
(2005) 01 KAR CK 0028

In the Karnataka High Court

Case No : W.A. No"s. 4980, 5211-12, 5488-89 and 5596 of 2003

Alliance Business Academy

APPELLANT

Vs

Dr. H. Jayaram Reddy and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Karnataka Planning Authority Rules, 1965 — Rule 30

Karnataka Town and Country Planning Act, 1961 — Section 14 A, 74

Citation : (2005) ILR (Kar) 450 : (2005) 2 KarLJ 17 : (2005) 1 KCCR 255

Hon'ble Judges : S.R. Nayak, J;H.N. Nagamohan Das, J

Bench : Division Bench

Advocate : M.R. Naik, B.V. Acharya for Setty and Hegde Associates, S.K. Shashi Kiran Shetty, L. Govindraj and Arun Govindraj, for the Appellant; L. Govindraj, for R1, R2, Ashok Haranahalli, for R1, R3, K. Krishna, for R4, B.V. Acharya for K. Shashi Kiran Shetty, R3 and K. Krishna, for R2, for the Respondent

Judgement

S.R. Nayak, J.—All these appeals are directed against the order of a learned Single Judge of this Court dated 28th May, 2003 passed in Writ Petition Nos. 39079 and 39344 of 2002. Writ Appeal Nos. 5211-5212 of 2003 are preferred by M/s. Alliance Business Academy 4th respondent in the Writ Petitions. Writ Appeal Nos. 4980 and 5596 of 2003 are preferred by Sri Gundappa B Angoor, 3rd respondent in the Writ Petitions. Writ Appeal Nos. 5488 and 5489 of 2003 are preferred by M/s. H. Jayaram Reddy and Vinod Kumar Bansal who are the writ petitioners. Inasmuch as the questions of law and that of facts arising for decision in these writ appeals are common and since all the writ appeals are directed against the same common judgment of the learned Single Judge, all these writ appeals are clubbed and heard together and they are being disposed of by this common judgment.

2. For the purpose of convenience, the parties are referred to as they are arrayed in the Writ Petitions. The petitioners in Writ Petition Nos. 39079 and 39344 of 2002 are the residents of Dollar Scheme Layout in Madiwada, Bangalore, and they, in the Writ Petitions, sought for a writ of mandamus to the Bangalore

Mahanagara Palike (BMP) and Bangalore Development Authority (BDA) for revoking the sanctioned plan and for a direction to demolish the building constructed in the two sites owned by the 3rd respondent. The petitioners subsequently sought for quashing of the "special permission" granted by the BDA to establish a college vide its Resolution dated 19.10.2002 by amending the prayer. It was contended by the petitioners that the Dollar Scheme Layout in Madiwala is a residential colony notified as such by the BDA in the Comprehensive Development Plan (CDP for short). The petitioners stated that they have constructed two residential houses in premises Nos. 4 and 5 A at 36th Main, II cross, BTM I stage, Bangalore. The adjacent two sites bearing Nos. 2 and 3 which were allotted by the BDA purely for purpose of constructing residential houses by the allottees, were purchased by the 3rd respondent from the allottees. Subsequently, the 3rd respondent amalgamated the two sites into one and obtained a sanctioned plan from BMP for constructing a school building. On coming to know of the same, the residents of the layout objected to the same before the BMP. The BMP authorities, realising their mistake, directed the 3rd respondent not to proceed with the construction without obtaining prior permission for "change of land use" as required under the provisions of the Karnataka Town and Country Planning Act, 1961 (for short, the Planning Act). On being told so by the BMP authorities the respondent No. 3 made an application to the BDA for "change of land use" in that regard. The application was taken on file by the BDA authorities and objections were invited from the residents of the locality by issuing a notice in the local daily, Annexure-E. Objections were received from the residents of the locality. The BDA, after considering the objections, granted permission to the 3rd respondent vide its Resolution No. 188/2002 and 19.10.2002 marked as Annexure-H to the Writ Petitions, to build and establish a college. The petitioners contended that Annexure-H was issued by the BDA without notice to them and without recourse to the provisions of the Planning Act, Zonal Regulations, Building Bye-laws and prejudicial to the interest of the residents of the locality.

3. When those Writ Petitions were pending, the 4th respondent made an application to implead itself as a party - respondent to the Writ Petitions claiming that it is a long term lessee of site Nos. 2 and 3 and they have put up the building for running a college and, in fact, they are running classes in computer training. The BDA, in response to rule nisi, put in appearance and defended its action in granting permission to the 3rd respondent to establish a college under "special circumstances". The BDA, in its statement of objections, pointed out that though the 3rd respondent initially made an application for "change of land use" subsequently made an application, when the earlier application was pending, stating that his application may be treated as the one for grant of permission under "special circumstances" as provided in the Zonal Regulations for establishing a college and that in consideration of the said request and in exercise of the power under the Zonal Regulations, Annexure-H was issued and, therefore, there was neither any irregularity nor any illegality in the impugned

action. The Respondent No. 3 and the impleaded Respondent No. 4 have also filed detailed statements of objections supporting the impugned action of the BDA. In the statement of objections filed by the 3rd respondent, it was pointed out that the 3rd respondent had made an application for grant of permission for "change of land use" u/s 14A of the Planning Act and when that application was pending, the 3rd respondent realized that the Zonal Regulations permit for establishing colleges in the residential zone under "special circumstances" and in that view of the matter, the 3rd respondent abandoned his application for "change of land use" and invoked the power of the BDA for granting permission under "special circumstances" under the zonal Regulations. It was contended by the 3rd respondent as well as by the 4th respondent that the impugned resolution of the BDA, Annexure -H is in accordance with law. It was also contended that none of the rights of the petitioners have been affected and, therefore, there was no need for the BDA to issue notice and hear the petitioners before it passed the Resolution at Annexure -H. It was also contended by the 3rd respondent that the Writ Petitions are filed with a malafide intention to avenge the act of the 3rd respondent in complaining to the BMP against the petitioners about their encroachment of a BMP's property. Further, it was contended that when the building was being constructed, though the petitioners were aware of the construction, they did not approach the Court in time and they approached the Court only after the building was complete and, therefore, the Writ Petitions were liable to be dismissed on the ground of delay and laches also. The 4th respondent, apart from other contentions raised in the statement of objections, has also contended that they established the college and they have been conducting classes in computer training.

4. In the Writ Petitions, as originally presented before this Court, the Resolution of the BDA dated 19.10.2002 was not assailed. We have referred to the prayers made in the Writ Petitions as originally presented. However, during the pendency of the Writ Petitions, the petitioners sought amendment of the prayer by filing necessary application seeking quashing of the Resolution of the BDA dated 19.10.2002.

5. The learned Single Judge, in the premise of the above pleadings of the parties and having examined the provisions of the planning Act, Zonal Regulations and the bye-laws made thereunder, has come to the conclusion that the impugned resolution of the BDA at Annexure-H dated 19.10.2002 granting permission to build and run a college in the premises Nos. 2 and 3 under "special circumstances" is illegal. In view of that opinion, the learned Single Judge has allowed the Writ Petitions and quashed the impugned resolution of the BDA dated 19.10.2002, Annexure-H, and directed the Planning Authority to dispose of the application filed by the 3rd and 4th respondents for "change of land use" u/s 14A of the Act after hearing the petitioners and such other residents of the locality, who have already filed objections. The learned Single Judge has further directed that until the applications filed by the 3rd and 4th respondents are disposed of, they shall not conduct any activity including the running of the college in the

premises.

6. Being aggrieved by the above order of the learned Single Judge, the 3rd and 4th respondents have preferred writ appeals as stated above. The Writ Petitioners though succeeded before the learned Single Judge in getting the impugned resolution of the BDA quashed, they have also filed Writ Appeal Nos. 5488 and 5489 of 2003. The petitioners have set out the circumstances/ reasons which prompted them to file writ appeals in paras 2 and 3 of the Memorandum of appeal thus:

"2. Though the order has gone partially in favour of the appellants, it is still inadequate inasmuch as the same fails to advert to the fundamental question whether or not a commercial structure and activity could be allowed in a residential site and whether or not two residential sites could be amalgamated in the fashion accomplished by the respondents.

3. The appellants had also sought the quashing of the building license granted by the Corporation. Though arguments were advanced over the question, the same has not been adverted to by the learned Single Judge."

7. We have heard Sri B.V. Acharya, learned Senior Counsel, who appeared for the appellants in Writ Appeal Nos. 4980 and 5596 of 2003; Sri M.R. Naik, learned Counsel for the appellants in Writ Appeal Nos. 5211 and 5212 of 2003 and Sri L. Govindaraj, learned Counsel who appeared for the appellants in Writ Appeal Nos. 5488 and 5489 of 2003. The appellants in Writ Appeal Nos. 5488 and 5489 of 2003 are the contesting respondents in the writ appeals preferred by Respondents 3 and 4.

8. Sri B.V. Acharya, learned Senior Counsel, would contend that the impugned resolution of the BDA dated 19.10.2002 is in accordance with law and in conformity with Zonal Regulations. Sri B.V. Acharya would contend that Section 14A of the Planning Act has no application to the facts of this case. According to Sri B.V. Acharya, site Nos. 2 and 3 are admittedly situate in a residential zone and, therefore, it is very much within the power of the BDA, as a planning authority, to accord permission to construct a building to run a college under "special circumstances". According to Sri B.V. Acharya, one has to resort to the procedure contemplated u/s 14A of the Planning Act only if an allottee of a plot of land wants to change the use of the plot from one major head to another major head and that the procedure contemplated u/s 14A of the Planning Act has no application where an allottee seeks change of plot from one use to another use under the same major head.

9. Sri M.R. Naik, while adopting the arguments of Sri B.V. Acharya, would supplement by contending that there is no need to make an application every time when an allottee intends to change use of the land allotted to him for any permissible user other than what is indicated in a "zoning map". Sri M.R. Naik would maintain that there is a difference between "residential site" and "residential zone" and "they cannot be equated.

10. Sri L. Govindaraj, learned Counsel for the writ petitioners, per contra, while supporting the impugned judgment of the learned Single Judge, would contend that the power of the Planning Authority under Clause (b), which deals with uses that are permissible under "special circumstances", authorises the Planning Authority to allow establishment of any amenities specified therein only while planning, but, that clause does not empower the Planning Authority to allow conversion of one particular land use into another land use without recourse to Section 14-A of the Planning Act. In other words, according to Sri L. Govindaraj, the Planning Authority could exercise the power contemplated in Clause (b) only while planning, that is to say, while framing Outline Development Plan (ODP) and CDP and not after the CDP comes to exist. Sri L. Govindaraj would point out that while allotting site Nos. 2 and 3, it was made clear to the allottee that the sites should be used only for construction of a residential house and not for any other purpose; the raising of a building to run a college cannot be equated to raising of a building for residential purpose and in that view of the matter, the application made by Respondents 3 and 4 should be regarded as the one for "change of land use" from one major head to another major head in the CDP and, if that is so, the applicants should necessarily resort to the procedure prescribed u/s 14-A of the Act. Sri L. Govindaraj would also attack the impugned resolution of the BDA on the ground that before passing the resolution, the writ petitioners and similarly circumstanced other aggrieved persons were not heard in the matter resulting in violation of principles of natural justice. Sri L. Govindaraj would next contend that even the amalgamation of site Nos. 2 and 3 for the purpose of raising the building for running a college is violative of the Planning Act and the Zonal Regulations. In support of this Contention, learned Counsel would place reliance on the judgments of this Court in Jayanagar 4th T Block Residents Association Vs. Gnyana Mandir Trust, and Pee Kay Constructions Vs. Chandrasekhar Hegde, . Sri L. Govindaraj, lastly would contend that the Planning Authority did not apply its mind to the objections raised by the petitioners and other residents of the locality and on that count also, the impugned resolution of the BDA is vitiated.

11. Although in Writ Appeal Nos. 5488-5489 of 2003 grounds extracted above are urged, in the course of arguments, Sri L. Govindaraj did not pointedly press into service the ground taken in para 2 of the memorandum of appeal and he did not at all address any argument with regard to the ground taken in para 3. In the Writ Petitions, the petitioners have not sought for quashing of the building licence granted by the BMP. In the writ appeals preferred by them also, the petitioners have not sought for amendment of the prayers made in the Writ Petitions. In the absence of any ground taken in the Writ Petitions and in the absence of the prayer, considering the validity of the building license granted by the BMP, on merit, would not arise. The statement made in para 3 of the writ appeal that the appellants (writ petitioners) had also sought for quashing of the building licence granted by the BMP does not seem to be a correct statement. We have perused the prayer in the Writ Petitions. No prayer is made to quash the building license

granted by the BMP.

12. Although these writ appeals were heard quite extensively, in our considered opinion, the main question that arises for decision falls within a short compass. The question is whether Clause (b) of "Residential Zone" which deals with the uses that are permissible under "special circumstances" empowers the Planning Authority to allow establishment of any of the amenities specified therein while planning only or that Clause (b) also empowers the Planning Authority to allow conversion of a site meant for a particular amenity into another amenity if both the amenities are specified amenities therein?

13. In order to appreciate the point raised before us, it will be beneficial for us to briefly refer to the provisions of the Planning Act. The Planning Act was enacted by the Karnataka State Legislature for regulating planned growth of land use and its development and for making and execution of town planning schemes in the State of Karnataka with a view to provide civic and social amenities for the people in the State, to preserve and improve the existing recreational facilities and other amenities thereby contributing towards balanced use of the land and to provide for healthy environment, hygiene and general standard of living. In order to achieve the aforementioned laudable objectives, the Planning Act has created the "Planning Authority" which is given the power first to conduct a survey, locate the area for development by declaring it as a planning area. u/s 9 of the Planning Act, the Planning Authority is required to prepare an ODP for such planning area. Section 12 of the Planning Act deals with what an ODP should contain. The ODP prepared u/s 9 of the Act is required to be forwarded to the State Government u/s 13 by the Planning Authority. The same is required to be published for general information by inviting objections or comments. The State Government, after applying its mind to the contents of the ODP and objections submitted if any, is required to accord its approval. If the Government accords approval, it is required to be published on the Notice Board for information of the general public and then only it becomes final and enforceable u/s 14 of the Act. Section 14 of the Planning Act deals with enforcement of the ODP and the Regulations. A careful reading of Section 14 makes it clear that on and from the date on which ODP has been published, every owner of land shall use/should develop his land strictly in accordance with the permitted use. However, if he wants to use the land for a different purpose than what is mentioned in the ODP, he has to apply and obtain permission from the Planning Authority u/s 14-A of the Planning Act. Section 14-A of the Act reads:

"14. A Change of land use from the outline Development Plan (1) At any time after the date on which the Outline Development Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government, allow such changes in the land use or development from the outline Development plan as may be necessitated by topographical or cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline

Development Plan or the circumstances prevailing at any particular time, by the enforcement of the plan;

Provided that -

- (a) all changes are in public interest;
- (b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and
- (c) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of Sub-sections (2) and (3) of Section 14 shall apply mutatis mutandis to the change in use or development from the Outline Development Plan.

14. The Government of Karnataka has framed the rules called the Karnataka Planning Authority Rules, 1965 ("Planning Rules" for short) in exercise of the powers conferred u/s 74 of the Planning Act. Rule 30 deals with as to what a map prepared by the Planning Authority should contain. It has divided the areas and the uses in the map under the headings, residential, commercial, industrial, transport and communication, public utilities, public and semi-public uses, open spaces and agricultural land. In the instant case, the CDP has been published under Government Order No. HUD 139 MNJ 94 dated 5th January, 1995. The object of the CDP as stated in the Notification is to promote among other things, general social welfare of the community and to put reasonable limitation on the use of the land for the said purpose. The Notification has divided the entire Bangalore city into residential, commercial, industrial, public and semi-public zones. Annexure I to the above Government order establishes zones, land zoning maps, whereas Annexure -II classifies the land use of the zones into 8 categories under the heads; residential commercial (retail and wholesale business), industrial (light and service industries, medium and heavy industries), public and semi-public utilities and services, parks and open spaces and playgrounds (including recreational area) transportation and communication, agricultural land and watersheds. The Notification also provides for the uses that may be permitted by the BDA under different zones. As regards residential zone, the permissible uses are classified under two categories (a) uses that are permissible and (b) uses that are permissible under "special permission" of the authority. Categories (a) and (b) are extracted herebelow for ready reference.

"Residential zone

- (a) Uses that are permissible dwellings, hostels including working women and gents hostels, Dharmashalas, places of public worship, schools offering general education course upto secondary education, public libraries, post and telegraph

offices, KEB counters, BWSSB counters, Clubs, Semi-public recreational uses, milk booths and neighbourhood or convenience shops, occupying a floor area not exceeding 2000 sq.mets. doctor's consulting rooms, offices of Advocates, other professions in public interest not exceeding 2000 sqmts. of floor area in a building.

(b) Uses that are permissible under "special circumstances" by the Authority.

Municipal, Statutory Authorities, State and Central Government Offices, Banks, Public Utility Buildings, Colleges, Cemeteries, golf clubs, tailoring, laundry, hospitals for human care except those meant for mental treatment, nursing homes, philanthropic uses, fuel storage depots, filling stations, huller and floor mills, coffee grindings machines including service industries, with a maximum power up to 5 HP for all the industries as per the list given in Schedule 1 and 10 HP in case of huller and floor mills. The power required for air conditioners, lifts and computers shall be excluded while calculating the horse power specified above.

15. Zoning Regulations are statutory instruments, and, therefore, in interpreting those regulations, it is well settled, the Courts should give content and meaning to every word of the regulations. The Courts cannot by interpretative processes reduce a term or word in the regulations as surplus age or otiose or redundant. Admittedly, the sites in which the building is constructed to run the college fall within the residential zone. It is trite, the use of the building for running a college comes within the uses which can be permitted under "special circumstances". Therefore, it cannot be held that the use of the land under such "special circumstances" should have been specified in the CDP itself even before it was sanctioned by the State Government. Regarding each zone, the Zonal Regulations prescribe the normal use as also the uses under "special circumstances". In the CDP, the area where the land has to be used in the normal circumstance and the area where the land has to be used under "special circumstances" are never indicated nor is it practicable nor expedient to indicate the same. In effect, both category of uses are permitted by the Zonal Regulations. However, in the case of use coming under "special circumstances", a separate permission from the Planning Authority is needed. In the instant case, a separate permission envisaged in Clause (b) has been obtained by respondents 3 and 4 to use site Nos. 2 and 3 for construction of a building to house a college to impart computer training. We do not find any merit in the contention that Section 14-A of the Planning Act is attracted, because, question of "change of land use" or change of zoning would not arise since the property in question continues to be in residential zone and under the zonal Regulations, two categories of uses, viz., (i) ordinary use, and (ii) use under "special circumstances" are permitted and since "special permission" is obtained from the BDA, the impugned resolution of the BDA cannot be faulted. The opinion of this Court in SRI KRISHNAPUR MUTT, UDUPI v. N. VIJAYENDRA SHETTY AND ANR. 1992 (3) Kar LJ 326 supports our view. In that judgment, this Court has held:

"7. When the first respondent had obtained permission or commencement certificate for the construction of a commercial building the nature of the building remained the same, namely, "commercial" as contemplated u/s 12 of the Act and it continued to be so even when the 1st respondent wanted to run a restaurant or a boarding and lodging house. The concept of commercial use of a building includes not only activities where a shop premises is located, it also covers a restaurant or a lodging house and the classification of the important or main purposes of land-use u/s 12 is commercial, residential, industrial and so on and not each sub-purposes have been entered in the definition. Each one of the purposes mentioned while defining the expression commercial cannot be stated to be a different purpose. It falls within the same genus and each purpose will only indicate the specie of the same genus. When a building is utilized for different purposes within the same genus of purpose it cannot be said that there has been a material change in the use of building or the land. Therefore, in the present case just because the Planning Authority had given a commencement certificate for construction of a commercial building on the land in question, the further requirement of another commencement certificate being granted to the first respondent to put up a boarding and lodging house in the upper floors does not result in any material change and the resolution passed by the Town Planning Authority in this regard, called in question in this proceeding becomes superfluous or irrelevant.

8. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted. The building bye-laws while sanctioning a plan will take care of what parking space should be provided in the area and whether the building itself would have such facility. But under the planning laws what we are required to see is whether there is any change in the use of land or building from the one which was originally granted and whether such change is a material change or not for the purposes of the Act. As stated by me earlier, a material change occurs only when there is alteration of building from one major head to another major head not in other circumstances. The purpose of the enactment is only the orderly growth of a city and it regulates each area of the city with regard to the nature of buildings that could be put up, namely, commercial, industrial or residential. When that aspect is taken care of, rest of the matters should be left to the municipal authorities and other licensing authorities who regulate the trade or other activities.

16. The above observations were made by this Court speaking through S. Rajendra Babu, j.(as His lordship then was) while rejecting the contention of the petitioner therein that Section 14 of the planning Act contemplates that every land-use, every change in the land-use and every development in the area should conform to the provisions of the planning Act and should be in compliance with the ODP and that any change in the land-use or development thereof should

be with the permission of the planning Authority; therefore, each time where there is a change in the user of land or where there is any development altering the nature of the building or use thereof requires a fresh commencement certificate.

17. We also do not find any merit in the contention of Sri. L. Govindaraj that the petitioners and the similarly circumstanced residents of the locality ought to have been heard in the matter before the impugned resolution was passed by the BDA. None of the legal rights of the petitioners or similarly circumstanced other residents of the locality have been violated or impaired by the permission granted by the BDA. Therefore, the petitioners could not insist that they have a right to be heard as a matter of law. If the BDA has accorded permission in terms of the Zoning Regulations and exercising power conferred upon it under those Regulations and if the impugned resolution has no effect of affecting any of the legal rights of the petitioners, the resolution cannot be faulted simply because no notices were issued to the petitioners and they were not heard in the matter before the resolution was passed.

18. The other contention of Sri L. Govindaraj directed against the amalgamation of two sites into one for the purpose of construction of a building to house a college is also not acceptable to us. The rationale of our opinion is that if a site could be permitted to be used for an amenity other than the amenities for which it was originally allotted by the Planning Authority, in terms of law, simply because two sites were permitted to be used for establishing a permissible amenity in accordance with the Zonal Regulations, that fact itself would not vitiate the action of the Planning Authority. The question to be addressed is whether the sites in question individually or together could be allowed to be used for establishing amenity or amenities which is/are different from the amenity/amenities for which the site/sites was /were originally allotted in terms of the Zoning Regulations. Clause(b) of Zoning Regulations undeniably empowers the Planning Authority to permit an allottee of a site in a residential zone to use that site for establishing a college. Even in such case, if the allottee were to resort to the procedure envisaged u/s 14-A Planning Act, Clause (b), which is a statutory provision, would be rendered otiose in other words a dead letter. The judgments of this Court in JAYANAGAR 4th T BLOCK RESIDENTS ASSOCIATION (supra1) and PEE KAY CONSTRUCTION (supra2) cited by Sri L. Govindaraj in support of his contention that amalgamation of two residential sites into one is impermissible, are of no help to sustain his argument inasmuch as they could be distinguished on facts. In the above judgments, the Court was not called upon to interpret Clause(b) of residential Zone in Annexure-II appended to the Zonal Regulations.

19. It is true that the 3rd respondent, initially, under an erroneous impression of law, applied to the BDA for grant of permission for "change of land use" u/s 14-A of the Planning Act without realising that he should have applied for permission of the BDA to use the building for running a college under "special circumstances" as provided in the Zonal Regulations. When the said application

filed u/s 14-A of the Planning Act was being processed, the 3rd respondent having realised that in his case, question of obtaining permission for "change of land use" contemplated by Section 14-A of the Planning Act would not arise, but, that he has to obtain permission from the BDA for use of the building for running a college which use falls under the "uses under special circumstances; abandoned his application filed u/s 14-A of the Act and, instead, sought permission of the BDA to run a college in the building already put up in the property under the "special circumstances". The BDA, on consideration of the relevant materials placed before it, passed a resolution on 19.10.2002 granting permission to the 3rd respondent to run a college in the building under "special circumstances". The 3rd respondent remitted the entire development fee on the order of the BDA on 25.10.2002. Admittedly, the college began to function from 26.10.2002. When the matter stood thus, Writ Petitions were filed only on 29.10.2002. The fact that the BDA had permitted the use of the premises for running a college as per its resolution dated 19.10.2002 was not disclosed in the Writ Petitions. The above resolution of the BDA was also not challenged in the Writ Petitions as initially presented. However, during the pendency of the Writ Petitions, the Writ Petitions were amended so as to include the prayer seeking quashing of the resolution of the BDA dated 19.10.2002. There is no satisfactory explanation from the petitioners as to why they kept silent while the 3rd respondent was constructing the building. The petitioners being neighbours of the property in which the building was constructed, could not possibly plead and in fact did not plead that they were not aware of the construction of the building. Looking from that angle also, the equities of the case are not in favour of the Writ Petitioners, but, in favour of respondents 3 and 4.

20. In conclusion, with respect, we cannot sustain the order of the learned single judge. We, therefore, allow Writ Appeal Nos. 5211-5212 of 2003 and Writ Appeal Nos. 4980 and 5596 of 2003 and set aside the order of the learned Single Judge dated 28th May, 2003 and dismiss Writ Petition Nos. 39079 and 39344 of 2002. Consequently, Writ Appeal Nos. 5488-5489 of 2003 are liable to be dismissed and, we, accordingly dismiss those Writ Appeals. In the facts and circumstances of the case, we direct the parties to bear their respective costs in the Writ Petitions as well as in the Writ appeals.