawful and an effort to preserve the heritage of the picturesque site. It is also submitted that the impugned order dated 23.07.2025 is well speaking, and sans any arbitrariness. Moreover, the contention of the petitioner that he was not aware of passing of the said order is apparently wrong. For the sake of handiness, the relevant extract from the said impugned order is reproduced hereinbelow:

“उक्त पंचनामे के आधार पर अप्रार्थी के विरुद्ध उदयपुर विकास प्राधिकरण अधिनियम-2023 की धारा 32 के तहत दिनांक 17-07-2025 को नोटिस जारी किया गया जिसमें दिनांक 23-07-2025 की पेशी तारीख नियत की जाकर अप्रार्थी को जवाब सुनवाई का अवसर दिया गया। नोटिस बाद तामील प्राप्त हुआ जिसे शामिल पत्रावली किया गया। नियत पेशी दिनांक पर अप्रार्थी स्वयं उपस्थित हुआ। अप्रार्थी द्वारा मौके पर संचालित होटल के सम्बन्ध में किसी प्रकार का जवाब एवं निर्माण स्वीकृति आदी प्रस्तुत नहीं की गई। अप्रार्थी का बिना स्वीकृति के ईको जोन में अवैध व्यवसायिक निर्माण किया जाना स्पष्ट पाया गया।



प्रकरण का अवलोकन किया गया। प्रकरण के तथ्य इस प्रकार हैं कि राजस्व ग्राम बडी के आराजी संख्या 1544 रकबा 1, 1700 हैक्टेयर किस्म आबादी होकर नगर विकास प्रन्यास, उदयपुर के नाम दर्ज है। उक्त भूमि में बिना स्वीकृति एवं बिना भू-उपयोग परिवर्तन करवाये जी+4 का निर्माण कर 'द लेक माउण्ट' नाम से व्यवसायिक होटल का संचालन किया जा रहा है। इसके अतिरिक्त उक्त भूमि सज्जनगढ बायो पार्क के इको सेन्सेटीव जोन में स्थित है। उक्त क्षेत्र में नियमन की स्वीकृति राज्य सरकार एवं श्रीमान् जिला कलक्टर महोदय, की अध्यक्षता में गठीत ईको सेन्सेटीव मोनेटरिंग कमेटी से स्वीकृति लिया जाना अनिवार्य है। अप्रार्थी द्वारा आज दिनांक तक बिना स्वीकृति लिये ही अवैध निर्माण कराया गया है एवं व्यवसायिक उपयोग किया जा रहा है। अप्रार्थी का बिना स्वीकृति, बिना रूपान्तरण एवं बिना भू-उपयोग परिवर्तन करवाये ईको जोन में व्यवसायिक होटल का निर्माण किया जाना स्पष्ट पाया गया।

अप्रार्थी ने प्राधिकरण भू-अभिलेख निरीक्षक, पटवारी से प्राप्त रिपोर्ट अनुसार राजस्व ग्राम बडी के आराजी संख्या 1544 जो सज्जनगढ बायो पार्क के इको सेन्सेटीव जोन में स्थित है। इस भूमि पर बिना स्वीकृति, बिना भू-उपयोग परिवर्तन करवाये जी+4 का निर्माण कर 'द लेक माउण्ट' नाम से व्यवसायिक होटल का संचालन किया जा रहा है। अप्रार्थी का उक्त कृत्य उदयपुर विकास प्राधिकरण अधिनियम-2023 की धारा 32 के तहत अवैध होने से ध्वस्त-विध्वंस योग्य है।

अतः अप्रार्थी द्वारा राजस्व ग्राम बडी के आराजी संख्या 1544 जो सज्जनगढ बायो पार्क के इको सेन्सेटीव जोन में स्थित है। इस भूमि पर बिना स्वीकृति, बिना भू-उपयोग परिवर्तन करवाये जी+4 का निर्माण कर 'द लेक माउण्ट' नाम से व्यवसायिक होटल का संचालन किया जा रहा है। उक्त अवैध निर्माण को उदयपुर विकास प्राधिकरण, उदयपुर की सामान्य बैठक दिनांक 26-06-2024 के अनुमोदन क्रमांक एफ. 5(1)/जन/मिटींग/2024/11 दिनांक 28-06-2024 से उदयपुर विकास प्राधिकरण अधिनियम-2023 की धारा 32 में प्रदत्त शक्तियों का प्रयोग करते हटाने के आदेश पारित किये जाते हैं। अप्रार्थी उक्त अतिक्रमण को इस निर्णय से 03 दिवस की अवधि में स्वतः हटा ले एवं अन्यथा बाद मयाद गुजरने के कभी भी इसे ध्वस्त अथवा सीज किया जावेगा जिसकी समस्त जिम्मेदारी अप्रार्थी स्वयं की होगी।





अप्रार्थी व प्राधिकरण के सम्बन्धित क्षेत्र के पटवारी/भू-अभिलेख निरीक्षक/सहायक अभियन्ता को निर्णय की पालना सुनिश्चित कराने हेतु सूचित किया जावे। निर्णय सुनाया गया। पत्रावली फ़ैसल शुमार होकर नम्बरान से कम हो। ”

DISCUSSION AND FINDINGS:

46. Having accorded careful consideration to the rival submissions advanced by learned counsel for the parties, the judgments cited at the Bar and ante-proceeding to advert to the merits of the instant *lis*, this court deemeth it apposite to jot down the following observations:

46.1 This Court finds that the controversy, though projected by the petitioner as one concerning grant of development permission and applicability of the doctrine of deemed permission, essentially turns upon a more fundamental question, namely, whether the petitioner could have lawfully undertaken the construction in question at the place where it has been raised, having regard to the special statutory and environmental restrictions governing the area falling within the immediate vicinity of Sajjangarh Wildlife Sanctuary.

46.2 The answer, on a cumulative consideration of the applicable statutory framework, the notification dated 13.02.2017, the Zonal Master Plan governing the Eco-Sensitive Zone, the inspection report and the undisputed location of the property, has to be in the negative.



47. At the outset, this Court deems it appropriate to observe that development permission under a general municipal/development enactment cannot be construed in isolation from the restrictions imposed by a special environmental regime. The principle is elementary: a general power of development cannot be exercised in derogation of a specific prohibition operating under an environmental notification or statutory regime framed for protection of an Eco-Sensitive Zone or a protected area.

48. The petitioner seeks to derive considerable advantage from the alleged failure of the development authority to decide the application within the prescribed period and consequently invokes the doctrine of deemed permission. Such submission, however, proceeds on an erroneous premise. Deemed permission, where available under a development enactment, is necessarily circumscribed by the substantive limitations imposed by law. It cannot metamorphose an otherwise prohibited activity into a permissible one, nor can statutory silence on the part of a development authority be treated as a positive authorisation to violate an environmental prohibition. In other words, what cannot be expressly permitted by the competent authority cannot ordinarily be deemed to have been permitted merely because the authority failed to communicate its decision within the stipulated period. The doctrine of deemed permission is intended to prevent administrative lethargy in matters where permission is otherwise legally capable of being granted; it cannot be employed as an instrument to defeat a statutory prohibition.



49. This distinction assumes greater significance in the present case because the restriction in question is not merely a technical building regulation. The properties in question herein are admittedly situated within one kilometre of the Sajjangarh Wildlife Sanctuary. The restrictions applicable to the area have their genesis in the environmental objective of protecting the Sanctuary and regulating activities in its immediate environs. The construction, therefore, cannot be examined as though it were an ordinary urban building activity situated in an unrestricted development area.

50. The Supreme Court, in **Vellore Citizens' Welfare Forum v. Union of India : (1996) 5 SCC 647**, has categorically recognized the precautionary principle as an essential feature of sustainable development and held that environmental measures must anticipate, prevent and attack the causes of environmental degradation. The Court further held that where there is a threat of serious or irreversible damage, absence of scientific certainty cannot be a ground for postponing preventive measures. The aforesaid principle is of direct relevance herein. Once the competent statutory authorities have demarcated an area adjoining a protected wildlife sanctuary as environmentally sensitive and have imposed restrictions upon developmental activities therein, the Court cannot, in exercise of its equitable and discretionary jurisdiction under Article 226 of the Constitution, dilute such restrictions merely because the petitioner has already invested money or undertaken substantial construction.



51. Indeed, the Supreme Court in **Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401**, while examining the environmental clearance regime, emphasized the importance of the environmental rule of law and the necessity of a meaningful appraisal of environmental consequences. It had been opined that the environmental decision-making process cannot be reduced to a mechanical formality when the activity has potential implications for an ecologically sensitive area. This Court is also unable to accept the submission that the environmental restrictions ought to yield to the provisions governing ordinary development permissions. The environmental regime operates as an additional and special layer of regulation. Compliance with one regulatory regime does not dispense with compliance with another where the latter has been specifically enacted to protect a sensitive ecological area.

52. Further, it can be noted that the Public Trust Doctrine assumes considerable significance in the facts of the present case. The area in question, being situated in the immediate vicinity of a protected wildlife sanctuary and falling within an environmentally sensitive regime, cannot be viewed merely as private property amenable to unrestricted commercial exploitation. The State and its instrumentalities, while exercising regulatory powers over such ecologically fragile areas, act in the capacity of trustees of natural resources for the benefit of the present and future generations. The Hon'ble Supreme Court, in **M.C. Mehta v. Kamal Nath : (1997) 1 SCC 388**, has authoritatively held that the Public Trust Doctrine forms part of the law of the land and that the State is the



trustee of natural resources which are meant for public use and enjoyment. The Court has further recognised that ecologically fragile lands and ecosystems fall within the protective ambit of the doctrine and that natural resources cannot be permitted to be appropriated or subjected to private commercial use in a manner inconsistent with the public interest. The principle was reiterated by the Apex Court in **Intellectuals Forum, Tirupathi v. State of A.P.: (2006) 3 SCC 549**, wherein it was emphasised that the State, as trustee, is under a legal obligation to protect natural resources and that the doctrine operates against their conversion or exploitation for private or commercial purposes in derogation of public interest.

53. Thus, in the present case, the respondents cannot be faulted for adopting a restrictive approach towards commercial construction in the vicinity of the Sajjangarh Wildlife Sanctuary. Rather, such regulatory intervention is a manifestation of their obligation as trustees of the ecological resources of the area. To permit an unauthorised or environmentally impermissible commercial construction merely because substantial investment has been made therein would amount to subordinating the public interest in preservation of the ecological character of the area to an individual's private commercial interest. The doctrine, operates not merely as a justification for the impugned action but as a positive obligation upon the State authorities to prevent degradation of the environmentally fragile area. The Hon'ble Supreme Court has more recently reiterated that the Public Trust Doctrine requires the Government to protect natural resources and



the environment for the enjoyment of the general public rather than permit their use for private ownership or commercial purposes. Accordingly, where the petitioner's private commercial interest comes in conflict with the State's constitutional and statutory obligation to preserve an Eco-Sensitive Zone and protect the adjoining wildlife sanctuary, the former must yield to the latter. The impugned regulatory action, therefore, cannot be termed arbitrary merely because it restricts or removes a construction undertaken for private commercial purposes.

54. This Court is also unable to accept the petitioner's contention that since certain other constructions in the vicinity have allegedly been compounded, regularised, or no action has been initiated against them, the petitioner is entitled to the same relief on the principle of parity. Such a plea is founded on the doctrine of negative equality, which has been consistently rejected by the Hon'ble Supreme Court. Article 14 of the Constitution of India, embodies a positive concept of equality and does not envisage the perpetuation or multiplication of an illegality. A wrong or irregular benefit extended to one person, whether by mistake, oversight, or in violation of law, does not create a legal right in favour of another person to claim identical treatment. The constitutional guarantee is of equality in accordance with law, and not equality in illegality or arbitrariness. Therefore, even if similarly situated persons have escaped action or have been granted an unlawful benefit, this Court cannot issue a direction compelling the State to repeat the same illegality.



55. The most vehement argument advanced by the learned counsel for the petitioners, as to whether the petitioner can claim the benefit of **Kanha Hotels and Spa Pvt. Ltd. (Supra)**, as considerable emphasis has been placed by learned counsel for the petitioner upon the judgment rendered by this Court in the said judgment, however, the reliance is misplaced. It is trite that a judgment is an authority for the proposition which it actually decides upon the factual and statutory foundation obtaining therein. A precedent cannot be divorced from its factual matrix, nor can the ratio of a judgment be mechanically extended to a case where the foundational facts are materially different. A careful reading of **Kanha Hotels and Spa Pvt. Ltd. (Supra)**, demonstrates that the factual position obtaining therein was materially distinct. In that matter, the project had proceeded through a continuous chain of statutory permissions and approvals over a substantial period. In the present case, however, the petitioner seeks to draw an equivalence merely from the existence of an earlier establishment and seeks to use the same as a foundation for the subsequent construction in question. The material placed before this Court does not establish that the impugned construction itself was preceded by the requisite approvals from the competent authorities under the special environmental regime applicable to the area.

56. Subsequently, it can be noted that the respondents have placed reliance upon the Building Inspection Report forming part of Annexure R/2, which records the deviations and violations noticed at the site. The petitioner has not been able to



demonstrate, by placing cogent material before this Court, that the construction forming the subject matter of the impugned action had been duly sanctioned by all the competent authorities whose approval was necessary in view of the special character and location of the land. The Court cannot lose sight of the fact that the proceedings do not concern a mere marginal deviation from a sanctioned building plan. The allegations concern substantial construction undertaken in an area subjected to heightened environmental restrictions on account of its proximity to a protected wildlife sanctuary. Once the construction is found to be unauthorised and is further found to be contrary to the restrictions governing the area, the question of regularisation cannot be approached as a matter of right. Regularisation is an exception and not the normal consequence of an unauthorised construction.

57. The Supreme Court in **Friends Colony Development Committee v. State of Orissa, (2004) 8 SCC 733**, deprecated the tendency to regularise unauthorised constructions and emphasized that the planning law cannot be rendered meaningless by permitting violations to be compounded as a matter of course. Likewise, in **Esha Ekta Apartments Co-operative Housing Society Ltd. v. Municipal Corporation of Mumbai, (2013) 5 SCC 357**, the Supreme Court reiterated that constructions raised in violation of sanctioned plans and development regulations cannot ordinarily be protected through indiscriminate regularisation. The Court stressed the importance of planned development and cautioned against permitting illegal constructions to acquire legitimacy through subsequent



regularisation. The principle is even more compelling where the illegality has an environmental dimension. A construction which is impermissible in an Eco-Sensitive Zone cannot be placed on the same footing as an ordinary deviation in a building situated in an unrestricted urban area.

58. The Hon'ble Supreme Court has time and again held that where an unauthorised construction is illegal and cannot be compounded, it has to be demolished, and that judicial discretion cannot be exercised in a manner which encourages or perpetuates illegality. The said principle has also been endorsed in the ratio encapsulated in **Priyanka Estates International Pvt. Ltd. v. State of Assam, (2010) 2 SCC 27**, holding that where construction (albeit in the referred judgment pertain to unauthorized floors construction) is raised in flagrant violation of the sanctioned plan and without requisite sanction, demolition may be the only lawful course. The principle emerging from the aforesaid authorities is that the Court's equitable jurisdiction cannot become a sanctuary for an illegality. The extent of investment, completion of construction, commercial use, employment generated or other economic considerations cannot, by themselves, convert an unlawful structure into a lawful one.

59. The petitioner has also sought to rely upon the alleged fact that certain earlier constructions had been compounded or regularised. However, this Court is of a stern view that such contention is of no assistance, as an illegality committed in the past cannot become a source of legal entitlement for committing another illegality in the present. Article 14 of the Constitution of





India does not envisage negative equality. If an authority has, at some earlier point of time, acted contrary to law, such action cannot compel the authority or the Court to repeat the same illegality. The Apex Court has repeatedly held that there can be no equality in illegality. Thus, the petitioner cannot claim a right to perpetuation of an alleged wrong merely by pointing towards other constructions. Particularly in environmental matters, such a plea would be wholly destructive of the statutory scheme. If every subsequent violator were permitted to plead that similar violations existed elsewhere, the regulatory regime would become incapable of enforcement and the very object of declaring an area environmentally sensitive would stand frustrated. In order to extract more authority to the said view, the following reproduced extract from the ratio encapsulated in **Kaniz Ahmed (supra)**, has been crucially scanned by this Court:

*"6. The learned counsel appearing for the petitioner would submit that her client be given one chance to pray for regularisation of the unauthorised construction. We do not find any merit in such submission. **A person who has no regards for the law cannot be permitted to pray for regularisation after putting up unauthorised construction of two floors. This has something to do with the rule of law. Unauthorised construction has to be demolished. There is no way out. Judicial discretion would be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. We are at pains to observe that the aforesaid aspect has not been kept in mind by many State Governments while enacting Regularisation of Unauthorized Development Act based on payment of impact fees.***





7. Thus, the Courts must adopt a strict approach while dealing with cases of illegal construction and should not readily engage themselves in judicial regularisation of buildings erected without requisite permissions of the competent authority. The need for maintaining such a firm stance emanates not only from inviolable duty cast upon the Courts to uphold the rule of law, rather such judicial restraint gains more force in order to facilitate the well-being of all concerned. The law ought not to come to rescue of those who flout its rigours as allowing the same might result in flourishing the culture of impunity. Put otherwise, if the law were to protect the ones who endeavour to disregard it, the same would lead to undermine the deterrent effect of laws, which is the cornerstone of a just and orderly society.[See: *Ashok Malhotra v. Municipal Corporation of Delhi*, W.P. (C) No. 10233 of 2024 (Delhi High Court)]”

(Emphasis supplied)

60. The Court is also conscious of the petitioner's submission that substantial investment has already been made and that a major portion of the construction has been completed. Nevertheless, such considerations cannot outweigh the statutory prohibition. A person who proceeds with construction without securing all requisite permissions does so at his own peril. Investment made in anticipation of obtaining permission cannot create a vested right to obtain such permission subsequently. In the present case, the petitioner cannot contend that because the construction has substantially progressed, the respondents should now be directed to regularise or permit the same. Such an approach would effectively reward the petitioner for proceeding ahead of the statutory process.



61. The Supreme Court's jurisprudence concerning unauthorised construction as also opined in consistently proceeds on the principle that the passage of time does not sanctify illegality. Nor does expenditure incurred in raising an unauthorised structure confer any equitable right to retain it.

62. The Court must also bear in mind the constitutional dimension of environmental protection. Article 21 of the Constitution of India encompasses the right to a clean and healthy environment, while Article 48-A casts a constitutional obligation upon the State to protect and improve the environment and safeguard forests and wildlife. The Sajjangarh Wildlife Sanctuary is not merely an ordinary parcel of public land. The statutory restrictions imposed around a protected wildlife area represent a legislative and administrative recognition of the ecological significance of the area. The Court, while exercising discretionary jurisdiction, cannot adopt an interpretation which dilutes those restrictions. In **Vellore Citizens' Welfare Forum (supra)**, the Hon'ble Supreme Court held that the precautionary principle is part of the environmental law of India and requires the State and statutory authorities to anticipate and prevent environmental degradation.

63. The principle has subsequently been reiterated by the Hon'ble Supreme Court in a catena of judgments, where environmental decision-making was considered in the context of the environmental rule of law and the need for meaningful compliance with the statutory environmental framework. Consequently, where there is a conflict between the petitioner's



private commercial interest in retaining an unauthorised construction and the statutory mandate for protection of an environmentally sensitive area, the latter must prevail.

64. The contention that the impugned order is vitiated for want of opportunity of hearing also does not persuade this Court.

The material placed before the Court indicates that a notice was issued to the petitioner and that the petitioner submitted a reply thereto, which was duly considered before the order under Section 32 of the UDA Act, 2023 was passed. The principles of natural justice require a reasonable opportunity of hearing; they do not require an authority to accept the defence raised by the affected party. Once the petitioner was put to notice of the alleged violations and had an opportunity to submit her explanation, the requirement of *audi alteram partem* stood substantially satisfied.

65. The petitioner has also not demonstrated any specific prejudice occasioned to her by the alleged procedural irregularity. In any event, the existence of an environmental prohibition cannot be defeated merely by invoking a technical plea of natural justice when the substantive illegality of the construction stands independently established from the record.

CONCLUSION :

66. On an overall conspectus of the matter, this Court finds that the petitioner has failed to establish any enforceable right to continue with the construction in question. The construction is situated within the restricted area adjoining the Sajjangarh Wildlife Sanctuary; the applicable environmental notification and Zonal Master Plan impose restrictions upon developmental and





commercial activities in the area; the petitioner has failed to establish requisite approval from the competent environmental/monitoring authority for the construction under challenge; that the inspection material placed on record indicates substantial violations; that the ratio encapsulated in **Kaniz Ahmed (supra)**, is squarely applicable herein. The doctrine of deemed permission cannot be invoked to override an express environmental restriction. Such doctrine operates, at best, within the permissible field of the statute under which the deeming fiction is created and cannot be stretched to confer legitimacy upon an activity which is otherwise prohibited by a special environmental regime.

67. Equally, the mere existence of an earlier hotel/resort or establishment upon the land does not confer an automatic and perpetual right to undertake every subsequent construction or expansion without obtaining the permissions required by the law prevailing at the time of such subsequent construction.

68. The reliance placed upon **Kanha Hotels and Spa Pvt. Ltd. (supra)** is accordingly, rejected, as the said judgment proceeded upon a materially different factual foundation, where the Court found a continuous chain of requisite statutory approvals and, on that basis, treated the project as an existing unit. The present case does not stand on the same footing.

69. The Court is also of the considered view that permitting the present petition would have consequences extending beyond the individual dispute. It would effectively mean that a commercial construction raised in an environmentally restricted area could



acquire legitimacy by the mere passage of time, substantial investment or invocation of deemed permission. Such an interpretation would render the environmental restrictions nugatory and would create an incentive for persons to complete construction first and seek statutory approval thereafter. Such an approach cannot be countenanced. Environmental regulation is preventive in character; it is not merely a mechanism for compensating environmental damage after the event. The precautionary principle requires the statutory authorities and the Courts to prevent environmentally impermissible activity rather than facilitate its continuation and thereafter attempt to regularise its consequences.

70. This Court, therefore, finds no perversity, jurisdictional error or manifest illegality in the impugned action of the respondents warranting interference under Article 226 of the Constitution of India. The petitioner has failed to demonstrate violation of any enforceable legal right so as to justify exercise of the extraordinary and discretionary writ jurisdiction of this Court. Consequently, the present writ petition is found to be devoid of merit and is liable to be dismissed. The action of the respondents in directing sealing/demolition of the unauthorised construction, being founded upon the applicable statutory and environmental restrictions and the violations noticed upon inspection, does not warrant interference.

71. In view of the foregoing discussion and findings, the present writ petitions are hereby **dismissed**. The impugned order/action of the respondents, including the direction for sealing



and demolition of the unauthorised construction, is not interfered with. Thus, the respondents shall be at liberty to proceed in accordance with law for enforcement of the impugned order, subject to compliance with any statutory procedure otherwise required. No order is passed as to costs. Pending application(s), if any, also stand disposed of.

72. A copy of the present judgment be placed in each connected petitions.

(SAMEER JAIN),J

Preeti Asopa