

the construction must be made within one year in such case and must not be in contravention of the provisions of the Act.¹

(iv) Illegal and Unauthorised Constructions & Consequences:- The Construction may be illegal or unauthorised for several reasons. It may be without obtaining any permission or might have been commenced before the permission is granted or it may be in violation of the permission so granted or it may be in contravention of some provisions of the Act or any other law or it might have been constructed by encroaching into the road or public street or Government land or neighbours land or it might have been constructed by obtaining permission from an incompetent authority. Different consequences will follow and different provisions of law will apply depending upon the nature of violation entailing different procedures. The law provides for stoppage of work, prosecution, penalty and demolition and having regard to the nature of violation complained of, the action is to be taken. One course does not bar the other.² Even a neighbour can seek injunction or other action.³

Refusal of permission for construction on the ground of non-compliance of demolition notice is justified.⁴

(v) When Demolition can be ordered:- All violations do not merit demolition and the authority must give reasons before directing demolition.⁵ When the violation does not affect the public interest, penalty is sufficient.⁶ A full bench of A.P. High Court while reviewing the case law held as follows in.⁷

"Having regard to the rampant, illegal and unauthorised constructions raised in the country, the following guidelines have to be followed by the Corporation in respect of illegal constructions. The guidelines should not be treated as exhaustive but only illustrative and the discretion to be exercised by the Corporation in any given case should not be arbitrary or capricious.

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1. 1995 (1) ALD 1 = 1994 (3) ALT 73 = 1994 (2) APLJ 194 (FB).
 2. 1990 (1) LS 116. See also AIR 1996 SC 892.
 3. See 1981 (1) An WR 166, AIR 1985 Del 293, AIR 1993 AP 20, 1980 (2) APLJ 39 NRC, AIR 1988 Cal 370, AIR 1974 SC 2177 (Where writ petitions were entertained, inspite of pendency of Civil suits) See also 1997 (2) ALD 115 and 1973 (2) ALT 9 DB ; 1996 (2) An. WR 2.
 4. AIR 1999 J & K 87.
 5. 1990 (2) ALT 202 = 1990 (2) An WR 19 NRC (DB).
 6. 1989 (2) APLJ 120, See also 1999 AIHC 3559 (Ker.).
 7. 1995 (1) ALD 1, See also AIR 1991 SC 1453 ; 1996 (3) ALD 512.

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- (1) In cases where applications have been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.
- (2) Whatever is stated in guidelines number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of the Act.
- (3) If no application has been filed seeking permission and the construction is made without any permission whatsoever. It is open to the Corporation to demolish and pull down or remove the said unauthorised structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorised construction."

(vi) How Demolition is to be carried out:-- When the construction was already made, the stoppage of work under Section 461 does not arise and such notices are liable to be quashed. The notice of demolition shall contain the exact nature of the violations and contraventions made to enable the party to make effective representation against the proposed action.¹ No show cause notice is required in case of encroachment and notice to remove the illegal construction is enough in such cases.²

Section 636 of Hyderabad Municipal Corporation Act, being general in nature and as additions to a building are specifically covered by Section 433, issue of notice in such a case under Section 636 in respect of cases covered by Section 433 is clearly illegal.³

1. 1993 (3) ALT 660 = 1993 (2) LS 256

2. 1996 (4) ALD 117 = 1996 (2) LS 226 = 1996 AIHC 5023. See also AIR 1996 SC 892, 1991 (2) ALT 142 and 1988 (2) APLJ 469.

3. 1988 (1) ALT 239.