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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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COMMENT: IN RE: DIRECTIONS IN THE MATTER OF DEMOLITION OF STRUCTURES

AUTHORED BY - JARIN JOSEPH

Abstract

The concept of the separation of powers, although not strictly implemented, has been incorporated into the Constitution of India. Our system operates on checks and balances to prevent the arbitrary exercise of power by the government. In light of this, the Supreme Court, in various decisions, has emphasized the significance of the rule of law and its importance within our system. *In Re: Directions in the matter of demolition of structures* is a recent case that raised concerns about the arbitrary exercise of power by the executive, particularly in demolishing residential and commercial structures belonging to various citizens. This paper seeks to examine the question posed by this case: whether the properties of individuals accused or even convicted of crimes can be demolished without following due process of law. Furthermore, the paper analyzes the court's view on the rule of law, the doctrine of separation of powers, and its interpretation of Article 21 to include the Right to Shelter. Through this analysis, the paper aims to highlight the correctness of the decision made by the Supreme Court.

Introduction

The underlying principle of separation of power is that the organs should not overlap with each other. The doctrine even if not strictly incorporated into the constitution has a significance in our system. In the present case, where a specific structure was abruptly selected for demolition while other similar structures in the same vicinity remain untouched it calls for malafide intention rather than the argument of breach of local municipal laws.

Facts and issues

Petitioners approached the Supreme Court by way of a writ petition, whose residential and commercial properties were demolished by the state machineries without following the due process of law on account of them being involved as accused in criminal offences. Seeking directions against the state officials involved in the illegal demolition and also directing them that no precipitative action be taken in respect of residential or commercial properties of any accused in any criminal proceedings.

Considering the limited scope of the petitions the court identified the question to be addressed in the present case as whether the properties of the persons, who are accused of committing certain crimes or for that matter even convicted for commission of criminal offences, can be demolished without following the due process of law or not?

Constitution vs. Arbitrary exercise of power

The Supreme Court delved into the principle of the rule of law, which forms the very foundation of democratic governance. To begin with, A.V. Dicey's conceptualization of the rule of law asserts that no one is above the law and that everyone is equal before it. The law must be just and fair, protecting human dignity, and most importantly, the rule of law must prevent the abuse of power. According to the constitutional framework, courts are the sole independent adjudicators of the rights of the people. Through the processes enshrined in constitutional law, criminal law, and procedure, it can be said that these are facets of the rule of law that regulate the exercise of executive power.

The Indian Constitution does not endorse a rigid separation of powers; however, it maintains that any disruption of the delicate balance between the three branches of government would undermine the fundamental principles of the democratic system to which we are committed. In the case of *Rai Sahib Ram Jawaya Kapur and others v. State of Punjab*¹, the court observed that “the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.”² The question that arose in the matter was, whether state government officers assume the adjudicatory function and impose the punishment of property demolition on a person without them undergoing a trial? Such a situation is totally impermissible in the constitutional setup as executive can never replace the judiciary in carrying out its core functions. When executive encroaches upon the functions of judiciary acting against the public it is breach of public trust. The well-established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office³. If the executive arbitrarily demolishes citizens' homes solely because they are accused of a crime, it goes against the principles of the 'rule of law.'

¹ AIR 1955 SC 549

² Rai Sahib Ram Jawaya Kapur and others v. State of Punjab AIR 1955 SC 549

³ Delhi Airtech Services Private Limited and another v. State of Uttar Pradesh and another (2011) 9 SCC354

When the executive assumes the role of a judge and imposes the penalty of demolition on a citizen merely due to the accusation, it breaches the principle of 'separation of powers.' We believe that in such cases, public officials who take the law into their own hands should be held accountable for their overbearing actions.

The rights of citizens guaranteed under the constitution have been given no consideration by the authorities while taking such extreme measures. Even an accused, undertrial, or convicts, have certain rights, as any other citizen in the constitution. This court has previously protected the rights of the prisoners Sunil Batra (I) v. Delhi Administration and others⁴ wherein it was highlighted Article 21 protects the prisoners against several inflictions. The position taken by the court was that even the accused/convicts have rights which cannot be violated by the arbitrary exercise of power by the state or if so, compensation is a form of remedy.

The demolition of the properties by the state machinery does not only affect the accused but also any member of the family residing in the premises at the moment. The question posed by the court was can the relatives be penalized by demolishing the property without them being involved in any crime? The act of punishing of such persons who have no connecting with the crime is a violation of the right to life under the constitution. Right to shelter is one of the facets of Article 21 and depriving the basic right is unconstitutional.

It is a well-established principle of criminal jurisprudence in our country that a person is presumed innocent until proven guilty. The court opined that, permitting the demolition of a house where several individuals or families reside, solely because one person living there is either an accused or convicted in a crime, would amount to inflicting collective punishment on the entire family or families living in the structure. Therefore, such an action would be incompatible with our constitutional framework and criminal jurisprudence.

Conclusion

A reformative decision to prevent the arbitrary exercise of power by the executive as it is very often found exercising extra judicial powers. The court has rightly pointed the significance and importance of the principles of rule of law, separation of powers, public trust in our democratic system. The directions given by the court has been finalized by taking into account the recommendations given by the counsels and the S.G.

⁴ (1978) 4 SCC 494