

(1996) 02 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 3740, 4545, 4546, 4547, 4731, 4794, 4795, 4825, 4829, 4882, 4936, 4937, 4938, 4956, 4957, 4958, 4959, 5183, 5185, 5186, 5189, 5190, 5191, 5197A, 5212, 5213, 5214, 5204 and 5205 of 1994 and 92, 94, 95, 100, 195, 196, 197, 204, 254,

Anil Kumar Khurana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 62 DLT 313

Hon'ble Judges : Y.K. Sabharwal, J;K. Ramamoorthy, J

Bench : Division Bench

Advocate : P.N. Lekhi, Aman Lekhi, Sandeep Khurana, R.S. Rana, Arun Jaitley, Madhu Tawetia, Rakesh Prasad, Ravinder Sethi, Sumeet Bansal and Naveen Chawla, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) I had the advantage of reading the opinion of my learned Brother K. Ramamoorthy. I am in respectful agreement with the conclusions reached by brother Ramamoorthy that all the appeals and writ petitions deserve dismissal. In his judgment Brother Ramamoorthy has dealt with various aspects of the matter in great detail as also the decisions cited before us. Considering, however, the gravity of unauthorised construction and misuse and numerous cases which come up before Courts seeking injunction relating to such constructions, I would notice few salient facts of these cases.

(2) The unauthorised construction and unauthorised user of residential building for commercial purposes in Delhi has gained alarming proportions and crossed all limits. At the very outset I may state that these activities are against the interests of the Society at large and need to be dealt with firmly.

(3) The common questions of fact and law are involved in these batch of writ

petitions and appeals in respect of buildings in Karol Bagh Zone.

(4) The appeals have been preferred by the owners/builders challenging the judgment dated 5th December, 1994 passed by a learned Single Judge dismissing their injunction applications filed in the suits praying for grant of decree for permanent injunction restraining the Municipal Corporation of Delhi (M.C.D.) and another from taking any demolition and/or sealing action in respect of the properties in question.

(5) The writ petitions have been preferred by the purchasers of built up areas/spaces in these buildings.

(6) The main arguments were addressed in the case of Anil Kumar Khurana (C.W. 4545 of 1994). Khurana says that he had purchased built up area measuring 1560 sq.ft on the 4th floor in the building constructed on Plot No. 11/5-B, Pusa Road, New Delhi, by four different agreements dated 4th July, 1994 for a total consideration of Rs. 30,40,000.00 from Pawan Kumar and others.

(7) Fao (OS) 19/95 has been filed by Pawan Kumar against the dismissal of his injunction application in Suit No. 176 of 1994. The brief facts of the writ petition of Khurana and appeal of Pawan Kumar may first be noticed.

(8) In January 1994 Pawan Kumar instituted the aforesaid suit claiming to be the owner and in possession of property bearing Plot No. 5, Block 11-B, Pusa Road and pleading that after demolishing the old structure he started fresh construction as per the sanctioned plan. It was also claimed that he completed the construction as per sanction and within time of the validity of the sanction plan, namely, up to July 1994. He further pleaded that there were minor deviations in the construction from the sanctioned plan and the deviations were within the compoundable limits and, Therefore, the Mcd after receiving the compounding fee granted to him the completion certificate in respect of the property. He has specifically pleaded in the suit that the construction was strictly as per sanction and building bye-laws and for minor deviations he had paid the compounding fee and, Therefore, claimed that the property is as per the sanction and building bye-laws. He further claimed that he had not violated any of the terms of sanction granted, provisions of the Municipal bye-laws, the Delhi Municipal Corporation Act, the building bye-laws and the rules framed thereunder. The suit was filed since the defendants were threatening demolition of the property and disconnection of essential supply of electricity. By annex person. third any to property the in right transfer henceforth not will plaintiff that and order of passing date on as construction possession regarding quo status maintain shall directions issued occupation, already are others for Counsel learned stand also further raise or premises occupy allowed be should Therefore, and, by raised illegal exception strong taken has Mcd contention noticing after suit, with dealing Judge Single 1994, July, 27th On property. demolishing from restrained MCD was, inter-alia,

(9) In the written statement the Mcd, inter-alia, pleaded that a completion

certificate was granted in respect of the building in question on November 16, 1993 in respect of construction of basement, ground floor, first floor and barsati. It was also pleaded that the permissible deviations in respect of which the compounding fee was paid were also included in the completion certificate. Further facts pleaded by Mcd in the written statement are these :- On 28th January, 1994 unauthorised construction was detected at the basement, ground floor, first floor, second floor and third floor of the building. Show cause notice was issued and since no reply was received, demolition notice for unauthorised construction was issued on 3rd February, 1994 to which also no reply was forthcoming and thus the Mcd passed demolition order on 10th February 1994. On 3rd February 1994 and 4th February 1994 ongoing unauthorised construction in the building was demolished in part; on February 10, 1994 still further demolition orders in respect of unauthorised construction was passed but before the same could be executed the plaintiff carried further unauthorised construction at the 4th floor of the building which was detected on April 25, 1994 and a show cause notice was issued to the plaintiff on the same date. The demolition order in respect of the 4th floor was passed on May 9, 1994. On February 11, 1994 when officers of the Mcd went to demolish the ongoing unauthorised construction the plaintiff showed them a stay order having been granted by this Court. According to the Municipal Corporation of Delhi apparently even after obtaining stay order from this Court the plaintiff has been carrying on unauthorised construction in the premises as a bare reading of the completion certificate makes it clear that the construction has been allowed only up to Barsati but the plaintiff has raised construction on 3rd floor as well as 4th floor besides raising unauthorised construction even on the basement, ground floor, first floor and second floor.

(10) The suit of Pawan Kumar was being heard by learned Single Judge Along with various other suits including Suit No. 159 of 1994 filed by Smt. Paramjit Kaur and Another v. Mcd raising similar disputes. A local Commissioner was appointed by the Court to report about the existing structures. The report of the learned local Commissioner in respect of the existing structure shows that in Basement floor, there is a big Hall lying vacant, ground floor - there is a big hall lying vacant with toilet, bathroom built with small hall with attached bathroom temporarily meant for labour in the rear side back. First floor - there is a big hall with toilet, bathroom built in all respect and lying vacant. On Second floor - there is a big hall with toilet, bathroom built and lying vacant. Third floor - there is one big hall with toilet, bathroom built and lying vacant. Fourth Floor - there is one big hall with toilet, bathroom complete and lying vacant; Terrace with a covered mantic. There is a lift which is incomplete and is not functioning.

(11) The learned local Commissioner reported that the building consists of basement floor, first floor, second floor, third floor, fourth floor and terrace with covered mantic but owner/builder has got the building plan sanctioned only for construction of a basement, ground floor, first floor and a half second floor i.e. barsati.

(12) By judgment dated 5th December, 1994, the learned Single Judge came to the prima facie view that it was not a fit case where injunction could be confirmed. The conduct of the plaintiff regarding misrepresentation and concealment of material facts and in particular the case set up by the plaintiff that the building was constructed as per sanctioned plan, has been noticed in the judgment under appeal which also makes reference to the report of the local Commissioner, referred to above. The contention that the Mcd has no jurisdiction to order or conduct demolition has also not found favor with the learned Single Judge. The judgment of the learned Single Judge is under appeal before us. Brief Facts of C.W. 4545/1994

(13) As noticed earlier the writ petitioner Mr. Anil Kumar Khurana claims to have purchased built up area of 1560 sq.ft on the 4th floor in the aforesaid building from Pawan Kumar and others by four different agreements to sell, all dated 4th July, 1994. These agreements were entered into after the ex-parte order of injunction was passed in the suit referred to above and after show cause notice and demolition order had been passed by the MCD. Khurana has pleaded that the promoter of the building had applied to Commissioner, Mcd, for grant of permission for erecting residential building. He further says that the building work started in the year 1992 and was completed within a span of two years in early 1994. He also admits that instead of a residential building, a commercial building was erected. It also stands admitted on record that according to the terms of the lease deed of the plot in question the user is residential. Khurana, however, says that he is not privy to submission of building application or to the obtaining of sanction from Mcd for construction of the building. The main contention urged by Khurana is that Mcd has no jurisdiction over the land under the plot and, Therefore, the action of the Mcd in taking demolition action is without jurisdiction. Khurana says that it was mistake of the promoter to obtain sanction for construction of the building from Mcd to which he is neither a party nor there can be an estoppel against the Statute.

(14) The main plank of arguments in the writ petitions and the appeals is that the Dda being successor of Delhi Improvement Trust alone has the jurisdiction over the land in question since their predecessor-in-interest had taken the land on lease from the Delhi Improvement Trust. The plea of hostile discrimination has also been pressed into service contending that there are various unauthorised buildings but buildings in question are being singled out to suffer demolition. It has also been pointed out that various buildings in Karol Bagh Zone are being put to commercial use though the permissible user is residential. It has further been contended that the respondents are debarred from taking any action in view of the resolution of Dda bearing No. 728 dated 24th December, 1965. Yet another contention is that there is acute shortage of commercial accommodation and, Therefore, a service is being rendered by construction of these buildings and putting them for commercial use since the authorities have failed to provide the commercial accommodation to meet the scarcity of commercial accommodation.

(15) Khurana, Therefore, seeks a declaration that the land use of the property is not exclusively residential and the property can be used for purposes other than residential and the building is not liable to demolition and the land is outside the jurisdiction of Mcd and within the jurisdiction of DDA.

(16) The appeals and the writ petitions have been resisted by Mcd and Dda (hereinafter collectively referred to as "Respondents"). The respondents have contended that the appellants and the writ petitioners are not entitled to any discretionary relief from this Court either in exercise of writ jurisdiction or while - dealing with appeals filed against orders refusing injunction. It is contended that both jurisdictions are discretionary and equitable. It has been, inter- alia, submitted that the owners/purchasers of the space in these buildings have been indulging in speculative litigation by deliberate concealment with a view to mislead the Court and obtain interim orders. It has been pointed out that though the plaintiff pleaded that the building had been constructed as per sanction plan but now it stands admitted that many floors have been unauthorisedly added and instead of residential a commercial building has been constructed. It is also not disputed that the properties as constructed cannot be put to residential use. It has further been submitted that many of the petitioners purchased the buildings after Mcd had initiated action against the owners/builders for demolition of the property. The petitioners have deliberately concealed from the Court various show cause notices as also the demolition order passed by Mcd in respect of the buildings in question and about the pendency of various suits. They also point out that various purchasers have purchased the built up areas after the order of injunction had been passed. It has been submitted that by order passed on 2nd November, 1994 in suits the Court directed that the plaintiffs will neither induct any one nor create any third party interests in the said properties. The Mcd was given liberty to give a public notice of the said order. The Mcd by public notice issued in Times of India dated 9th November, 1994 apprised the public of the order and warned them that anyone acquiring the said properties or any part thereof shall be doing so at his/her own risk. Inspire of the said order the sale deeds in C.W.P.5213,5186,5192,5183 and 5205 of 1994 have been executed after 2nd November, 1994. The respondents have also submitted that admittedly buildings have been built in violation of not only the sanctioned plan but also of the provisions of building bye-laws and instead of two storeyed building and a barsati floor, in most of cases buildings up to 5 floors have been constructed and the ground coverage has been extended up to 100% as against 40% allowed under the Municipal Bye Laws. It has also been contended that the Mcd is well within the jurisdiction to take demolition action and as per Municipal Act and Bye Laws in relation to the Union Territory of Delhi the permission under the Delhi Municipal Corporation Act is required prior to raising the construction.

(17) The exercise of jurisdiction under Article 226 is purely discretionary. Seldom can a petitioner ask for it as of right. Writs are not issued as a matter of course. While deciding a writ petition the Court can see which way the justice lies. This Court is not obliged or bound to interfere in writ jurisdiction in every case where

the order of the authorities may be without jurisdiction. When it stands established and admitted that the land use mentioned in the lease deeds is residential and the buildings have been constructed in a manner that the same can be used only for commercial purposes and also that there are unauthorised construction, instead of permissible two and a half floors, about five floors have been constructed, a person would not be entitled to approach this Court and invoke the writ jurisdiction to protect such unauthorised construction, assuming one Statutory Authority (DDA) has jurisdiction over land underneath and not the other (MCD), to initiate demolition action.

(18) In an equitable jurisdiction it is the duty of the Court to preserve the public good. The writ Court cannot protect the wrong. A person who seeks equity must do equity. No one can be allowed to take advantage of his own wrong. A person who has committed a wrong may not be heard by a writ Court in support of the plea that the authority which is taking action against him has no power or jurisdiction and such power vests in another Statutory Authority. The law breakers can be refused equitable relief assuming they may have some case on merits. The writ Court can deny hearing to such law breakers.

(19) The petitioners have admitted that buildings have been constructed in a manner that these can be used only for commercial purposes. The user as per terms o

(20) The Supreme Court in *A.M. Allison Vs. B.L. Sen*, declined to decide the question of the jurisdiction of the Deputy Collector to entertain the claims which were entertained by the said Officer. Observing that the order of the Deputy Collector was subject matter of proceedings of the High Court under Article 226 of the Constitution, the Supreme Court held that the writ proceedings are not of course and the High Court had the power to refuse the writ if it was satisfied that there was no failure of justice. The High Court had refused to interfere on the ground that there was no failure of justice. The Supreme Court upheld the opinion of the High Court and also declined to interfere. In present case though the petitioners have raised the plea of want of jurisdiction of Mcd to take demolition action but they have miserably failed to show any failure of justice. There cannot be any failure of justice as it stands admitted that the buildings cannot be put to residential use and the constructions do not conform to the building bye- laws and sanctioned plans. Reference may also be made to decision in *Dahyabhai Somabhai and Another Vs. Ramaji Kesraji and Others*, ; holding that even if order is without jurisdiction Court can refuse to issue writ if justice of the case so demands. In *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, ; the Supreme Court speaking through Justice Krishna Iyer, held that in proceedings under Article 226 of the Constitution granting or withholding of relief may properly be dependent upon the public interest.

(21) The public interest demands that the Court should not come to the aid of those who break the law with immunity and put up commercial complexes on the land meant admittedly for residential use. These complexes are put up and

spaces purchased for petty commercial considerations without any regard to the hardship and inconvenience of other citizens.

(22) Reference may also be made to the case of *Sripat Narain Rai Vs. Board of Revenue, U.P. and Others*, where it was held that mere fact that order was without jurisdiction or there was error apparent on face of record was not sufficient to justify issue of writ but in addition, it had to be established that the order had resulted in injustice to the petitioner.

(23) In the present cases the order of restraint against the authorities in respect of buildings in question would rather result in injustice to the Society. There is no question whatsoever of any injustice to the petitioners. The petitioners cannot have any better rights than the builder/owners. It is also not conceivable that the areas/ spaces in the building would be purchased by making investment of huge amounts without the purchasers knowing the land use in terms of the lease deed. It is not even their case. In passing it may also be noticed that most of the writ petitioners and owners/builders are represented by same Counsel and the writ petitions were filed during the pendency of the suits of builders/owners. The writ petitioners as also appellants are not entitled to be heard that the MCD has no jurisdiction and that the jurisdiction vests only with DDA. The owners/builders had themselves got the plans sanctioned from MCD.

(24) The contention that there are various other buildings in Karol Bagh Zone which are not being demolished though unauthorised and, Therefore, the action of the respondents in directing demolition of the buildings in question is discriminatory and liable to be quashed, is also misconceived. The petitioners have placed on record certain photographs and other material to show the existence of other unauthorised buildings in Karol Bagh Zone. The offending buildings of the petitioners are also in Karol Bagh Zone. Assuming there are other unauthorised buildings in the Zone still I cannot accept the contention that other unauthorised buildings should be first demolished and then alone the buildings of the petitioners should be touched.

(25) The acceptance of the contention based on Article 14 of the Constitution would mean perpetuating illegalities. No person can be permitted to take advantage of his own wrong. The buildings in question have been constructed in violation of terms of lease and building bye-laws and in contravention of sanctioned plans. It cannot be said that first the action should be taken against other law breakers. Illegal action by sanctioning plans contrary to bye-laws or non-action in other cases by not demolishing other unauthorised buildings cannot be a ground to issue a writ in favor of the petitioners taking shelter under Article 14. Article 14 has no application where action is taken by authorities to remove one evil merely on the ground that no action has been taken to remove other evils. Two persons may commit similar offence. There one who is prosecuted cannot complain of violation of Article 14 on the ground that other person has not been prosecuted. If permissible in law Court may also direct prosecution or action against person who may have been left out but that would not be a

ground to quash prosecution or action against the person, against whom authorities are taking action. The plea of discrimination cannot be put forth when the law is given effect to. The denial of illegal favor cannot amount to discriminatory treatment violative of principles of equality clause enshrined in Article 14 of the Constitution. A wrong decision in favor of one person does not entitle any other person to claim benefit on the basis of the said wrong decision. In short, there cannot be a right to be illegally favoured on the ground that others have been so favoured. The petitioners have to establish their right in law. The plea of discrimination, Therefore, is rejected.

(26) It is also contended that the respondents are guilty of picking and choosing and for extraneous considerations have left out certain buildings from the rigour of demolition and taken up other buildings for demolition action, again on account of extraneous considerations and that buildings unauthorisedly constructed earlier should be demolished earlier and constructed later should be demolished later in point of time. If the principles of first come first go in the matters of demolition action in respect of unauthorised building, is accepted, it would mean that pending action of demolition against unauthorised construction already in existence, the authorities should not take any action in respect of ongoing unauthorised construction and permit such constructions to go on. This cannot be accepted. The principle of first come first go, has no applicability. I am not suggesting that in respect of other unauthorised constructed buildings action should not be taken. It is also true that if authorities had taken necessary action at appropriate times the present state of unauthorised construction would not have reached. It may be so but at the same time a beginning has to be made at some point of time. It cannot be held that since over years demolition action has not been taken and the entire city consists of unauthorised construction, either beginning should not be made by taking demolition action or first the old unauthorised buildings should be demolished. The authorities are, however, directed to take prompt decisions regarding other unauthorised buildings. I may also notice that neither resorting to demolition nor regularisation of the buildings unauthorisedly constructed decades earlier results in encouraging avoidable corruption at various levels and, Therefore, it is necessary for the authorities to take a prompt decision.

(27) The petitioners have no case even on merits.

(28) The petitioner has not been able to establish that the lease in favor of his predecessor was in pursuance of the provisions of an improvement scheme sanctioned u/s 42 of the U.P. Town Improvement Act. There is also nothing on record to show that the improvement scheme was in existence in 1957 when Delhi Development Act, 1957 was enacted.

(29) Admittedly the lease deed stipulates that the land and building erected thereon should not be used for any other purpose than for the purpose of residential bungalow without the consent in writing of the lessor. It is not the case of anyone that such a consent was obtained. Further, the deed provides that

lease shall become void if the land is used for any other purpose. Even if the contention of the petitioner is accepted that the provisions of the lease have to prevail that would also show that the lease becomes void since the case of the petitioners is that the buildings have been constructed in a manner that these can be used only for commercial purposes and not for residential purpose.

(30) The owners sought and obtained permission from Mcd and got the plans sanctioned for erecting "a residential building. It is too late in the day for the petitioners to contend that under a mistake of law the plans were got sanctioned from MCD.

(31) Reliance of the petitioners on resolution dated 24th December, 1965 passed by Delhi Development Authority is also misconceived. The said resolution shows that the Standing Committee, on consideration of the communication of Commissioner of Municipal Corporation of Delhi to the effect that in number of areas premises intended for residential purpose have been put to commercial use in contravention of provisions of Master Plan, felt that as office accommodation in Delhi for governmental needs as well as for private commercial uses is extremely short, it would not be feasible to launch prosecution against property owners for putting residential premises to commercial use in contravention of the provisions of the Master Plans until the present position in that regard substantially improves. The Standing Committee-inter-alia, recommended that positive steps should be taken for early development of District Centres in Kalkaji and Pusa Road etc so that shortage of office accommodation is relieved to some extent. The resolution relied upon cannot be used to contravene the municipal laws for all times to come. The resolution only shows that keeping in view the shortage of commercial accommodation in the year 1965 it was decided not to prosecute the owners for misuse since, at that time, commercial centres had not been built in the areas like Pusa Road and Kalkaji. There has been considerable change after the year 1965. In Pusa Road area. commercial complex by the name of Rajindra Place has been constructed by DDA. In Kalkaji area Nehru Place Commercial Complex has been constructed. The resolution of 1965 does not give a right in perpetuity to violate the law.

(32) Reliance of petitioners on the provisions of the Government Grant Act, 1985 is also misconceived. The Mcd by the threatened action is not interfering with the right, title or interest of the petitioners or their predecessor-in-interest in respect of the land on which unauthorised buildings have been constructed.

(33) In respect of blatant unauthorised constructions and misuse as in present cases it cannot be said that the Commissioner of Mcd has a discretion to order demolition or not. Vesting of discretion in these circumstances would itself be arbitrary and illegal.

(34) I am in respectful agreement with the conclusions reached by brother Ramamoorthy including the conclusion that the Mcd has power to take demolition action, while rejecting the contention of the petitioners and appellants that such

a power vests with DDA.

(35) In the end, I regret to notice that despite warning and caution given by the Apex Court and also this Court, from time to time, that stern action will be taken against unauthorised constructions and misuse, these activities have gone on unabated, without any let or hindrance and all the warnings have fallen on deaf ears without any effect on the unscrupulous builders and purchasers of these spaces. It is, Therefore, necessary to once again send a message, loudly, clearly and firmly to all those who indulge in such illegal activities that Courts will not come to the aid of persons who indulge in such blatant unauthorised constructions and misuse of the properties. It is also the duty of the Courts to examine these matters carefully before granting injunction restraining demolition of such unauthorised constructions. Ordinarily the Courts before issuing injunctions in such matters should insist upon filing of the sanctioned plans and details about the existing structures to prima facie find out whether the existing structures are in accordance with the sanctioned plan and building bye laws etc or not. The Courts may also consider appointment of independent person to verify correctness of representations made about existing structures as in many cases unauthorised constructions are raised after issue of injunctions and in cover and garb of orders of injunction. The alarming nature of such illegal activities can be controlled only by due cooperation from all citizens including the Media and the Press. It is the duty of all to expose these law breakers. I hope the Media would bring to the notice of public in general that unauthorised constructions and misuse have been severely dealt with by this Court and henceforth also no leniency would be shown in such matters. A copy of this judgment shall be sent forthwith to Delhi Doordarshan and All India Radio. Everyone has to be told that such unauthorised activities are against public interest. These activities have to be stopped forthwith. If inspired by this warning any one indulges in such unauthorised construction or misuse or in purchase of these unauthorised constructions he would be doing it at his own risk and peril and would not be heard to say that he has made large investments. I hope that atleast now this message would be taken with all seriousness.

(36) In view of the above, in my opinion, all the petitioners and appeals deserve dismissal with costs quantified at Rs. 10,000.00 in each case. These costs would be utilised by M.C.D. for creating in a Special Cell which should be set up to curb unauthorised construction and misuse of the immovable properties so that atleast a beginning is made now to promptly check these illegal activities. The officials and officers manning this Cell will have to be informed that any dereliction of duty would be severely dealt with.

K. Ramamoorthy, J.

(1) This is a Text Book example of law breakers attempting to establish wrongs through process of law seeking the imprimatur this Court. This is the meant of the matter.

(2) The concerned authorities had prepared plans regulating the construction of buildings by virtue of powers conferred on them by various statutes. The whole scheme of the Act, Rules, Regulations and Bye-laws is based on the thinking that sense of the ordinary peace living in the city and its surroundings by modern men will be shocked if structures are allowed to come up unregulated. One cannot ignore that the object of the law is to instill orderliness in matters of public welfare and compel public to conform to certain rules, the non compliance whereof will result itself in dislocation of normal living which the rules are intended to assure to the people. The local bodies are empowered to develop lands, to provide basic amenities, to dispose of developed lands, to put up complexes, residential and commercial, according to the needs and aspirations of the people. The development of Delhi was not a little owing to the untiring efforts of Dda, Mcd, National Capital Territory of Delhi and the Union of India. Indeed, a great deal has been done and yet much more remains to be done. The increase in population is in geometric progression in the country, influx of people from all over the country into Delhi for eking out their livelihood possess stupendous problems to the authorities and it is a matter of pride for the citizens of this country that the authorities are ready and willing to face any challenge and act to meet the demands of the people. Every effort is made to stimulate civic interest in people and organized efforts are being made to make National Capital Territory of Delhi a pleasant, green, orderly and beautiful place to dwell in.

(3) It appears that a comprehensive scheme is on the anvil to develop satellite cities to reduce congestion in the cities by setting up industries, providing employment for people so that the clamour to move out of their place is not encouraged. The main objective of the Act, Rules, Regulations and Bye-laws is to provide decent living conditions for the people by making available to them power and water supply, facilities for the discharge of sewerage which is essential for sanitary condition without which people cannot maintain good health. It is relevant to notice the preamble to Master Plan For Delhi 1990.

"DELHI, the locus of the socio-economic and political life of India, a symbol of ancient values and present aspirations, the capital of the largest democracy, is assuming increasing eminence amongst the great cities of the world. The City of Delhi has a distinct personality imbibed in it, is the history of centuries. In its part it has the grand vistas of New Delhi and the throbbing lanes of Shahjahanabad. It is a gem with many facets. Presently, growing at unprecedented pace, the city must be equipped to face the contemporary challenges. It should be able to integrate its elegant past as well as the modern developments into an organic whole. The inhabitants of this city should be able to live in safe convenient and lively surroundings. They should be able to improve their economic capabilities and share the fruits of modernisation. All this demands purposeful transformation of its socio- economic, Natural and built environment."

It is also observed -

"Delhi is increasingly becoming a focus of the developing world. A new Institute for higher learning in the development planning mainly to deal with the planning and development problems of the developing countries could be started in the city. Such an Institute along with the research and training in the development problems could have specialised departments of newly emerging fields, e.g. Energy, Ecology, Environment, Genetics, Computer Science and others. It needs to be emphasised that the modernisation of the city is not to be in parts but as a whole, not as limited actions in certain fields but as an attitude to decision making. In the development of all the areas for urban activities i.e. housing, commercial and industrial areas and areas for public facilities, the emphasis should be on long range efficiency, futuristic view point and healthy environment for sustaining a high quality of life. Delhi has a distinct personality. In the process of modernisation the city along with providing an environment of livability, performing functions of state and economic efficacy, must reflect its personality through its form and through its activity in its parts and as a whole."

(4) Laws are meant to be obeyed. They are made keeping in mind the welfare of the entire community.

(5) How could the builders could put up constructions in the National Capital Territory of Delhi which should set an example to the other cities in the country and how did the authorities concern permit such flagrant violations of law to take place would really beggar all description. We can draw a lesson from the action of the Housing Secretary in the U.S.A. The U.S. Housing Secretary Mr. Hindry Cisnerys, was responding really to a healthy impulse by running down two young men while they were trying to steal watches from a street vendor in Washington. The question which Mr. Cisnerys asked after he had nabbed the two young men "What kind of citizens or Government leader would I be if I did not try to help?"

(6) The petitioners are attempting to legalise illegal acts by filing these writ petitions and the appeals, which is not non-parries in all the Courts in the country.

(7) I feel that the provisions in statutes. Rules, Regulations and Bye-laws do not meet the demands of today's situation. The process has to be strengthened. The law must be provided with more biting teeth and there must be genuine apprehension in the mind of every person engaged in the real estate business that any infraction or violation of laws would be visited with exemplary punishment, for, they spoil the society and try to enthrone in the law abiding citizens that any violation would not be taken cognizance of by the authorities and that they have the means to get round the law. The law should also provide severe punishment for erring officers and responsibility must be fixed on them. The officers should not only be aware that they are the persons to implement the law but must also be conscious of the position that in a welfare state it is the obligation of the state to ensure the creation and sustaining conditions congenial to good health of the people which is a sine-guenon for the progress of the country as a whole not only in the field of science and technology but also in all

spheres of human endeavours to meet the challenge, particularly at this juncture, arising out of globalization of everything under the sun.

(8) It is argued on behalf of the petitioners that the authorities who could have prevented, by qua-time action, as it were, by using their power, the builders from commencing construction and according to the petitioners the officials concerned connived and had been privy to the illegal act. According to the petitioners the canny builders would not have the temerity to venture into illegal acts without the help of the officials. It is regrettable no doubt that prompt action had not been taken by the officers concerned for reasons best known to them. It is a matter for the powers that be to take such action as they deem fit against officers who had committed the wrongs. Unless stern measures are taken against the officials who are guilty of such serious misdemeanours. Government cannot maintain the purity of administration. The indolence on the part of the concerned authorities has spawned the unauthorised constructions. However, that cannot clothe the petitioners with any right to approach this Court seeking protection for their illegal acts. It cannot be gain said that the provisions are made to regulate the building construction for the safety, health and well being of the inhabitants. We cannot imagine a situation if such laws are not made. There will be utter confusion and chaos and we would revert to the storage civilization where might was right when there were no laws governing the affairs of men. We have to remember the famous words of an English Judge

"Amongst many other points of happiness and freedom which subjects enjoy there is none which they have accounted more dear and precious than this, to be guided and governed by certain rules of law which give both to the head and members that which of right belonged to them and not by any arbitrary or uncertain form of Government."

(9) Therefore, law is a must for an orderly society.

(10) The petitioners would contend that they have built complexes, buildings for the sake of the people as there is acute accommodation for both residential and non residential and the respondents cannot have any objection and instead of seeking to demolish the building they should regularise them. The sleight hands and vile minds would try to act in defiance of law on the premise that the law is not enforceable against them. The persons who can command some money and power tend to commit such offences with calculations and evil designs with the only motive of personal profit without any concern for the well being of the community at large and future of the country. The petitioners assert that they have not committed any wrong because their contention is that Dda is the successor-in interest of Delhi Improvement Trust the Rules and Regulations will be entirely different. I am reminded of the words of Haryana Jones in Efficiency of Law in this behalf "there are many mansions in the House of Jurisprudence and I would not be little in one's perspective of law in society provided only that he does not insist that he is the only perspective that gives a true and meaningful view of ultimate legal reality." The petitioners would contend that

their action is the only thing that is acceptable in the present situation and their action cannot at all be characterised as anything contrary to law.

(11) The Supreme Court on more than one occasion has noticed that there has been steady define in standard in public life and it is hoped that those who are in power have in the fore front of their minds the welfare and well being of the country that people with sense of patriotism and sacrifice would emerge in public life.

(12) The petitioners not being successful in their endeavor to get over the difficulties have approached this Court on the specious plea of discrimination by the respondents.

(13) It is submitted on behalf of the respondents that the petitioners have no legal right to make a grievance. There must be Judi dally enforceable right as a legally protected right.

(14) The Supreme Court has very forcefully observed about the powers of the Court in Kishore Singh Ravinder Dev and Others Vs. State of Rajasthan,

"The writter must right the wrong forthwith or must stand self condemned as make believe."

(15) And, Therefore, the writ cannot protect the wrong. It is the duty of the Courts to preserve public good and interdict misuse of powers and position. The Supreme Court has given the guidance by stating that scanning must be done through the objective lens of the Court representing the collective conscience of the community and not through the tinged lens of wrong doers whose economic interest may be prejudicially effected by the provisions of law. In other words, the Court examining the matter, from the perspective of the constitutional mandate armed with the criterion of the objectivity and over all interest of the community at large, must be satisfied.

(16) I would like to recall the observations of the House of Lord in 1961 Vol. I All England Reports 446 "I entertain no doubt that there remains in the Courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state and it is their duty to guard it against attacks which may be more insidious because they are novel and unprepared for".

(17) Bearing in mind these canone and principles, I proceed to consider the respective contentions of the parties.

(18) The learned Counsel for the parties argued their cases with skill and ability and but for their value able assistance it would not have been possible for us to come to a clear vision of facts and law. I am bound to place on record my sincere appreciation of their industry and forensic ability to focus our attention to the core of the matter.

(19) The Supreme Court has time and again laid down the parameters of the

jurisdiction of the High Court sitting under Article 226 of the Constitution of India to give reliefs to the litigant public. The High Courts, Therefore, have to act within that sphere of jurisdiction as laid down by the Supreme Court of India.

(20) Mr. P.N. Lekhi, learned Senior Counsel formulated his points. His submission was five fold;

(1)The Mcd has no jurisdiction to take any proceedings with reference to building in question under Sections 343 and 344 of Delhi Municipal Act, 1957. Chapter Vi of the Delhi Municipal Act over Nazul Lands does not apply;

(2)in view of the provisions of Section 60 of the Delhi Development Act, 1957 read with provisions of U.P. Town Improvement Act, 1919 the authority in relation to sanction plans, issue orders regarding demolition would rest only with DDA;

(3)Section 12 of the Delhi Development Act, 1957 should be in relation to Nazul Land as if Nazul Lands are included and form part of development area; (4) impugned notice of demolition to the owner or builder is bad in law on the following subsidiary grounds;-

(A)Without jurisdiction;

(B)If there was authority it was obvious of authority and in excess of authority is ultra vires,

(E)Discretionary power is not a discriminatory power and the Municipality or Corporation cannot choose the buildings for demolition when there is more than two lakhs buildings unauthorisedly constructed.

(5)In view of the resolution dated 24.12.65 the threat of demolition is bad in law and the resolution makes the area a commercial area.

(21) Learned Counsel referred to the agreement dated 31.3.1937 between the Secretary of State and between Delhi Improvement Trust. He explained the concept of Nazul Lands referring to (a) Aiyer's Judicial Dictionary XIth Edition, D.D. Act by R.K. Yadav 1987th Edition page 113, Section 84(2) of Delhi Land Revenue Act, 1954, Rule 233 Delhi Land Revenue Rules, 1962, Rule 237 where the Dda is to maintain two Registers, Register B and Register A; (b) Section 22 of the Delhi Development Act 1957 and guidelines issued by Land Management published by D.D.A. on 27.1.1992.

(22) The learned Counsel relied upon Chauthmal Vs. The State of Rajasthan and Others, . In that case Nazul Land is defined u/s 3(i)(b)of the Rajasthan Land Revenue Act, 1956. It is defined as "means Abadi land within the limits of the municipality or a Panchayat circle or a village, town or city, vesting in the State Government." Section 102A of the Act gives power to the State Government to place any Nazul land at the disposal of a local authority. Section 8(1) of the Rajasthan Municipality Act provides that if sale price exceeds Rs. 500.00 approval of the Collector is necessary i.e. sale by public auction by the local Authority. The

Municipality sold the land in question in public auction to the petitioner in the writ petition for Rs. 801.00 . The 4th respondent in the writ petition Smt. Kanwari Bai filed a petition before the Collector to set aside the sale and for a direction to the Municipality to sell the land to her by virtue of the fact that she is an adjoining owner of the land sold in public auction. Section 97 of the Rajasthan Municipality Act mentions such a right to the adjoining owner of a plot in the control of the Municipality in case it is sold by it. The Collector set aside the sale in favor of the petitioner and recommended the sale of the land to the 4th respondent under the provision of Section 97 of the Act.

(23) The State Government accepted the recommendation of the Collector and set aside the sale in favor of the petitioner and directed the sale in favor of the 4th respondent and directed Municipal Board Merta to sell the plot to Smt. Kanwari Bai in accordance with the Government notification. This was challenged by the writ petitioner in the High Court. Section 80(7) of the Rajasthan Municipality Act provide that for the execution of the contracts on behalf of the Municipal Boards and according to the petitioner the Municipal Board was within its powers to execute a sale deed and no approval of the Collector is necessary. In other words, argument was, that the land belonged to the Municipality by virtue of the vesting order passed by the Government and it was no longer a property of the Government and, Therefore, no approval need be obtained by the Municipality from the Collector.

(24) The argument on behalf of both the respondents was that a special provision was made for Nazul lands and the ownership was still retained by the Government and in view of the special provision in Section 80(1) of the Act approval of the Collector is necessary. In this connection, the learned Single Judge observed

"SECTION 92(2) mentions the properties managed and controlled by the Boards in two classes; (i) properties which vest in and belong to the Board; and (ii) properties which vest in the Board but did not belong to it. Nazul lands placed at the disposal of the Board under notification of 8.10.1959 belong to the second class. They vest in the Board but belonged to Government. In view of the decision of Their Lordships of the Supreme Court referred to above there is no reason to hold that these lands do not vest in the Municipal Boards. I accordingly hold that the Nazul lands placed at the disposal of the Boards under notification dated 8.10.1959 vest in the Municipal Board but do not belong to it".

(25) The learned Sr.Counsel relied upon the decision of the Supreme Court in Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, . Their Lordships of the Supreme Court were pleased to observe "that the word "vest" is a word of variable import is shown by the provisions of Indian Statute also. It would thus appear that the word vest has not got a fixed connotation meaning any of cases that the property is owned by the persons or authority in whom it vests. It may vest title or it may vest in possession or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular

piece of legislation." The argument of the learned Counsel is that the Nazul lands never vested either in possession or in title with the Municipal Corporation of Delhi and, therefore, Municipal Corporation of Delhi has no jurisdiction to take any action in respect of the alleged violation of the bye laws in respect of the construction made by the petitioners or the owners or builders. The learned Counsel referred to the decision in Vishal Builders (P) Ltd. Vs. Delhi Development Authority, . The Dda advertised for perpetual lease with reference to plots of land in District Centre Kalkaji, which is now called Nehru place. The petitioner bid at the auction and paid the money also. Sometime later on the ground that the plots of land were not suitable for putting up multi-storeyed building retracted from the deal. The Dda returned only a part of the amount. In respect of the balance, the builder filed a suit for recovery of the amount. The suit was decreed. While deciding the case the learned Single Judge has referred to the nature of the land vide pages 740 to 742. The land was Nazul land. The learned Judge expressed the view that the ultimate authority with reference to land is Central Government and when no rules have been framed by the Government and, Therefore, Dda cannot do anything. Ultimately, the learned Judge directed the Dda to return the entire amount to the petitioner. This case is relied upon by the learned Counsel to show that if the land is Nazul land, M.C.D. has no jurisdiction to do anything with reference to the land including the question whether the construction made by the petitioner or his predecessor is valid or not. The learned Counsel further submitted that if Dda takes any steps the petitioner will be prepared to give a suitable answer. Referring to Section 42 of the U.P. Town Improvement Act, 1919, it was contended that the nazul lands came to be brought under the statutory scheme. Section 42 reads as follows:-

"Notification of sanction of improvement scheme-(1) Whenever the [State Government] sanctions an improvement scheme it shall announce the fact by notification, and, except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same. (2) The publication of a notification under Sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned."

He referred to Clause 4 of the agreement dated 31.3.1937 between the Secretary of Delhi State and Delhi Improvement Trust. Clause 4 of the agreement reads as follows:-

"(4)The Trust may, sell or lease any land included in the said Nazul Estate in pursuance of the provisions of an Improvement Scheme sanctioned u/s 42 of the Act."

The learned Counsel contended that relying on the words in pursuance of that the lease in favor of the predecessor in interest was in pursuance of the scheme framed and, Therefore, we are governed only by what has happened under the scheme of the Act and we have to consider who are the successors-in-interest. For this purpose, the learned Counsel brought to our notice the case reported in

The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another, . What happened in that case was the respondent Premier Automobiles Ltd. imported certain goods and later on the respondent made a claim against the Port Trust with reference to the goods imported by it. The Port Trust took a plea that the claim was barred by time u/s 87 of the Port Trust Act, which is reproduced as under :-

"SEC.87. No suit or other proceeding shall be commenced against any person for any thing done, or purporting to have been done, in pursuance of this Act, without giving to such person one month's previous notice in writing of the intended suit or other proceeding, and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding."

It was contended on behalf of the respondent- plaintiff that whenever there is an act of negligence on the part of the Port that cannot be said to be in pursuance of the Act and, Therefore, it would be open to the Port Trust to take the plea of limitation. In other words, the contention was that the question of limitation u/s 87 would arise only if something done validly by the authorities under the provisions of the Act and not when there is a gross omission on their part to do something which they are obliged to do under the provisions of the Act.

(26) The Supreme Court dealt with this aspect at page 718 in paragraph 10 in the following words :-

"A cognate point arises as to whether you can attribute the neglect to comply with a law as something done in pursuance of that law-Hence again the fallacy is obvious. If under colour of office, clothed with the robes of authority, a person indulges in conduct not falling under the law he is not acting in accordance with the sanction of the statute or in bona fide execution of authority but ostensibly under the cloak of statute. It is the apparel that oft proclaims the man and whether anything is done under, in pursuance of, or under colour of a law merely means that the act is done in apparent, though not real, cover of the statute. Broadly understood, can the official when challenged fall back, in justification, on his official trappings? A Revenue Officer distaining goods wrongfully or a municipal officer receiving license fee from a non-licensee is violating the law but purports to act under it. On the other hand, a Police Officer who collects water cess or a Municipal Officer who takes another into custody, is not by any stretch of language acting in pursuance of or under the relevant Act that gives him power. And certainly not an act of taking bribe or committing rape. Such is the sense of the words we are called upon to construe. The true meaning of such and similar words used in like statutes has been set out by Halsbury correctly and concisely (3rd edn.. Vol. 24, pages 189-190): An act may be done in pursuance of or in the execution of the powers granted by a statute, although that act is prohibited by the statute. A person acting under statutory powers may erroneously exceed the powers given, or inadequately discharge the duties imposed by a statute, yet if he acts bona fide in order to execute such powers or to discharge such duties, he is considered as acting in pursuance of the statute.

Where a statute imposes a duty, the omission to do something that ought to be done in order completely to perform the duty, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of a statute which provides a special period of limitation for such an act."

The Supreme Court further held at page 728 as under:-

"The dichotomy between act and omission, however, logical or legal, has no relevance in this context. So the intendment of the statute certainly takes in its broad embrace all official action, positive and negatives, which is the operative cause of the grievance. Although the Act, in the present case, uses only the expression "act" and omits "neglect or default or omission", the meaning does not suffer and if other statutes have used all these words it is more the craftsman's anxiety to avoid taking risks in Court, not an addition to the semantic scope of the word "act". Of course, this is the compulsion of the statutory context and it may well be that other enactments, dealing with different subject-matter, may exclude from an "act" in the various General Clauses Act, as including "illegal omissions". The leading case of *Joliff v. The Wallasey Local Board* (supra) decided nearly a century ago has stood the test of time and still current coin, and Stroud's Judicial Dictionary; 3rd edn. Vol. 1; page 877) has extracted its ratio thus: An omission to do something which ought to be done in order to complete performance of a duty imposed under a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts. to" an act done or intended to be done" within the meaning of a clause requiring a notice of action (*Joliff v. Wallasey*, L.R. 9 C.P. 62)."

The argument is that by virtue of Clause 4 in the agreement whatever done in favor of the lessees by the Delhi Improvement Trust in pursuance of the scheme would confer them the rights as contemplated under the U.P. Town Improvement Act, 1919 and the Trust would be under the same obligations as enumerated in that Act. It is contended that Delhi Improvement Trust was acting within the powers conferred under the Act and in pursuance of the Act. The inference further made is that Delhi Improvement Trust was the precursor and the predecessor of D.D.A. and, Therefore, M.C.D. does not come into picture. This has to be considered in the light of the statutes which were brought into force in 1957 which I shall be dealing with presently. Another facet of the argument of the learned Counsel is that the Dda is the "reincarnation" of Delhi Improvement Trust and it is an independent body like the MCD. The force and ambit of statutory provisions cannot be hampered or hedged in by any features not recognised by and referred to in the statute. It is a reasoned doctrine recognised right from. *Her Majesty The Queen v. Burrah*, Law Report Appeal Cases (1878) Vol. (3) (P.C.) 889, which is recognised, applied and approved by the Supreme Court and High Courts in India. Reference was made to Section 49 of the U.P. Town Improvement Act, 1919, which refers to the provisions of U.P. Municipality Act, 1916 and Section 49 reads as follows:-

"49.Powers under the Municipalities Act vested in the Trust.-

(1)The provisions of Sections 178 to 186, 189 to 194,203 to 216,218 to 224,236,256, 257,261,265,266,267 (except in respect of cleansing and disinfecting), 268 to 270 and 278 of the. Municipalities Act shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force; and for the period during which such scheme remains in force all references in the said sections to the board or to the Chairman, or to any officer of the board, shall be construed as referring to the Trust which, in respect of any such areas, may alone exercise and perform all or any of the powers and functions which under any of the said sections might have been exercised and performed by the board or by the Chairman or by an officer of the board: Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred by this section.

(2)The Trust may make bye-laws for any area comprised in an improvement scheme which is outside the limits of the municipality- (a) generally for carrying out the purpose of this Act, and (b) in particular and without prejudice to the generality of the aforesaid powers the Trust may make bye-laws regarding any of the matters referred to in Section 298 of the Municipalities Act.

(3)The provisions of Sections 299 and 301 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all bye-laws made by a Trust under this sub-section, and all references in the said section to the board shall be construed as referring to the Trust.

"

The argument is that by virtue of provisions of Section 49the Trust shall exercise all powers of the Municipal Council in respect of areas coming in its purview. Learned Counsel also relied on the Section 32 of the U.P. Town Improvement Act, 1919. That section reads as follows:-

"32.Town expansion scheme.-

(1)Whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion of a municipality in any area to which this Act is extended, the Trust may frame a scheme (to be called a "town expansion scheme").

(2)Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilized.

(3)For the purposes of town expansion scheme the provisions of Clause (a) of Sub-section (2) of Section 40 shall not be applicable, but the Trust shall be required to supply such details as the [State Government] may consider necessary.

(4)When any such scheme has been notified u/s 42, if any person desires to

erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Trust for permission to do so.

(5) If the Trust refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

Referring in particular to Sub-section 4 of Section 32 the learned Counsel submitted that if within the area under the control of the Trust one wanted to put up any construction one had to apply to Trust for permission. Therefore, the Dda being the alter ego of Delhi Improvement Trust and the only authority competent to grant permission to build and sanction plan with reference to Nazul lands is Dda and Mcd has no jurisdiction over the matter. In this connection, the learned Counsel referred to the pleadings in paragraphs 9 and 10 of the Writ Petition No. 4545/94 and submitted that the averments in these two paragraphs have not been traversed by the Mcd and, Therefore, they are deemed to have been admitted by them. It was repeatedly pointed out by the learned Senior Counsel that the Dda has not filed any counter though Dda made it clear it was adopting the counter of the MCD. We have to consider what is the effect of the averments of paragraphs 9 and 10 vis-a-vis the position of law emerging after the enactment of two Acts, Delhi Municipal Corporation Act and Delhi Development Act in the year 1957. According to the learned Counsel development area is different from Nazul lands. It is significant, according to learned Counsel, while provisions are made to Nazul lands in D.D. Act nothing is mentioned in D.M.C. Act and the N.D.M.C. Act, 1994. Therefore, he requested us to have in mind the difference between the Nazul lands and the other lands. On the basis of his argument, he wants us to accept that on the date of coming into force of the two Acts the Nazul lands were, and could be dealt with only by Delhi Improvement Trust and other lands were dealt with under the Act applicable to the respective areas. Learned Counsel further submitted that the provisions in the D.D. Act, 1957 themselves would maintain the difference and on a correct reading and interpretation of the relevant provisions it will be clear that what he contends for is correct in law. The learned Counsel for the petitioners brought to our notice Section 60 of the D.D. Act, 1957. Section 60 reads as under:- "Section 60. Repeal, etc. and savings.

(1) As from the date of the constitution of the Authority,- (a) the United Provinces Town Improvement Act, 1919 (U.P. Act Viii of 1919), shall cease to have effect in the Union Territory of Delhi; and (b) the Delhi (Control of Building Operations) Act, 1955, shall stand repealed.

(2) Notwithstanding the provisions of Sub-section (1)- (a) every officer and other employee serving under the Delhi Improvement Trust or the Delhi Development (Provisional) Authority immediately before the date of the constitution of the Authority shall, on and from such date, be transferred to and become an officer

or other employee of the Authority with such designations as the Authority may determine and shall hold office by the same tenure, as the same remuneration and on the same terms and conditions of service as he would have held the same if the Authority had not been constituted, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority: Provided that any service rendered by any such officer or other employee before the constitution of the Authority shall be deemed rendered to be service thereof under it: Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper and every such officer or other employee shall discharge those functions accordingly;

(B)anything done or any action taken (including any appointment, delegation, notification, order, scheme, permission, rule, bye-law, regulation or form made, granted or issued) under any of the aforesaid Acts, shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been done or taken under the provisions of this Act unless and until it is superseded by anything done or any action taken under the said provisions;

(C)all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Authority;

(D)all properties movable and immovable vested in Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall vest in the Authority;

(C)all rents, fees and other sums of money due to the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall be deemed to be due to the Authority;

(F)all suits, prosecutions and other legal proceedings instituted or which might have been instituted by, for or against the Delhi Improvement Trust or the Delhi Development (Provisional) Authority may be continued or instituted by, for or against the Authority.

"

Relating to the scope of the law of Repeal he brought to our notice the passage at page 116 in Maxwell Interpretation of Statutes, 12th Edn. which is as under:-

"Few principles of statutory interpretation are applied as frequently as the presumption against alterations in the common law. It is presumed that the Legislature does not intend to make any change in the existing law beyond that which is expressly stated in, or follows by necessary implication from, the language of the statute in question. It is thought to be in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness, and to give any such effect to general words merely because this would be their widest, usual, natural or literal

meaning would be to place on them a construction other than that which Parliament must be supposed to have intended. If the arguments on a question of interpretation are "fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law."

The scheme of the Act is that on the date of the constitution of the authority the scheme under the U.P. Town Improvement Trust, 1919 would continue to be operative with reference to Nazul land because it is not inconsistent with the provisions of D.D. Act, 1957. And as the lease entered into between Delhi Improvement Trust and the lessees from whom the petitioners claim a right in relation to the Nazul lands would be intact and they remained undisturbed and they have to be governed by as per the scheme as it existed as on the date of the Act. Therefore, according to learned Senior Counsel, the D.D. Act draws a line of demarcation which is bright and discernible maintaining the dichotomy between Nazul lands and other lands. In support of his contention that the position of law as contended for by him is supported by Craies in his book 7th Edn. page 355, which reads as under:-

"The general rule as to the way in which repeating sections are to be regarded by the Courts was well expressed in *Hough v. Windus*. In that case a question arose as to the effect of Bankruptcy Act, 1883, upon the Statute of Westminster the Second (13 Edw. 1, c. 18) and writs of elegit, Bowen L.J. said "It appears to me that the answer to this somewhat formidable argument [upon Sections 146 and 169 of the Act of 1883] is to be found in a study of the framework of the Bankruptcy Act, 1883 so far as it works a repeal of previous legislation."

The argument is that the framework of the D.D. Act has to be carefully considered to appreciate his submissions. He also referred to a passage in Francis Bennion 1992 2nd Edn. Section 85 page 201, which is as follows:-

"(1) To "repeal" an Act is to cause it to cease to be a part of the corpus Jurisdiction or body of law. To "repeal" an enactment is to cause it to cease to be in law apart of the Act containing it. (2) A repeal may be either express or implied. (3) The repeal of an enactment constitutes the amendment of the Act containing it. Accordingly the rules applicable to amendments set out in Code ss 77 to 83 may also apply to a particular repeal. (4) An Act or provision of an Act may be repealed in the same Session of Parliament in which the Act was passed."

According to the learned Counsel we have to see what is scope of repeal and what it is that the Act intended to say that the provisions of the other Act referred to would cease to have a effect. The Counsel persisted, and said that the width of the repeal has to be borne in mind. To further gain strength for his submission, he relied on two passages in Halsbury's Laws of England, 4th Edn. Vol. 44 page 539 para 883 and page 543 para 888, which are as under :-

"883. Saving clauses.-Saving clauses are used in a statute to preserve earlier statutes which would otherwise be repealed by it, or rights which would otherwise be abrogated by it. A saving clause cannot be taken to give any right

which did not exist already. It can only preserve things which were actually existing at the time of its enactment, and Therefore cannot affect transactions complete at the date of the repealing statute. Where an enactment is subject to an express saving for certain rights, it may be implied that the enactment is intended to abrogate other rights not expressly mentioned. A saving clause from a repeal, unlike an exception to a positive enactment, is liberally construed. 888. Construction of statute by reference to later statutes. The meaning of the earlier of two statutes in *pari materia* cannot generally be ascertained by looking at what is enacted in the later one, even where the two statutes are directed to be construed as one. It has been said that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law. However, the position may be different where the later statute amends the earlier one or purports to declare its meaning. Further, where the interpretation of a statute is obscure or ambiguous or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of a subsequent statute. Where a far-reaching change in the law is enacted in a particular field, it is possible, in appropriate instances, that the Court will construe earlier legislation as a part of a new whole and give it a broader interpretation than would formerly have been proper."

The learned Counsel wants us to consider what is saved by Section 60 of the D.D. Act. According to the learned Senior Counsel, the earlier statute U.P. Town Improvement Act, 1919 and Punjab Municipal Act to the extent necessary are saved and, Therefore, it is in this light the right of Mcd to issue the notice has to be considered. The thrust of the argument is that Nazul lands would be under the control of Dda and not Mcd but referring to saving clause what the learned Counsel intended to submit is that the repeal Act would be applicable to the lands in question. Prima facie, the contention appears to me very contradictory. The argument should run complementary to the earlier argument that in the place of Delhi Improvement Trust; Delhi Development Authority would come in but the argument should not in derogation of it saying that repeal Act is saved would apply to the lands in question. There is some mixing up of concept relating to repeal and saving. Learned Counsel suggested in amplifying his submission that Section 12 of the C.D. Act should be read as he feels it should be. Section 12 reads as follows:-

"12.Declaration of development areas and development of land in those and other areas.

(1)As soon as may be after the commencement of this Act, the Central Government may, by notification in the Official Gazette, declare any area in Delhi to be a development area for the purposes of this Act: Provided that no such declaration shall be made unless a proposal for such declaration has been referred by the Central Government to the Authority and the Municipal Corporation of Delhi for expressing their views thereon within thirty days from the date of the receipt of the reference or within such further period as the

Central Government may allow and the period so specified or allowed has expired.

(2) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act no development of land shall be undertaken or carried out in any area by any person or body (including a department of Government) unless,-

(I) where that area is an area other than a development area, approval of, or sanction for, such development has been obtained in writing from the local Authority concerned or any officer or Authority thereof empowered or authorised in this behalf, in accordance with the provisions made by or under the law governing such Authority or until such provisions have been made, in accordance with the provisions of the regulations relating to the grant of permission for development made under the Delhi (Control of Building Operations) Act, 1955 (53 of 1955) and in force immediately before the commencement of this Act:

Provided that the local Authority concerned may [subject to the provisions of Section 53A] amend those regulations in their application to such area.

(4) After the coming into operation of any of the plans in any area no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

(5) Notwithstanding anything contained in Sub-sections (3) and (4) development of any land begun by any department of Government or any local Authority before the commencement of this Act may be completed by that department or local Authority without compliance with the requirements of those sub-sections.

"

In particular, he would say that Sub-section 2 should be read as follows:-

"SUB-SECTION 2 of Section 12-Save as otherwise provided in the Act, the Delhi Improvement Trust shall not undertake or carry out any development of land in any area which is not a development area."

This is to demonstrate that the Act saves the lands under the jurisdiction of Delhi Improvement Trust from MCD. In this connection, the learned Counsel brought to our notice the case reported in *Schulte v. Gangi*, 1945 90 Law Edn. 1114 and referred to dissenting view by Frankfurter, J. in the following words:-

"For purposes of judicial enforcement, the "policy" of a statute should be drawn out of its terms, as nourished by their proper environment, and not, like nitrogen, out of the air."

Armed with this passage, the argument is that the position of law on the date of the D.D. Act should be kept in mind. Next the learned Senior Counsel referred to Section 6 of the General Clauses Act, 1897, which reads as under :-

"6.Effect of repeal.-Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(A)revive anything not in force or existing at the time at which the repeal takes effect; or

(B)affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(C)affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(D)affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(E)affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The argument is that the rights accrued to the lessees could not be taken away and the lessees cannot be brought under the control of Mcd which is not the intendment of the Act, especially when two acts are brought into the Statute Book more or less simultaneously. He relied on the decision reported in P.N. Balasubramanian Vs. Union of India and Another, . In this case, with reference to an act done by the writ petitioner when the Foreign Exchange Regulation Act, 1947 was in force, proceedings were initiated after the coming into force of the Foreign Exchange Regulation Act, 1973, the argument was that the authorities cannot take any action against the petitioner under the new Act. Reliance was placed in paragraph 8 on the judgment and the same reads as follows:-

"The assumption behind Shri Garg's argument regarding the effect of the provisions of Section 6 of the General Clauses Act is that the provisions of the repealed Act as such are continued in force even after the repeal and that the operation of the provisions of the repealing Act is barred. This is not borne out by the language of Section 6. For Section 6 does not save the provisions of the repealed Act as such. It "only saves the rights and liabilities which have accrued thereunder. All it ensures is that these rights and liabilities would be enforced not with standing the repeal. For this limited purpose it is not necessary to invoke the aid of the repealed Act as such. For, the rights and liabilities maybe such that they can been forced under the repealing Act itself. Even when the repealing Act is inconsistent with the enforcement of these rights and liabilities. Section 6 would save the operation of only those parts of the repealed Act the operation of which beyond the date of repeal is necessary to give effect to these rights and liabilities. In understanding Section 6 of the General Clauses Act, Therefore, the

first distinction to be made is between the provisions of the repealed Act as such and the rights and liabilities which have accrued when that Act was in force, i.e., events or transactions or facts as distinguished from law or the provisions of the repealed statute."

This Court negated the contention that by virtue of Section 6 of the General Clauses Act the jurisdiction of the authorities came to an end after the coming into force the Foreign Exchange Regulation Act, 1973. The passage relied upon by the learned Senior Counsel hardly supports the petitioners.

(27) The learned sr. Counsel then referred to the decision reported in Quadrat Ullah Vs. Municipal Board, Bareilly, . The facts of this case need not be narrated in detail. The Municipal Board was owner of the property. By some arrangement the appellant before the Supreme Court was put in possession of the property. The point was whether the arrangement was a lease or as a licence. At the time of the transaction, the parties were governed by the United Provinces (Temporary) Control of Rent and Eviction Act, 1947. Subsequently, during the pendency of the proceedings, the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was enacted. The argument was that by virtue of the later Act persons in possession would not be entitled to any rights under the earlier Act. The point that was framed for consideration by the Supreme Court in this behalf is as follows:-

"IFEx." I " is a lease wholly of an accommodation, can the plaintiff claim possession based on the repeal of the Act by the later Act during the pendency of the present appeal?"

The Supreme Court said that the rights of parties could be decided as per the later Act. The Supreme Court posited as under:-

"Now comes the additional ground taken before us based on the passage of the later Act. It is admitted that, by frequent amendments the duration of the Act was extended from time to time till at last it was to expire on September 30,1972. Some time before this date the later Act, a permanent statute, was put on the Statute Book which by Section 43 repealed the Act of 1947 and by Section 2 excluded from the scope of the protection of the Act accommodation belonging to local bodies. It is useful to extract Sections 2 and 43 at this stage: "2. Exemptions from operation of Act.-(1) Nothing in this Act shall apply to- (a) any building belonging to or vested in the State Government or the Government of India or any local Authority; or * * * * *" "43. Repeal and savings.-(1) The United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act No. III of 1947) is hereby repealed. (2) Not with standing such repeal- * * * * *"

We have in this case a temporary Act which would have died a natural death by the end of September, 1972 but before its life had run out was extinguished by statutory repeal on July 22,1972 on which date the later Act came into force. Surely, there has been a repeal of the Act which was relied upon successfully by the defendant and his legal representative the appellant, throughout the

litigation. But now that defense or protection is no longer available. However, Counsel for the appellant contends that a right has accrued to him under the Act which cannot be taken away by its repeal since the later Act is not in terms a retrospective one. Factually, it is correct to say that Section 43 has not been retrospective. Even so, the Counsel for the respondent submits that, on the repeal of the Act, the disability which his clients suffered has disappeared and he is entitled to enforce his cause of action. According to the tenant but imposed a disability on the landlord in enforcing his right to evict and that a mere defense cannot be described as a right in the defendant. According to him, the "right" referred to u/s 6 of the repealing Act is a substantive right and not a defensive plea. We have to examine these rival positions in some detail.

"Certain propositions are clear regarding the consequence of repeal of a statute. The general principle is that an enactment which is repealed is to be treated, except as to transactions passed and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the repealing enactment (vide Halsbury's Laws of England, Vol. 36 paragraph 714)."

This decision does not at all help the petitioners because the case of the petitioners is that the Zazul lands should be dealt with as if in continuation of U.P. Town Improvement Act, 1919 and the petitioners substantial right is saved by Section 6 of the General Clauses Act. While developing his argument further it was contended by the learned Senior Counsel that Section 60 of the D.D. Act is a case of repeal and re-enactment and in such cases unless the intention to the contrary is specifically expressed the repeal Act continues with full force. He relied on the decision in *State of Punjab-v. Mohar Singh Pratap Singh* AIR 1955 S.C. 84. Tersely stated the facts are after the partition of India East Punjab Refugees (Registration of Land Claims) Act (12 of 1948) was enacted. That gave right to repatriate from Pakistan to make a claim with the Indian Authorities for equal extent of land owned by them in india. The respondent before the Supreme Court made a false claim and on that account prosecution was launched against him. On the date when he made the claim the law that was governing the rights of parties was East Punjab Refugees (Registration of Land Claims) Act, Ordinance (7 of 1948). The argument was that the Magistrate before him he was tried for an offence under the Ordinance before the Act came into force and the prosecution was started long after the Ordinance had come to an end. Reliance was placed on Section 6 of the General Clauses Act, 1897. The passage relied on by the learned Senior Counsel at page 89 reads as follows:-

"The provisions of Section 6 of the General Clauses Act will, in our opinion, apply to a case of repeal, even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment."

The High Court took the view that the act repealed the Ordinance and, Therefore, any offence committed under the Ordinance would not survive under the Act. That was reversed by the Supreme Court setting aside the judgment of the High

Court. I fail to see how this judgment is of any help to the petitioners. The Supreme Court has observed as under:-

"In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. . We cannot Therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material."

Relying on this case, learned Senior Counsel submitted in such cases unless the new Act has a manifest intention of incompatibility and to discover which the scheme of both the acts (D.D. Act, 1957 and D.M.C. Act, 1957) will have to be seen, the saving clause either by necessary implication or expressly, would save the existing arrangement. By this, the learned Senior Counsel again would try to persuade us to conclude that the Mcd has no jurisdiction in the light of the statutory scheme enumerated by him. He referred to the case reported in *Munshi Lal Beni Ram Glass Works Vs. Sri S.S. Singh, Assistant Labour Commissioner and Others*, and the passage in paragraph II. The Supreme Court simply followed the decision in 1955 S.C. 84 (supra). The next case referred to by him *The Nagpur Hotel owners Association and Others v. The Corporation of the City of Nagpur and Another* 1979 M.C.C. 329. I do not want to refer to the facts. The case is similar to the decision of this Court in *P. N. Balasubramanian v. Union of India and Another* 2nd (1976) I Del 506. It was argued that there was repugnancy between Nagpur Corporation Act, 1950 and the Prevention of Food Adulteration Act, 1954 for the purpose of escaping out of an offence committed with reference to food adulteration, the Bombay High Court expressed the view that there was no repugnancy and the prosecution launched under the Prevention of Food Adulteration Act, 1954 was in accordance with law. This Section does not help the petitioners.

(28) For the purpose of bringing to our notice the phraseology adopted by the Supreme Court about the change of hats, the learned Senior Counsel relied upon the decision reported in *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, . This is to show that after the coming into force of the D.D Act and by virtue of the provisions of Section 60 and Section 12 the Delhi Improvement Trust has merely changed its hat and the proper authority now is the Delhi Development Authority under the Delhi Development Act, 1957. The learned Senior Counsel while developing his argument went to the other aspects

of the cases in respect of the lease deeds executed between Delhi Improvement Trust and the predecessor-in-interest of the petitioners. Another limb of the argument is that the lease deeds referred to by the learned senior Counsel would be things done under the U.P. Town Improvement Act, 1919 and, Therefore, as per Section 60 of Delhi Development Act they are saved and are outside the penumbra of the Delhi Municipal Corporation Act, 1957. He relied on the decision in Universal Imports Agency and Another Vs. The Chief Controller of Imports and Exports and Others, . This case arose under the French Establishment Application of Laws Order 1954. A trader in the Union territory of Pondicherry, which was under the control of French Government, had entered into a contract with the dealer in Japan for importing articles. The transaction had been complete in every respect and the goods also had been imported and as a matter of fact arrived in India before the order came into force. The authorities under this order sought to levy duty on the basis that the import was governed by the provisions of the order while as per the law existing prior to that publication the duty payable was less. The argument on behalf of the trader in Pondicherry was as per the saving clause in the order the import that was done by him was on "things done coming within the saving clause" and, Therefore, he cannot be called upon to pay duty under this order. The Supreme Court accepted that contention. In my view, the position in this case is entirely different. The petitioners and their predecessors-in-interest are in possession of lands governed by particular law prior to 1947. The law has been completely changed and it cannot be contended by the petitioners that the lease pursuant to which they are in possession are "things done" coming under the saving clause in Section 60 of the D.D. Act, 1957.

(29) The learned Senior Counsel relied on decision in State of Uttar Pradesh and Others Vs. Maharaja Dharminder Prasad Singh and Others, . Except the case defers to Nazul land there is nothing which has any bearing on this case. The nazul land therein was leased out to the lessee. From the lessee the respondent before the Supreme Court attempted to put up a commercial complex after obtaining permission from the Vice Chairman in violation of the conditions of the lease. The Government issued notice to cancel the lease. The case of the respondent was that the permission was granted by the Vice Chairman and that cannot be revoked. The High Court accepted the contention on behalf of the respondent and allowed his writ petition. The Supreme Court reversed the decision of the High Court. Section 3 of the U.P. Urban Town Planning & Development Act is in pan materia with Section 12 of the D.D. Act, 1957. Section 41 of the U.P. Urban Town Planning & Development Act empowers the Government to have control over the administration by the Vice Chairman of the Development Authority. Therefore, the decision by the Supreme Court cannot be of any help to the petitioners.

(30) It was further contended by the learned Senior Counsel that D.D. Act, 1957 is Special Act and deals only with Nazul lands and D.M.C. Act, 1957 is a General Act and, Therefore, if there is a conflict between general Act and special Act the

latter would prevail.

(31) The learned Senior Counsel then referred to the aspect of vesting. The learned Senior Counsel referred to Law Dictionary of Emami. The learned Senior Counsel referred to the decision in Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, . It is not necessary to go deep into the facts of this case. Their Lordships of the Supreme Court pointed out that the difference between vesting in possession and vesting in title. This decision was followed by the Supreme Court in Municipal Corporation of Hyderabad Vs. P.N. Murthy and Others, . It is asserted by the learned Senior Counsel that the Trust held the land on behalf of the Government. The learned Senior Counsel then referred to the pleadings in C.W.4958/94 and brought to our notice the lease deed dated 27.9.1948 i.e. a lease deed executed between the Delhi Improvement Trust, a body incorporate under the United Provinces Town Improvement Act, 1919 and one Vidya Wati, who was the lessee. The lease deed is in perpetuity from the date of lease dated 16.7.1948. Clause (i) refers to the payment of rent and other tax rates and assessments. Clauses (ii), .(iv) and (vi) of the agreement read as follows:-

(II)to erect upon the said land within one year from the date hereof and thereafter at all times during the said term to maintain thereon a good and substantial residential Bungalow, according to the Rules and Directions which now are or may hereafter be in force in Delhi under any Municipal Act or any bye-law framed by the Lesser or under any other law Rule or Regulation for the time being applicable thereto, in respect to materials tq be used in and method of construction of buildings in the quarter in which the said land is situate to submit plans, sections, elevations and specifications for the construction of the building to be erected upon the said land for the approval of the Lesser in duplicate, not to start the work of construction unless and until the approval of the Lesser has been obtained in writing, and not to make any alterations in and additions to the buildings so approved by the Lesser at any time either externally or internally without first obtaining the permission of the Lesser in writing;

(IV)to complete the said buildings within One Year from the date hereof to the satisfaction of the Lesser and maintain the premises and all buildings thereon in a sanitary condition according to the directions of the Lesser or some officer duly authorised by him in this behalf;

(VI)not to use the said land and buildings that may be erected thereon during the said term for any other purpose than for the purpose of residential bungalow without the consent in writing of the said Lessor; provided that the lease shall become void if the land is used for any purpose other than for which the lease is granted not being a purpose subsequently approved by the Lessor;

(32) Therefore, on a reading of the entire lease deed, according to the learned Senior Counsel in the place of Delhi Improvement Trust Delhi Development Authority would come in and, Therefore, there is no duality of power and there is

no division of power. Further developing this point, learned Senior Counsel would contend that the authority with reference to land for supervising and control of the buildings which were under the control of the Delhi Improvement Trust is Delhi Development Authority and, Therefore, the Mcd does not have any jurisdiction to take any action in respect of the land or the buildings thereon which were under the control of the Delhi Improvement Trust.

(33) The learned Senior Counsel relied upon the provisions of the Government Grants Act, 1985. The Act is a very short one and Sections 2 and 3 read as follows:-

"

2.Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1982, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made [by or on behalf of the Government] to, or in favor of, any person whomsoever, but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3.Government grants to take effect according to their tenor.-All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary not with standing.

"

Relying upon these provisions the learned Senior Counsel contends hat no law can abridge or take away the rights of the grantee, namely the lessee from the Delhi Improvement Trust. The argument of the learned Senior Counsel would ignore the scope of the Government Grants Act and the Delhi Municipal Corporation Act, 1957. The learned Senior Counsel in this behalf referred to the decision in 2nd 27 Allahabad 634 (P.C.). The circumstances under which the matter went up to the Privy Council and the facts are these; on 19.10.1859 a sanad was granted to one G.S. The terms of the grant are, to the grantee and his heirs without indicating the line of inheritance; that G. S. died on 16.1.1860 leaving behind him his two brothers G & D. D had two sons at the time of death of G.S. Balbhaddar and Sheo. Balbhaddar's wife is Raghudane Kunwar. The elder brother G was in possession of Taluka called a Mehawa, the subject mater of the grant in 1859. The eldest brother died in 1865 issueless. G executed a will bequeathing the estate to Balbhaddar, who succeeded and got possession of the Taluka. During Balbhaddar's lifetime Oudh Estate Act, 1869 was passed taking over the entire estate by the British Government. It would appear that in 1861 a new sanad was given to G.

(34) At page 651 of the report the terms of the grant is extracted by the Privy Council, which reads as follows:-

"It is another condition of this grant that in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture."

The Privy Council referred to the views taken by the Courts below in India in the following terms:-

"But it was held by both Courts in India that such a sanad could not in point of law operate to substitute the line of descent prescribed by it for the line prescribed by the earlier sanad. The Subordinate Judge said : "Sanad was granted to Gajraj Singh, and he could have consented to have it changed, and if he had done so, it would have been binding on his heirs and successors, but if Girwar Singh got it converted into a primogeniture sanad, he could not, by doing so, himself derive any benefit or confer any benefit on his heirs and successors."

In the Appeal Court the view was thus expressed:

"The fact which renders the sanad on which the defendant relies absolutely useless is the fact that the estate had already been conferred by the Government on Gajraj Singh and his heirs for ever when it professed to give it to Girwar Singh and his heirs for ever."

At page 653 referring to the Government Grants Act, the Privy Council observed as follows:-

"IN the argument before their Lordships another objection to the powers of Government was raised. It was suggested that though in the earlier troublous times many things were effectively done by Government as acts of State, still, in or after 1861 (which is the earliest possible date for Girwar's sanad, for it was in April of that year that he asked for it) no executive act of the Government could have created an estate descending by any rule of inheritance other than that laid down by the law, and the law in the present case would be the Hindu law. Whatever force such a contention might otherwise have had appears to their Lordships to be removed by the Act to which their attention was called. Act No.XVof1895 (The Crown Grants" Act, 1895). That Actrecites, amongst other things, that doubts have arisen as to the power of the Crown to impose limitations and restrictions upon grants and other transfers made by it or under its authority, and it is expedient to remove such doubts. And Section 3 enacts that "all provisions, restrictions, conditions, and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute, or enactment of the Legislature to the contrary not with standing."

(35) Therefore, the point that arose for decision before the Privy Council was entirely different and the petitioners cannot rely upon the Government Grants Act, 1895 to say that the Mcd has no right to issue the notice of demolition in case of violation of the building bye-laws. It may also be noticed that the petitioners cannot rely upon the Government Grants Act, 1895 because the Mcd

does not seek to interfere with the possession of the land of the petitioners, and the case of the Mcd is that construction cannot be put up in these lands without obtaining permission from the MCD. It does not require any argument to show that the petitioners cannot rely upon the Government Grants Act torn the purposes of maintaining their illegal acts.

(36) The learned Senior Counsel then relied upon the decision in Jnanendra Nath Nanda and Others Vs. Jadu Nath Banerji and Others, . This again is easily distinguishable and does not render any help to the case of the petitioners.

(37) The learned Senior Counsel then invited our attention to the decision of the Supreme Court in The State of U.P. Vs. Zahoor Ahmad and Another, . Here again, the facts are entirely different and the Supreme Court did not touch any point relevant to the points at issue. The learned Senior Counsel then referred to the decision of the Supreme Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . This is the case where the Lt. Governor took action against the Express Newspapers Pvt. Ltd. for the alleged violation of the building bye-laws by the Express Newspapers. That action of the Lt. Governor was challenged before the Supreme Court. In paragraph 25 at page 884 the Supreme Court noticed the construction done by the petitioner, which reads as follows:-

"The material on record discloses that the construction of the new Express Building with an increased Far of 360 with a double basement was in conformity with Clauses 2(5) and 2(14) of the perpetual lease-deed dated March 17, 1958 inasmuch as it was with the express sanction of the Lesser i.e. the Union of India. It is also quite clear that Sikander Bakht, the then Minister for Works & Housing was throughout guided by the officials of the Ministry, particularly the Secretary, Ministry of Works & Housing, who was the Competent Authority to act for the President with regard to any contract, grant or assurance of property of the Union relating to any matter whatsoever in relation thereto by virtue of the notification issued by the President under Art. 299(1) and further that the grant of such permission was after the matter had been dealt with at all levels and was in conformity with the orders of the then Vice-Chairman, Delhi Development Authority dated October 21, 1978 as one under "special appeal".

In paragraph 30 at page 887 the Supreme Court noticed the permission given by the Ministry to the petitioner for the construction, which is as follows :- "The Ministry of Works & Housing by letter dated February 2, 1978 conveyed to the Vice Chairman, Delhi Development Authority the decision of the Union of India to permit the petitioners to build with an Far of 360 as below:

"It has been decided that Far in this case may be increased up to 360 so that with the extra basement area the firm would have an additional built-up area of nearly 50,000 sq. feet. You are requested to take necessary action in the matter".

At page 889 the Supreme Court noticed the petitioners' case as follows :-

"IN the facts and circumstances hereinbefore adumbrated, the petitioners pleaded inter alia that:

1.The proposed action of re-entry by the Lesser i.e. the Union of India, Ministry of Works & Housing at the instance of the Lieutenant Governor of Delhi is meant to be an act of political vendetta. The impugned notices have been issued with an evil eye and an unequal hand and with a deliberate design to compel the petitioners to close down the Express Group of Newspapers in general and the Indian Express in particular. The said notices are ex facie illegal and without jurisdiction and are contrary to the factual and legal provisions. The arbitrary and discriminatory initiation of executive action under the guise of alleged infraction of the terms of the lease and/or the Master Plan of Delhi and/or the Municipal building bye-laws is violative of the petitioners' fundamental rights under Arts. 14, 19(1)(a) and 19(1)(g) of the Constitution.

2.The construction of the new Express Building with an increased Far of 360 was in conformity with Clause 2(5) of the perpetual lease dated March 17, 1958 inasmuch as it was with the express sanction of the Lesser i.e. the Union of India. The grant of permission by Sikandar Bakht, the then Minister for Works & Housing to sanction the construction of the new Express Building with an increased Far of 360 was in accordance with the Master Plan, after M.N. Buch, Vice-Chairman, Delhi Development Authority by his order dated Oct. 21,1978 as "one under special appeal" under the Master Plan, Chapter II, Part A, Zoning Regulations, Item 13, Use Zone-C-2, at p. 50 directed that plots Nos. 9 and 10 at Bahadurshah Zafar Marg leased to the Express Newspapers Pvt. Ltd. should be "amalgamated together into one plot and taking into account the existing built up area occupied by the old Express Building built on the eastern portion of the underground sewage drain with an Far of 260, the construction of the new Express Building on the western portion thereof after removal of the sewer line with an overall Far of 360 was permissible.

"

This is the Express Newspaper's case and the facts are different and the Supreme Court decided the issue on the peculiar facts of that case. I fail to see how this decision can be of any help to the petitioners. The learned Senior Counsel then referred to the opinion of Francis Bennion 2nd Edn. 1992 in his book Statutory Interpretation page 411 Section 198, which reads as under :-

"SECTION198. The rule *ut res magis valeat quam pereat*. It is a rule of law that the legislator intends the interpreter of an enactment to observe the maxim *ut res magis valeat quam pereat*; so that he must construe the enactment in such a way as to implement, rather than defeat, the legislative purpose."

(38) The learned Senior Counsel referred to Sections 12 and 22 of the D.D. Act, 1957 and contended that there is a distinction between the two Sections which would have an impact on the case of the petitioners. Section 22 does not speak of development area and speaks of Nazul lands. Section 12 refers to

development area and that does not speak of Nazul lands. According to the learned Senior Counsel development area means hereafter to be declared under this Act and the area means the land already there in the scheme. He then referred to Section 59 of the Act which speaks of dissolution of the authority. According to the learned Senior Counsel, it is significant to notice that there is similar provision in Section 103 of the U.P. Town Improvement Act, 1919. Therefore, the learned Senior Counsel wanted to infer that the scheme of the Act was to make the Dda as successor-in-interest as it were, of the Delhi Improvement Trust. The learned Senior Counsel then referred to the introduction of Section 22A in the D.D.A. Act in 1963, which reads as follows :-

"22-A. Power of Authority to develop land in non-development area.- Not withstanding anything contained in Sub-section (2) of Section 12, the Authority may, if it is of opinion that it is expedient to do so, undertake or carry out any development of any land which has been transferred to it or placed as its disposal u/s 15 or Section 22 even if such land is situate in any area which is not a development area."

Then the learned Senior Counsel referred to Section 22(3) of the D.D. Act and the learned Senior Counsel wanted us to infer that Nazul lands means development area. The learned Senior Counsel relied on the decision State of Mysore Vs. Allum Karibasappa and Others, , and Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, .

(39) State of Mysore Vs. Allum Karibasappa and Others, related to superseding of the committee of management of a municipality. I have gone through the case and I do not find any ratio relevant to the point at issue. Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, is a case where the point that was mooted was whether u/s 59 of the City of Nagpur Corporation Act, 1950 the Commercial, Corporation on whom vested the exercise, supervision and control over the action proceedings of all municipal officers and servants. Supreme Court said that vesting and control read together would convey an absolute control in the authority. The ratio of this decision does not at all come to the help of the petitioners.

(40) The learned senior Counsel then said the power of the authority under the Delhi Municipal Corporation Act is a discretionary power and, Therefore, the discretion has to be exercised by the concerned authority in accordance with the known principles and it cannot be arbitrary and fanciful and at the whims and fancies of the concerned authorities. In CW.4545/94 the petitioners put their case thus -

"

9. It appears the promoters of the building applied to respondent No. 3 for grant of permission for erecting residential building, a fact the petitioner has only recently come to know. But this is not material because the area in which the building stands, is outside the jurisdiction of the respondents 3 and 4, and as

already stated in paragraph 3 above, the plot vests in Delhi Development Authority, being the successor body of Delhi Improvement Trust. Action, if any, in regards to the building can only be taken in accordance with Section 186, U.P. Municipalities Act, 1916, read with Section 49, U.P. Town Improvement Act, 1919, and Section 60, Delhi Development Act, 1957.

10. Most of the buildings in the area in which the building is situated, are commercial and multi-storeyed structures.

12. The building plans for all buildings other than those erected by either the Delhi Development Authority or Manager Telephone Nigam, were sanctioned as residential buildings.

13. This fact in itself shows, the building bye-laws, so far as the area in which the building stands, are unreasonable and any insistence on compliance of such unreasonable bye-laws would be per se indicative of reasonableness. If the Delhi Development Authority may raise high rise buildings and put it to commercial use, if Mahanagar Telephone Nigam may with impunity do the same, if private persons may also do likewise in the immediate vicinity, it is inherently discriminatory to subject the building to a hostile treatment.

15. The threatened demolition of the building, by Delhi Municipal Corporation of Delhi would be abuse of authority and power, exercise of excess of jurisdiction and mala fide too, as the building is not within the area over which the said Municipal Corporation can exercise power and authority.

"

(41) The learned Senior Counsel referred to the photographs shown as annexure P.2 collectively to the writ petition where there are number of buildings having more than 2 1/2 floors in the area. The learned Senior Counsel also refers to the amendment petition CM.827/95. The petitioners wanted to have the following amendment:-

"4. The petitioner craves leave to this Hon'ble Court to annex the documents referred to in paragraph 3 above to the captioned writ petition and add the following sub paragraphs to paragraph 11 therein :-

"The petitioner craves leave to also refer to and rely upon a chart, annexed to the writ petition as Annexure P-2A, giving list of buildings in Delhi which have more than two and half storeys. The petitioner is also placing on record, as Annexure P-2B, a photo copy of plan of a five storeyed building sanctioned by Municipal Corporation of Delhi."

5. Paragraph 11 of the writ petition, after the amendment aforementioned will read as under :- "II. Petitioner annex to this petition as Annexure "P-2" (Colly.) a collage of photographs which show, there already exist a large number of buildings, put to non residential use and in height too having more floors than two and a half, some are ten floor or even sixteen floor buildings. The petitioner

craves leave to also refer to and rely upon a chart, annexed to the writ petition as Annexure P-2A, giving list of buildings in Delhi which have more than two and half storeys. The petitioner is also placing on record, as Annexure P-2B, a photo copy of plan of a five storeyed building sanctioned by Municipal Corporation of Delhi."

(42) The learned Senior Counsel submitted that it is the duty of the authorities to find out whether there are unauthorized constructions in the locality. There are 19 officers in Mcd and 9 officers in Dda for this purpose. According to the learned Senior Counsel there must be some reasons for the authority not to take serious view in respect of the buildings in question in this case also when they had allowed the other constructions referred to in paragraphs 4 and 5 of the amendment petition. the learned Senior Counsel, as per the amendment, produced a sanctioned plan by Mcd in Jhandewalan Scheme about which Mr. Arun Jaitley, learned senior Counsel for Mcd submitted that it was a wrong action by the Mcd and action is being taken against the concerned authorities. The learned Senior Counsel for the petitioners referred to bye-laws 481-483 to be approved by the Government. The learned Senior Counsel asserted that Mcd and Dda should explain how the plan could be sanctioned by the authorities. The learned Senior Counsel then referred to the counter filed by the Mcd at page 77 and according to the learned Senior Counsel paragraph 10 in the writ petition has not been traversed. In my view that when facts are before the Court, when there is a general denial by the authorities of all the allegations in the petition, the fact that there is no specific denial of paragraph 10 cannot be pressed into service by the petitioners when they have to prove their case by producing all materials in this behalf. The petitioners cannot try to pick hole in the case of the respondents and try to spin out a case.

(43) The learned Senior Counsel referred to the decision (96) Lawyers Edition at page 113 and 116. The learned Senior Counsel referred to Khudiram Das Vs. The State of West Bengal and Others, . The case arose under Internal Security Act. Then the learned Senior Counsel referred to Corporation of Calcutta Vs. Mulchand Agarwalla, . The relevant passage is at page 114, which reads as follows :-

"In this view, the point for decision is whether the order passed by the Municipal Magistrate and affirmed by the learned Judge in revision is open to attack on the merits. The respondent contends that the Magistrate has u/s 363 a discretion whether he should pass an order for demolition or not, and that this Court should not in appeal interfere with the exercise of that discretion especially when it has been concurred in by the High Court. Now, the language of Section 363 is that the Magistrate "may" pass an order for demolition of the building, and though the word "may" might in some contexts be construed as meaning "shall" that is not the sense in which it is used in Section 363. We agree with the respondent that Section 363 does not require that when a building is shown to have been erected without permission or completed otherwise than in accordance with the

terms of the permission or in breach of the building rules, an order for its demolition should be made as a matter of course. In our opinion, it does give the Magistrate a discretion whether he should or should not pass such an order. That was the construction put in - "Abdul Samad v. Corporation of Calcutta, 33 Cal. 287 (A), on Section 449 of the Calcutta Municipal Act, (Bengal Act III of 1899) which corresponds to Section 363 of the present Act on language which is, so far as the present matter is concerned, the same. In re-enacting the present section in the same terms as Section 449 of Bengal Act III of 1899, it must be taken that the Legislature has accepted the interpretation put on them in 33 Cal 287 (A)", as correctly representing its intention. It should accordingly be held that the word "may" in Section 363 does not mean "shall" and that the Magistrate has under that section a discretion whether he should pass an order for demolition or not. The position, Therefore, is that the orders of the Courts below are based on mistakes and misdirections, and cannot be supported. The conduct of the respondent in adopting a hide-and-seek attitude in completing the constructions in deliberate defiance of the law calls for severe action. It would be most unfortunate, and the interests of the public will greatly suffer, if the notion were to be encouraged that a person might with impunity break the building rules and put up a construction and get away with it on payment of fine." The learned Senior Counsel said that the word used "may" has to be construed giving a discretionary power to the authority and that is what Supreme Court had held. Therefore, according to the learned Senior Counsel Section 343 of the D.M. C. Act also says "may". Therefore, in every case of unauthorised construction the Commissioner cannot say that the building should be demolished. Section 343 of the D.M.C. Act reads as follows :-

"343. Order of demolition and stoppage of building and works in certain cases and appeal-(1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or has been completed without or contrary to the sanction referred to in Section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons Therefore has been delivered to that person), as may be specified in the order of demolition: Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made: Provided further that where the erection or work has not been completed, the Commissioner may by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time. Direct the person to stop the

erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under Sub-section (2).

(2) Any person aggrieved by an order of the Commissioner made under Subsection (1) may prefer an appeal against the order to [the Appellate Tribunal] within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under Sub-section (2) against an order of demolition [the Appellate Tribunal may, subject to the provisions of Subsection (3) of Section 347] stay the enforcement of the order on such terms, if any, and for such period, as it may think fit.

Provided that where the erection or any building or execution of any work has not been completed at the time of making of the order of demolition, no order staying the enforcement of the order of the demolition shall be made by [the Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal] has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(4) [No Court] shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) [Subject to an order made by the Administrator on appeal u/s 347D, every order by the Appellate Tribunal Appeal under this section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal] the order of demolition made by the Commissioner shall be final and conclusive.

(6) Where no appeal has been preferred against an order of demolition made by the Commissioner under Sub-section (1) or where an order of demolition made by the Commissioner under that sub-section [has been confirmed on appeal, whether with or without variation, by the Appellate Tribunal, and by the Administrator in a case where an appeal has been preferred against the order of the [the Appellate Tribunal] the person against whom the order has been made shall comply with the order within the period specified therein, or as the case may be, within the period, if any fixed by [the Appellate Tribunal or the Administrator] on appeal and on the failure of the person to comply with the order within such period, the Commissioner may himself cause the erection or the work to which the order relates to be demolished and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

]"

(44) We can usefully refer to the passage in Interpretation of Statutes by G.P. Singh 5th Edn. (1992) page 264 where in reference is made to the decision of the Supreme Court in Central Bank of India Ltd. Vs. Karunamoy Banerjee, . I shall deal with this contention at the appropriate stage presently. The learned

Senior Counsel relied upon a few passages from Wade Administrative Law 375 Indiscriminate use of Power, 395-396 reasonableness. The learned Senior Counsel relied upon a passage in Schwartz, Administrative Law, (an American Book), 3rd Edition. The passage reads as follows:-

"Judicial power over discretion is now crystallized in the arbitrary, capricious and abuse of discrimination". Clause of the Federal Administration Procedure Act quoted in the preceding section. There are comparable provisions in State Review Statute. They confirm the judicial authority to intervene where discretion has been abused."

Abuse of discretion occurs where the power has been exercised in a manner i.e. in the traditional phrase, arbitrarily or capriciously. The test is once again a test of reasonableness. Rationality is what is required under both the substantial evidence rule and the arbitrary and capricious standard. Review of discretion is thus subject to essentially the same standard of review as findings of facts under the substantial evidence rule. Under that rule as seen in Section 10.8 the Court now determines whether a challenged finding was reasonable one in the light of evidence available on record. A comparable determination is made when discretion is reviewed. The Court determines whether the exercise of discretionary power was reasonable on the record presented and the circumstances of the particular case. As the Supreme Court has put it, where the exercise of administrative decision is at issue, the question is whether the challenged acts falls within that "zone of reasonableness" that the Courts allow the agency on review. Mobil Oil Corporation vs. F.D.C. (1974) 417 U.S. 307.

(45) The learned Senior Counsel referred to the decision in AIR India Vs. Nergesh Meerza and Others, . He relied upon the decision at page 1850 which reads as follows :-

"Coming now to the second limb of the provisions according to which the services of AHs would stand terminated on first pregnancy, we find ourselves in complete agreement with the argument of Mr. Setalvad that this is a most unreasonable and arbitrary provision which shocks the conscience of the Court. The Regulation does not prohibit marriage after four years and if an Ah after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities which may stand in the efficient discharge of the duties by the AHs. It was said that even in the early stage of pregnancy some ladies are prone to get sick due to air pressure, nausea in long flights and such other technical factors. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and The Maharashtra Maternity Rules, 1965 (these apply to both the Corporation as their Head offices are at Bombay,)), she is entitled to certain benefits including maternity leave. In case, however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the

duties by some of the AHs, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in Management making arrangements on a temporary or ad hoc basis by employing additional AHs. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the Ah in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor Ah not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an Ah under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood - the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, Therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, Therefore, clearly vocative of Article 14 of the Constitution. In fact, as a very fair and conscientious Counsel Mr. Nariman realised the inherent weakness and the apparent absurdity of the aforesaid impugned provisions and in the course of his arguments, he stated that he had been able to persuade the Management to amend the Rules so as to delete "first pregnancy" as a ground for termination of the service and would see that suitable amendments are made to Regulation 46 (i) (e) in the following manner:

"(A) Regulation 46(i)(c) will be amended so as to substitute for the words "or on first pregnancy", the words "or on a third pregnancy".

(b) There will be a suitably framed Regulation to provide for the above and for the following:

(I) An air hostess having reason to believe that she is pregnant will intimate this to Air India and will also elect in writing within a reasonable time whether or not to continue in service.

(II) If such air hostess elects to continue in service on pregnancy, she shall take leave from service for a period not later than that commencing from 90 days after conception and will be entitled to resume service only after confinement (or premature termination of pregnancy) and after she is certified by the Medical Officer of Air India as being fit for resuming her duties as an air hostess after delivery or confinement or prior termination of pregnancy. The said entire period will be treated as leave without pay subject to the air hostess being entitled to maternity leave with pay as in the case of other female employees and privilege leave under the Regulations.

(III) Every such air hostess will submit to an annual medical examination by the Medical Officer of Air India for certification of continued physical fitness or such

other specifications of health and physical condition as may be prescribed by Air India in this behalf in the interest of maintenance of efficiency.

(IV) It will be clarified that the provisions relating to continuance in service on pregnancy will only be available to married women - an unmarried woman on first pregnancy will have to retire from service.

"

The learned Senior Counsel relied on paragraphs 105 and 106 at page 1856 which would read as follows :-

"We fail to see how a young and attractive Ah would be able to cope with difficult or awkward situations more effectively than others because smartness or beauty cannot be the only hallmark of competency. Similar observations were made by the Mahesh Tribunal in the following terms:

"The management claims this on the ground that the cabin crew service has to be attractive to passengers."

The argument that AHs should be young and attractive and should possess pleasing manners seems to suggest that AHs should by their sweet smiles and pleasant behavior entertain and look after the passengers which cannot be done by women of older age. This argument seems to us to be based on pure speculation and an artificial understanding of the qualities of the fair sex and, if insult to the institution of our sacred womanhood. Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother, a wife, a companion and a social worker. It is idle to contend that young women with pleasing manners should be employed so as to act as show pieces in order to cater to the varied tastes of the passengers when in fact older women with greater experience and goodwill can look after the comforts of the passengers much better than a young woman can. Even if the Corporation had been swayed or governed by these considerations, it must immediately banish or efface the same from its approach. More particularly such observations coming from a prestigious Corporation like A.I. appear to be in bad taste and is proof positive of denigration of the role of women and a demonstration of male chauvinism and verily involves nay discloses an element of unfavourable bias against the fair sex which is palpably reasonable and smacks of pure official arbitrariness. The observations of Sastri, C.J. in *Kathi Raning Rawat Vs. The State of Saurashtra*, , may be extracted thus (at p.125) -

"All legislative differentiation is not necessarily discriminatory.... Discrimination thus involves an element of unfavourable bias.... If such bias is disclosed.... it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition."

The learned Senior Counsel then brought to our notice paragraph at page 1859 which reads as under:-

"REGULATION 46(i)(c) provides that Ah would retire on attaining the age of 35 years or on marriage if it takes place within four years of service. The last limb of this provision relating to first pregnancy in the case of AHs has already been struck down by us and the remaining sub-clause (e) has to be read with Regulation 47 which provides that the services of any employee may, at the option of the Managing Director, on the employee being found medically fit, be extended by one year beyond the age of retirement, the aggregate period not exceeding two years. This provision applies to employees who retire at the age of 58. So far as the AHs are concerned, under the Regulation the discretion is to be exercised by the Managing Director to extend the period up to ten years. In other words, the spirit of the Regulation is that an Ah, if medically fit, is likely to continue up to the age of 45 by yearly extensions given by the Managing Director. Unfortunately, however, the real intention of the makers of the Regulation has not been carried out because the Managing Director has been given an uncontrolled, unguided and absolute discretion to extend or not to extend the period of retirement in the case of AHs after 35 years. The words "at the option" are wide enough to allow the Managing Director to exercise his discretion in favor of one Ah and not in favor of the other which may result in discrimination. The Regulation does not provide any guidelines, rules, or principles which may govern the exercise of the discretion by the Managing Director. Similarly, there is also no provision in the Regulation requiring the authorities to give reason for refusing to extend the period of retirement of AHs. The provision does not even give any right of appeal to higher authorities against the order passed by the Managing Director. Under the provision, as it stands, the extension of the retirement of an Ah is entirely at the mercy and sweet-will of the Managing Director. The conferment of such a wide and uncontrolled power on the Managing Director is clearly vocative of Article 14, as the provision suffers from the vice of excessive delegation of powers."

(46) I am afraid, that the reliance upon the above case by the learned Senior Counsel is not at all correct and the Supreme Court decided the case, on totally different circumstances, which has absolutely no bearing on the facts of this case. The Supreme Court in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, has quoted with approval Dicey's concept of Rule of Law and, Therefore, the principle is well known and difficulty would arise only in its application to the facts of a given case. The learned Senior Counsel placed considerable reliance on the resolution dated 24.12.1965, Annexure P.5 in CW.4545/94. That is a resolution No. 728 passed in an ordinary meeting of the Delhi Development Authority on 24.12.1965. The subject matter of the resolution is "change of residential use to the commercial use contrary to the master plan F-1(12)/64-WD". The resolution became necessary as the Commissioner, Municipal Corporation of Delhi had written to the Dda about the use of residential premises to commercial use and the provisions of Section 29(2) of the D.D. Act read with Section 14 which would speak of imposition of punishment for contravention. Therefore, the matter had to be considered in the light of the situation that

prevailed on that date. Paragraphs 4 and 5 of the resolution read as follows:-

"

4. In the result, if the requirements of the Master Plan are to be enforced, the only course open would appear to be for prosecutions to be launched. However a decision on this point is bound up with the conditions obtaining in the city. For instance, it is well known that office accommodation in Delhi, both for Governmental needs and for private commercial houses, is extremely short and it is because of this shortage, which is certain to continue for quite some time yet, that residential premises have been obtained on rent by establishments wanting to have offices in Delhi. The prosecution of property owners, who have let out such buildings for office accommodation, is thus likely to pose a serious problem and it is, Therefore, for consideration whether prosecutions be launched or whether no notice of use contrary to the Master Plan be taken until the present situation substantially improves.

5. The Standing Committee, in its meeting held on the 14th December, 1965 discussed the matter at length. It was felt that, as office accommodation in Delhi for governmental needs as well as for private commercial houses is extremely short, it would not be feasible to launch prosecutions against property-owners for putting residential premises to commercial use in contravention of the provisions of the Master Plan, until the present situation in this respect substantially improves. It was, however, recommended that :-

(I) Positive steps should be taken for early development of district centres in Kalkaji and Pusa Road, etc. so that the shortage of office accommodation is relieved to some extent.

(II) Government may be moved for amendment of the Delhi Development Act and the Delhi Municipal Corporation Act so as to incorporate there in suitable provisions which would enable to the concerned public authority to appropriate a portion of the benefit accruing to property owners as a result of increase in value of the property on account of its commercialisation; and

(III) draft regulations under the Delhi Development Act should be put up to the Delhi Development Authority immediately for approval.

"

This can't be pressed into service by the petitioners to legalise their illegal constructions.

(47) When a specific question was put by us about the appeal filed by the plaintiffs in the suits, the learned Senior Counsel said that an amendment petition was filed by the plaintiffs in the suit and that was not considered by the learned Single Judge and the petition for amendment is still pending and the decision in the writ petitions will cover the case in the appeals also. The learned Senior Counsel submitted that according to him the question is whether the Mcd

has jurisdiction to issue demolition notice and the question is not whether the constructions in question are unauthorised or not. From the arguments advanced by the learned Senior Counsel we can safely infer the petitioners were conscious of the facts that the construction made by them are unauthorised and, Therefore it is, the ancillary and subsidiary argument on the discretionary power u/s 343 was projected. Therefore, in all the writ petitions the fact that the constructions are unauthorised is a matter beyond any doubt. Therefore, on the factual matrix the Court is not invited to adjudicate as there is no such need. In fine, the crux of the argument of the learned Senior Counsel is that Dda alone will have jurisdiction over the matter and if Dda comes forward with a notice of demolition the petitioners have effective answers to the notice and ultimate authority is only the Central Government.

(48) The learned Senior Counsel then advanced arguments with reference to CW. No. 4882/94 and CW. 429/95. The learned Senior Counsel referred to paras 17 and 18 of the writ petition, which are as under :-

"The properties mentioned above are all constructed by private persons. The building plans of each one of these properties are sanctioned by Municipal Corporation of Delhi for constructing residential houses. All these "residential houses" are put to commercial use. These "residential houses" are no longer the two and half storeyed residential houses sanctioned by respondent No. 1. These originally sanctioned "residential houses" are commercial buildings of four/five or more storeys, standing right along the road and the Municipal Corporation has not taken any action against them. According to the Building Bye-laws (as adopted by the Municipal Corporation of Delhi) residential buildings cannot exceed ground-floor, first and second floors and the Barsati floor. The photographs clearly show the floors of these buildings are far in excess. Even their Far is in excess of the permitted Far under the building bye-laws. The list in paragraph 16 is not exhaustive but illustrative."

(49) The learned Senior Counsel referred to the works study in the first Master Plan and also the fact that how the pattern of land use maintained by the Corporation and the learned Senior Counsel submitted the place itself was a business centre. In the Master Plan in 1962 also the place is referred to as a commercial centre. The learned Senior Counsel referred to Annexure J at page 79 of the Bye-laws by the Nabi's Publication. The learned Senior Counsel referred to para 6 page 16 in CW.429/95 for the purpose of focusing the point of discrimination. The learned Senior Counsel referred to Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, and submitted that the High Court has to consider on the basis of natural laws. The learned Senior Counsel referred to Article 142 of the Constitution of India, which reads as follows :-

"142.

(1)The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or

matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

"

The learned Senior Counsel said that power of the High Court in Article 226 is as wide as the power of the Supreme Court in Article 142. As a matter of fact, the learned Senior Counsel said the power of the High Court under Article 226 is wider than the power under Article 142. The learned Senior Counsel while winding up his submissions said that the genesis of all these municipal laws is only for sanitation and, Therefore, what has to be seen is the sanitation aspect of the problem and according to him sanitation law becomes municipal laws and Sanitation Committee becomes Municipal Committee.

(50) The learned Counsel Mr. Rawal, appearing for the petitioners in C.W.5197/94 adopted the arguments of Mr. Lekhi and according to him he was appearing in CW.5197/94. The learned Counsel submitted that the Mcd had acquiesced in the unauthorised constructions and the Mcd failed to take action at the right time and the Mcd had not acted in accordance with the provisions in the Mcd to check unauthorised constructions and, Therefore, Mcd is estopped from taking any action. The learned Counsel also made his submissions on that premise on facts. He relied upon the passage in Vol. 16 Halsbury 4th Edn. para 1592. He also invited our attention to the ratio of the Supreme Court in Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, and also at page 476. He also referred to the decision in Algar v. Middlesex County Council, 1945 (2) All ER 243. He also referred to West Country Cleaners (Falmouth) Ltd. v. Saly, 1966 (3) All ER 210 . He also referred to the decision in Sangeeta Shrivastava Vs. U.N. Singh and Others, which dealt with the case of students. He referred to the decision Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . He also referred to Estoppel by Revision by Spencer and Bower 3rd Edn. page 48. Having regard to the principles of estoppel, I do not find any difficulty in rejecting the contentions of the learned Senior Counsel without any further consideration of the facts of the case.

(51) Mr. G.L. Sanghi, learned Senior Counsel advanced argument in CW.5183/94. There are two petitioners in the writ petition and the premises is N-5/34, Pusa Road stated that the agreement to sell was on 5.6.1994 in favor of his clients. On 25.10.1994 there were registered sale deeds and on 13.11.1994 there were some sale deeds. He stated that misuse cannot warrant demolition.

He submitted that demolition even if it is done it can be only to the extent of the offending area and not the entire building. That is not the issue here. The authorities will, it is expected, only demolish the offending portion. But if in a given case the offending portion is so vast if it is demolished the unoffending portion cannot survive, the authorities cannot help it. The learned Senior Counsel referring to Sections 346 and 347 of Mcd Act, 1957 submitted that there was no notice to the petitioners. The learned Senior Counsel also stated that the demolition threat not warranted in law. The learned Senior Counsel did not invite our attention to the facts and circumstances under which the petitioners purchased the property. Arguments were also advanced by him in C.W. 279/95. It was contended that the petitioners could rely upon the doctrine of legitimate expectations. In this connection, paragraph 18 of page 19 of the writ petition was relied on. He invited our attention to the decision in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

(52) Arguments were also advanced in C.W. 5192/94. It was contended that there was no notice and for the ground floor sanction was granted for commercial use by the MCD.

(53) Mr. Prashant Bhushan advanced arguments in W.P. 482/95 and W.P. 345/95. He submitted that plans were sanctioned for commercial purposes in premises No. 24, Patel Nagar and there are other unauthorised constructions, no action taken by the Corporation. Mr. Manmohan also argued contending that as per Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , decided by the Supreme Court, this Court has got power to lay down policy and on the facts and circumstances of this case, this Court may frame a scheme as to whether relating to the unauthorised construction. No question of giving any guidelines or laying down policy would arise as the matter is governed by statutory provisions.

(54) On 22.2.1995 Mr. Lekhi, learned Senior Counsel again made few submissions and brought to our notice the office order issued by the Commissioner, M.C.D. on 4.4.1986 where priorities for demolitions are given. The office order reads as follows:-

"OFFICEOF M.C.D. Commissioner Town Hall No. 11/C Delhi Dated 4.4.86 Office Order In partial modification of office Order No. 38/ Bldg. dated 5.9.1977, priorities of demolition of unauthorised construction will be as under : first Priority;

(A)Cases of unauthorised construction of commercial nature such as markets, offices, godowns which have been dismissed/remanded from the Courts.

(B)Unauthorised construction of commercial nature including cases where unauthorised structure was demolished and has been reconstructed.

(C)All cases of commercial as well as residential nature where sanction of building plans is revoked.

(D) Unauthorised construction of new colonies on green agricultural land / private land.

(E) Unauthorised construction of residential nature which has been dismissed from the Court, including the cases of unauthorised construction which affect rights (light, ventilation, passage etc. of neighbors).

Second Priority;

(A) Cases of unauthorised construction effected by any structure or coming in the right of way of the road. (b) Unauthorised construction or residential nature in set backs of residential and non-residential buildings.

Third Priority; All other cases which are not covered in priorities mentioned above.

2. The inter-se priority for demolition of unauthorised constructions in any of the above categories will be fixed by the concerned Zonal Engineer (B) himself the guiding principle being that in the same category, cases in which demolition orders have been passed last should be demolished first.

3. The cases will be entered in the demolition register section wise i.e. the matured cases of the area of each Junior Engineer will be recorded separately in the demolition register in the order detailed above and the demolition action will be taken by the Jr. Engineer accordingly.

4. Out of turn demolition action can be taken, where deemed necessary, after obtaining specific order from the Addl. D.C./Zonal Assistant Commissioner in charge of the Zone.

5. Daily demolition programme of the Zone will be specifically prescribed by the Addl. D.C./Zonal Assistant Commissioner/Zonal Engineer (Bdg.) in accordance with the area /JE wise priorities prescribed in above paras and will not be left to the lower staff.

6. ADCs/ZACs/ZE(B) shall personally ensure that on an average four cases per demolition squad are pulled down every day. Monthly progress report on demolition will be sent by Addl.DC/Zonal Asstt. Commissioner to the Executive Engineer in the proforma already circulated by 7th of each month who will submit a consolidated report to Commissioner by 10th of every month.

7. No official of the Vigilance Department below the rank of Deputy Director of Vigilance shall call for a file from the Building Department. The Vigilance Department will not keep the files of the building Department for more than 10 days without the approval of Deputy Commissioner. The files concerning unauthorised construction should be returned by the Vigilance Department after taking extracts, if necessary, so that the processing of Vigilance cases and action against unauthorised construction go on simultaneously.

8. Site inspection of unauthorised construction cases shall be carried out to the

following extent: Zac 5% of total cases booked in a month ZE(B) 20% of total cases booked in a month.

9.It should be noted that ADCs/ZACs exclusively responsible for the administrative control of Bldg. Department including the unauthorised construction and should take necessary disciplinary action against the erring officials at their own level.

10.Sometimes complaints are received from the Zones that trucks are not available for demolition purposes. Instructions already exist that zones may engage trucks and labour as and when required by them on hire.

11.ADC /ZAC /ZE(B) will chalk out programme of demolition in such a way that each J.E. demolish unauthorised construction of 2nd and 3rd priorities also at least once a month each, so that unauthorised construction of all categories are demolished side by side.

This order will take immediate effect and is issued for strict compliance. sd/- (V.K. Kapoor) COMMISSIONER"

According to learned Senior Counsel if the priorities are to be followed at the discretion of the authorities no unauthorised building will be demolished and it will become an arbitrary exercise of powers by the authorities and whether the buildings in question would come under a priority category would again be decided arbitrarily by the authorities. The learned Senior Counsel relied upon a few passages in Delhi Municipal Digest by Mr. Verma which do not render any assistance for deciding the dispute in this case.

(55) The learned Senior Counsel Mr. Arun Jaitley appearing for Mcd formulated his submissions thus, (i) the petitioners are guilty of misrepresentation and suppression of material facts and, Therefore, they are not entitled to invoke equitable jurisdiction under Article 226 of the Constitution of India; (ii) some of the petitioners are guilty of civil contempt because they claim rights under sale deeds executed after 2.11.1994 when the learned Single Judge of this Court restrained the owners from creating any third party interest in the properties; (iii) in respect of ten properties in question about 65 proceedings have been initiated since 21.1.1994 in different Courts. In most of the cases the pendency of the earlier proceedings and the orders passed in the earlier cases were not disclosed and all the unauthorised constructions were carried out after obtaining stay orders from the Original Side of this Court from 21.1.1994; (iv) that the petitioners in the writ petitions and the appellants in the appeals against the orders of the learned Single Judge have with impunity had acted in violation of several laws governing the construction of buildings and they are against public interest and indirectly they seek to regularise those violations by invoking the jurisdiction of this Court. The details of the suits filed and the writ petitions filed need not be elaborately referred to.

(56) The learned Senior Counsel submitted that while filing civil suits

representations were made that the constructions have been made in accordance with the sanctioned plans and also the Delhi Municipal Corporation Act and the building bye-laws but actual facts were suppressed. Later on, when the Mcd entered appearance in the suit facts were completely clarified and placed before the Court and the Court vacated the orders of injunctions passed earlier. It is further contended that having failed before the Civil Court deliberately without mentioning those facts the persons claiming rights through the plaintiffs in the civil suits had filed writ petitions on false representations and, Therefore, inasmuch as the petitioners based their claim on falsehood and fraud, they are not entitled to any indulgence from this Court. The learned Senior Counsel relied upon the following cases:-

1.1917 (1) K.B.486 504, The King v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington. 2. Air 1940 Lah 69 ,Basheshar Nath and Others v. Municipal Committee, Moga. 3. Udai Chand Vs. Shankar Lal and Others, 4. Air 1978 Punjab & Haryana 326, Tetar Mandal and Others v. Executive Officer and Others. 5. Anand Swarup Malik Vs. Municipal Corporation of Delhi, 6. Air 1992 Del 197 , M/s. Seemax Construction (P) Ltd. v. State Bank of India and Another. 7. T.A. George and Another Vs. Delhi Development Authority and Others, 8. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

(57) In the first case referred to above, the Court of Appeal in England decided about the conduct of the person for the grant of relief of injunction. The Court observed at page 495 as under:-

"BEFORE I proceed to deal with the facts I desire to say this: Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

(58) Lord Cozens-Hardy M.R. observed at page 505 as under :-

"That is merely one and perhaps rather a weighty authority in favor of the general proposition which I think has been established, that on an ex parte application uberrima fides is required, and unless that can be established, if

there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say "We will not listen to your application because of what you have done."

(59) In the second case referred to above, Mr, Justice Din Mohammad of the Lahore High Court observed at page 70 as follows :-

"Under Section 56(j). Specific Relief Act, an injunction cannot be granted when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court. This provision has been interpreted in various decisions and they all unanimously lay down that he who seeks equity must do equity and, unless the plaintiff comes into Court with clean hands, no relief should be granted to him by way of injunction. In Rangammal v. Venkatachari (1895) 18 Mad 378, the following remarks of Story were quoted with approval: The Court cannot but leave the guilty plaintiff to the consequences of his own inequity and decline to assist him to escape from the toils which he had studiously prepared to entangle others. In Seeni Chettiar v. Santhanathan Chettiar. (1896)20 Mad 58 67, it was observed: That rule (Sec 56, Clause (j). Specific Relief Act) rests on the maxim that he who seeks equity must do equity and implies that a plaintiff seeking an injunction must come with clean hands. With reference to this point, it is laid down in Kerr on Injunctions, on the authority of the case therein cited, that a plaintiff, who asks for an injunction, must be able to satisfy the Court that his own acts and dealings in the matter have been fair and honest and free from any taint of fraud or illegality, and that if, in his dealings with the person against whom he seeks relief or with third parties, he has acted in an unfair or inequitable manner, he cannot have relief. The facts as set out above clearly indicate that the plaintiffs inveigled the Committee into passing a resolution which is now being attacked as ultra vires. The Committee had rejected the application for sanction in unequivocal terms more than a year before the resolution of 8th December was passed. In fact, even a suit had been instituted to contest the notice issued by the Municipal Committee. The attitude of the Committee changed only when the plaintiffs made an offer of Rs. 3000 to Lala Chandu Lal for being allowed to put up the proposed structure. It was on that representation that Lal Chandu Lal intervened as a mediator and at the request of one of the plaintiffs made an oral offer of Rs. 3000 on behalf of the plaintiffs. The Committee made a counter offer and resolved that if the plaintiffs paid Rs. 2000 permission could be given to the constructing of a part of the roof. The plaintiff's treat this offer as a permission granted by the Committee u/s 172 and want to utilize that portion of the permission which benefits them and to repudiate that part of it which goes against them. In other words, they want to put up the construction without any payment on the ground that the Committee had no authority to demand that payment. This is rank dishonestly."

(60) In the third case, referred to above, the Supreme Court extracted the following passage from an earlier case decided by the Supreme Court:- "Exercise

of the jurisdiction of the Court under Article 136 of the Constitution is discretionary: it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. A party who approaches this Court invoking the exercise of this overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal.

(61) In the 4th case, referred to above, the Punjab & Haryana High Court following the decision of the Court of Appeal quoted from the decision of the Full Bench of the Allahabad High Court, which is in the following terms :-

"A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the present case, we feel that, in this case, the petitioner-Company has disintitiled itself to ask for a writ of prohibition by material suppression, misrepresentations and misleading statements which have been found by us above."

Ultimately, the Punjab & Haryana High Court said "agreeing with the long line of precedents and affirming a rule which appears to us hoary by usage, we hold that the writ petitioners, in the present case, have by their own conduct disintitiled themselves to the relief which they sought to claim."

(62) In the 5th case, referred to above, Mr. Justice B.N. Kirpal (as he then was) sitting singly observed as under :-

"It is a cardinal principle of law that a person must come to the Court with clean hands if he seeks an injunction under Order 39 Rules I and 2. In the present case the conduct of the plaintiff leaves much to be desired. As already noted, the plaintiff has had little regard to tell the truth and has time and again misrepresented the true facts in Court. Such deliberate attempt on the part of the plaintiff to mislead the Court may or may not amount to a contempt but will certainly, to my mind, disintitle the plaintiff to any interim relief. On this ground alone, Therefore, the plaintiff is not entitled to the injunction prayed for."

(63) In the 6th case, referred to above, my Lord Mr. Justice Y.K. Sabharwal was pleased to consider a case under similar circumstances and was pleased to observe as under:-

"The suppression of material fact by itself is a sufficient ground to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the Court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. A person deliberately concealing material facts from Court is not entitled to any discretionary relief. The Court can refuse to hear such person on merits. A person seeking relief of injunction is required to make honest disclosure of all relevant statements of facts otherwise it would amount to an abuse of the process of the Court. Reference may be made to decision in *The King v. The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington 1917 (1) K B D 486* where the Court refused a writter of prohibition without going into the merits because of suppression of material facts by the applicant. The legal position in our country is also no different. (See: *Charanji Lal v. Financial Commissioner, Haryana, Chandigarh Air 1978 P & H 326* . Reference may also be made to a decision of the Supreme Court in *Udai Chand Vs. Shankar Lal and Others*, . In .the said decision the Supreme Court revoked the order granting special leave and held that there was a misstatement of material fact and that amounted to serious misrepresentation. The principles applicable are same whether it is a case of misstatement of a material fact or suppression of material fact."

In paragraph 12 what my Lord observed is more relevant and reads as follows:-

"The tendency of the litigants to approach different Courts to somehow or the other obtain interim orders without full disclosure of the earlier judicial proceedings and without full disclosure of all material facts is on constant increase and it is necessary for due administration of justice to reiterate the legal proposition that such a person may be refused a hearing on merits."

(64) In the 7th case, as referred to above, my Lord, Mr. Justice Jaspal Singh observed at page 159, which is as follows:-

"For an ex parte interim injunction the Court requires uberrima fides on the part of the applicant. This being the accepted legal position right from the days of King's Bench Division Judgment in *The King v. The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington 1917(1) Kb 486* the learned Additional Judge legally could and rightly did refuse to grant to the appellants the relief of temporary injunction."

(65) In the 8th case, referred to above, the Supreme Court observed at page 855 as under:-

"The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property- grabbers, tax evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on

falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

(66) There is considerable force in the submissions made by the learned Senior Counsel and the writ petitions deserve to be dismissed on this score alone.

(67) But having regard to the large canvas of arguments, and with due deference to the learned Senior Counsel who argued for various writ petitioners, we dealt with all the arguments submitted by the learned Counsel.

(68) The second point submitted by the learned Counsel regarding the civil contempts committed by the petitioners. This Court while passing orders on 2.11.94 in suits categorically imposed an embargo that the plaintiffs will neither induct anyone nor create third party interest in the properties in question. This Court, as a matter of fact, had given liberty to the Mcd to give public notice in this behalf. Pursuant to the directions issued by this Court, a public notice, as a matter of fact, was issued by Mcd on 9.11.1994 warning the public that acquiring any interest in the properties in question they will be doing so at their own risks. In flagrant disobedience to the orders passed by this Court, the plaintiffs in those suits had temerity to effect transfers in favor of third parties. The details of the writ petitions in which sale transactions had been entered into, after the passing of the orders of this Court on 2.11.1994 by the Hon'ble Ms. Justice Usha Mehra are as follows:-

1.CW. No. 5213/94 Ritesh Industries and Another v. Mcd and Others. Sale deed executed on 2.12.94 (one month after the passing of the order). 2. C.W. 5186/94 Phoenix International and Others v. Uoi and Others. Sale deed dated 8.11.94. 3. C.W. 5192/94 Sunil Narula v. Uoi and Others. Sale deed dated 5.12.1994. 4. C.W. 5183/94 Jindal Drilling & industries and Others v. Uoi and Others. Sale deed dated 13.11.1994. 5. C.W. 5205/94 M/s. Tiruvandagam Investment P. Ltd. v. Uoi and Others. Sale deed on 8.11.1994.

The learned Senior Counsel contended that the parties are guilty of civil contempt and they cannot rely upon the sale deeds and then seek to protect a case that they were not aware of the orders passed by this Court and they are all bona fide purchasers for value without notice. Learned Senior Counsel contended that the writ petitions are liable to be dismissed. The learned Counsel relied upon the following cases:-

1952 (2) All ER 567, Hadkinson v. Hadkinson. 2. (1975) 45 Com Cas 448 , Century Flour Mills Ltd. and Another v. S. Suppiah and Another. 3. A.R. Antulay Vs. R.S. Nayak and Another, 4. Delhi Development Authority Vs. Skipper Construction and Another, 5. 1974 (3) All ER 217 . 6. Jagat Nath Wahal and Others Vs. The U.P. State Road Transport Corporation and Others, .

(69) In the first case, referred to above, the Court of Appeal in England recording the obedience of orders passed by the Courts, Romer, L.J. observed as under:-

"It is the plain and unqualified obligation of every person against, or in respect

of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void."

Denning, L.J. observed as follows:-

"THE Court would only refuse to hear a party to a cause when the contempt impeded the course of justice by making it more difficult for the Court to ascertain the truth or to enforce its orders and there was no other effective means of securing his compliance. The Court might then in its discretion refuse to hear him until the impediment was removed or good reason was shown why it should not be removed."

(70) In the second case, referred to above, the Full Bench of the Madras High Court observed as follows :-

"Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice."

(71) In the third case, referred to above, it was observed by the Supreme Court that the wrong committed by anybody must be remedied by the Courts.

(72) In the 4th case cited above, the Supreme Court had observed that anybody who commits wrongs against society should not be left unpunished.

(73) Here in the instant case, the petitioners, who attempted to put up building without obtaining sanction from the concerned authorities, cannot be heard to contend that they have not committed any wrong and the Mcd has no jurisdiction.

(74) In the 5th case, referred to above. Lord Denning observed as follows:-

"It was Lord Bacon in his essay on Judicature who said: "The principal duty of a Judge is to suppress force and fraud". As part of this it is the duty of a Judge to denounce wrong-doing when it is established before him. He speaks for all law-abiding citizens. His words uphold the opinion of the good. And shake the confidence of the wicked. By condemning wrongdoing, he reinforces the moral sanction on which law and order so much depend."

(75) In the 6th case, referred to above, a Division Bench of the Allahabad High Court followed the principles laid down by Lord Justice Denning.

(76) The third submission of the learned Counsel is the abuse of process of law. The learned Counsel submitted that proceedings have been initiated with reference to the buildings without disclosing the earlier proceedings and the orders passed therein. It is submitted that the petitioners, builders and the owners entered the arena of adventurism and, Therefore, they are not entitled to

be heard at all in respect of the contentions raised by the petitioners in the writ petition. He brought to our notice the following decisions of the Supreme Court:-

1. Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, 2. Bloom Dekor Limited Vs. Subhash Himatlal Desai and Others, 3. 1995 (1) Apex Decisions (SC) 229. 4. Order of the Supreme Court dated 8.2.1995 in SLP (C) No. 21000/93; Delhi Development Authority Vs. Skipper Construction and Another, .

(77) In the first case, referred to above, the Supreme Court had occasion to deal with a situation where an abuse of process of Court amounted to contempt. A person in stead of filing a case in the Patna High Court filed the same in Calcutta High Court. Their Lordships of the Supreme Court referred to the various circumstances under which the person concerned abused to the process of Court. Their Lordships quoting very judgment of the Supreme Court of India states, which are in the following terms:-

"It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage".

Per Frank Further, J. in Offutt v. U.S. (1954) 348 Us 2.

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope". Present Judge, Curtis-Raleigh quoted in Jennison v. Baker (1972) I All Er 997 1006."

Their Lordships punished the person for contempt. As pointed out by the Supreme Court, the petitioners were playing a game by filing these writ petitions when the applications for injunctions were dismissed by civil Courts.

(78) In the cases referred to as items 2 and 3 above. Supreme Court reiterated the principles stated earlier. In the case referred to as 4th item also, the Supreme Court put down strongly the attitude of a building contractor.

(79) The next point that was argued by the learned Senior Counsel was that the petitioners had violated the law and, Therefore, they cannot seek any relief in this Court under Article 226 of the Constitution of India. As earlier pointed out earlier, the fact that there has been violations of the bye-laws is not a matter of admission by the petitioners. But what is argued on behalf of the petitioners is that a discretion that is vested in the Commissioner u/s 343 because the word used is "may" in that section and, Therefore, the Commissioner cannot pick and choose for the purpose of demolishing the buildings constructed in violation of the law. In other words, the word "may" does not mean shall. The learned Counsel brought to the notice that in Rahul v. Mcd, CM(M) 59/93 where it is held that merely because an unauthorised construction is transferred and goes into many hands, the basic character of the nature of the construction would not change or the unauthorised construction would not become an authorised one. About the notice not having been served upon the petitioners, it was contended by the learned Senior Counsel for the Mcd that the notice u/s 343 is to be served

only on a person at whose instance the construction has been made. He relied on the decision reported in *Ram Narain Vs. Municipal Corporation of Delhi*, . Touching on the scheme of the law pertaining to the construction of the buildings in the city, the learned Senior Counsel submitted that Section 7 of the Delhi Development Act provides for the framing of the Master Plan. Section 8 provides for the planning of Zonal Development Plan. As per Section 14 of that Act, that after coming into force of the plans no land shall be used or permitted to be used for any purpose contrary to the plans. Therefore, under the law no one can be permitted to use the land nor can the Municipal Corporation permit anybody to use the land contrary to the plans. Section 53(2) of the D.D.A. Act provides that the Act and the Rules framed there under shall prevail over every other legislation to the contrary. Therefore, there is a clear mandate to the authorities to conform to the law. Looking at the scheme of things and Section 343 of the D.M.C. Act the role of the Commissioner becomes a power coupled with the performance of a public duty and he has to keep in mind the public interest and he is the authority for enforcing the law. It cannot be contended that the building bye-laws and the Regulations and Rules framed there under are not in public interest. Therefore, looking at the power in its proper perspective in Section 343 of the Dmc Act of the Commissioner, the learned Counsel would contend that the "may" should be read as "shall". He invited our attention to the following cases:-

1. *State of Uttar Pradesh Vs. Jogendra Singh*, 2. *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, 3. *State (Delhi Admn.) Vs. I.K. Nangia and Another*, 4. 1981 (1) A W R 166 . 5. *P. Saina and Others Vs. Konderi and Others*, 6. *Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others*, 7. *Bangalore Medical Trust Vs. B.S. Muddappa and others*, 8. 1992 Scc 426 434, *Sanjay Place Group Housing Association and Others v. Agra Development Authority and Others*.

(80) Meeting the submissions of the learned Counsel for the petitioners with reference to the decision of the Supreme Court in *Corporation of Calcutta Vs. Mulchand Agarwalla*, , the learned Counsel submitted that even the judgment would stipulate that the word "may" would indicate only "shall" and that is easily distinguishable on the merits.

(81) In controverting the arguments on behalf of the petitioners that there are several unauthorised constructions in the city and the authorities have acted in a discriminatory fashion in choosing to demolish only the properties mentioned in the petitions and also the properties subject matter of the appeals and consequently the action of the authorities come within the mischief of the Article 14 of the Constitution of India, the learned Senior Counsel submitted that such an argument cannot at all be countenanced because a person who seeks equity must do equity and it is a basic principle of law no man can take advantage of his own wrong and it is submitted that the Constitution seeks to protect under Article 14 only those persons who have been discriminated or denied equal protection or who deserve succour against arbitrary actions of the authorities and

Article 14 is not intended to protect the wrong doers. If the contention of the petitioners is accepted, then no law can be enforced and the enforcement of any provisions of law would depend upon the sweet will and pressure of a particular individual. It is axiomatic that no man can take advantage of his own wrong. The petitioners have completely ignored their duties to the society as envisaged under the provisions of the Constitution. It is really disturbing that the law breakers should with impunity try to take umbrage under cover of discrimination calling in aid, the pervasive and the most potent weapon in the hands of the Courts against arbitrary action of any authority functioning within the territory of India. We cannot subscribe to the view that such persons, as the petitioners, would be entitled to a hearing. Under the constitutional set up, as declared by Chief Justice Marshall of the United States of Supreme Court the only organ of the State which can have effective control over the enforcement of laws is the Court and in that sphere the Court and the Court alone should have a final say. When we are governed by rule of law, in my view, no Court will be justified in entertaining any argument on behalf of the petitioners.

(82) Learned Counsel for the Mcd brought to our notice the following decisions:-

1.1975 Labour & Industrial Cases 1624. 2. 1987 (1) Karnataka Law Journal 163. 3. AIR1994Delhi320 . 4. 1994 (1) A D 1002 1009. 5. 1995 (1) A D (S.C.) 265.

(83) In the case first referred to above. Full Bench of this Court observed in para 41 in the following terms:-

"It is well settled that Article 14 has no application where action is taken by the authorities to remove one evil and merely because no action is taken to remove another alleged evil it cannot be said that evil which is sought to be removed is hit by the provision of Article 14 of the Constitution. It may be that two persons may commit different offences but only one person is prosecuted by the authorities. The one who is prosecuted cannot complain of violation of Article 14 merely because the other one is not prosecuted. Article 14 has no application in such cases."

(84) In the second case referred to above, the Kamataka High Court expressed this view in very clear terms in the following manner :-

"In this petition the petitioner has assailed the proposed action of the respondent-State of Kamataka and its officers in the Excise Department directing re-auction of bids which had once been confirmed in favor of the petitioner on the sole ground that respondents 22 to 35 are also defaulters but whose bids at the auctions, confirmed in their favor have not been subjected to re-auction, and Therefore, the right of the petitioner for equal treatment assured under Article 14 of the Constitution has not been meted out to it (Form of Parnters). It is difficult to envisage discrimination when the law is given effect to. If the challenge is to the law on the ground that it discriminates then that could be examined. But, in the enforcement of the law if there has been discrimination, it cannot be complained of by one who admittedly stands disqualified by the law. Reliance iri

this behalf placed by Sri Narasimha Murthy, on the decision of the Supreme Court in Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others, is really not of much assistance to support the claim made by the petitioner. It was conceded there that the Nationalisation of certain routes for the exclusive operation of the State undertaking under Chapter-IV (A) of the M.V. Act had resulted in the discrimination of some others who had been permitted to operate on the very nationalised routes. That was stated to be on account of inadvertence or over-sight on the part of the Government agency. In that circumstance, the Supreme Court observed that denial of equal protection flowed from State action and had the direct impact on the fundamental rights of the petitioners therein. Therefore, the Supreme Court made what they described as the constructive approach by eliminating the discrimination by permitting the petitioners also to operate on those nationalised routes."

(85) In the third case referred to above, this Court dealt with the case of a student who failed to pass the examination held for the Xi standard to become eligible to study in the Xii standard claimed transfer certificate which would entitle him to get admission in Xii standard in some other institutions. His case was that in respect of some other students the management had issued transfer certificate to that effect. The management explained the circumstances under which the transfer certificate enabling the students to get admission in Xii standard in other schools and the management submitted that such a practice had been discontinued. His Lordship Mr. Justice R.C. Lahoti speaking for the Division Bench observed as under :-

"We have grave doubts if the respondents were justified in adopting the policy of issuing transfer certificates or giving promotions to higher class as an exception merely on "humanitarian consideration" inspired by the performance of the student not justifying promotion to higher class. Such policy has been discontinued. The petitioner has not been able to cite any instance where inspired by having failed, a student might have been promoted to higher class. We can not also approve the action of the respondent institution issuing transfer certificates entitling the students in two exceptional cases to admission in higher class in other institutions. We are not satisfied that grounds - on which respondent institution proceeded to work out exceptions, could have been valid grounds for justifying such exceptional approach. We have, Therefore, to see if the petitioner can be assisted by issuing a writ commanding the respondent institution to issue similar transfer certificate to the petitioner. Suffice it to refer to a Division Bench decision of this Court in the Chief Commissioner and Another v. Mrs. Kitty Pun, Air 1973 Delhi - where in it has been held that a denial of illegal favor cannot amount to discriminatory treatment violative of principle of equality Article 14 of the Constitution."

We may also refer to a recent decision of the Supreme Court in Madras Fertilizers Ltd. Vs. Assistant Collector of Central Excise, Madras V Division, Madras and Others, where in their Lordships have reiterated their own view in Coromandal

Fertilizers Ltd. v. Union of India and Others 1958 (1) Scr 523 as under -

"A wrong decision in favor of any particular party does not entitle any other party to claim the benefit on the basis of the wrong decision."

(86) In the 4th case referred to above, this Court dealt with a case where the petitioner claimed a plot for industrial purposes on concessional rates, when as per the statutory rules he was not entitled to the same. It was his case that persons similarly situated like him, who were also not entitled to get on concessional rates, the respondent-DDA had allotted plots on concessional rates, and Therefore, Dda cannot have any objection to allot a plot to him on concessional rates. Deciding the matter His Lordship Mr. Bhat observed as under:-

"On these pleadings, it is not possible for me to hold definitely that petitioner has been discriminated. Further, in case, a few individuals or individual units were wrongly favoured by the 1st respondent this Court cannot compel the 1st respondent to repeat the same wrong doing in favor of the petitioner by recourse to Article 14 of the Constitution of India. There cannot be a constitutional right to be illegally favoured only because, a few others were so favoured. Petitioner shall have to establish that under the relevant statutory provisions or under the law governing the allotment of industrial sites by the 1st, he is eligible for allotment at a concessional rate. The relevant principle is stated in Narain Das and Others Vs. The Improvement Trust, Amritsar and Another, -

"Equal laws have to be applied to all persons in the same situation and there must be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. Section 56 does not suffer from any vice offending Article 14 and indeed it was not so contended by Shri Gupte. What was contended by him was that while administering Section 56 there has been hostile discrimination against the appellants because lands under orchards belonging to persons similarly placed have been exempted whereas the appellants have been refused exemption. No doubt, equal protection can be denied as much by the administration of a law as by legislation In any event if the appellants have failed to bring their case within Section 56 of the Act then merely because some other party has erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not clothe the present appellants with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case."

(87) The learned Counsel then argued on the question relating to the scheme framed under the United Provinces Town Improvement Act, 1919 and the same being in existence has contended for by the petitioners. The learned Counsel submitted that no document has been filed to show about the existence of any scheme under that Act. As already noticed, the agreement between the Delhi Improvement Trust and party referred to in CW.4958/94 is of no help. Further, the learned Counsel submitted assuming that there was any scheme that cannot

be said to be in force after the coming into force of the Act in 1957. The learned Counsel brought to our notice the several provisions of the Acts.

(88) Rebutting the arguments on behalf of the petitioners u/s 60 of the Delhi Development Act, 1957, which has already been extracted above, the learned Counsel submitted what are the rights saved or specifically mentioned in the provisions itself and there can never be a vested right with reference to the procedure to be followed. He relied upon the following cases :-

1. [1971]3SCR815 . 2. AIR1985SC371 . 3. 1961 (2) All E R 721 730 . 4. [1991]3SCR912 . 5. (1980)ILLJ77SC . 6. Air 1955 N.U.C. 1122 . 7. (1964)ILLJ377SC . 8. [1965]1SCR323 . 9. .

(89) In view of the fact that the proposition of law is very clear, we feel that it is not necessary to refer to the facts in each of these cases.

(90) The learned Counsel asserted that when an area is specifically developed as a development area Dda comes into the picture on a reading of the provisions of D.D.A. Act and of M.C.D. Act, 1957.

(91) With reference to nazul lands, provisions are made under the D.D. Act in Sections 22 and 22A of the Act. According to the learned Counsel Nazul land does not ipso facto become a developed area. He referred to Section 2-E of the D.D. Act as to the definition of the developed area. Because a land is a zonal land the municipal functions and powers cannot be assumed by the DDA. Nazul land and developed area are two distinct things under the D.D.A. Act, 1957.

(92) About the argument that under the lease deed, which has already been extracted, permission is to be obtained from the Lesser namely Delhi Improvement Trust would not make M.C.D. Act inapplicable to the area. The obtaining permission from the Lesser is different from obtaining sanction from MCD. The learned Counsel specifically stated that the reliance placed by the petitioners upon Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, is of no avail to the petitioners.

(93) Meeting the argument on the ground of estoppel, the learned Counsel submitted and in my view rightly, there is no scope for the applicability on the principle of estoppel when the petitioners are guilty of violation of law.

(94) Controverting the argument on the point of legitimate expectations, the learned Counsel submitted that the doctrine of legitimate expectations cannot at all be pressed into service by the petitioners. The scope and ambit of doctrine of legitimate expectations has been clearly laid down by the Supreme Court in Union of India and others Vs. Hindustan Development Corpn. and others, .

(95) Yet another argument advanced by the petitioners that an undertaking is taken from the owners of the properties at the time of sanctioning of plans and it speaks of misuse charges and, Therefore, once there is an undertaking taken by the authorities they can only impose penalty for misuse charges and they are

precluded from taking any action from sealing or demolition. Learned Counsel submitted that a reading of the undertaking itself would expose the case of the petitioners. In the undertaking, it is clearly mentioned that the authorities free to take any action under law. The undertaking is as follows:- which expression shall mean and include all his/her heirs, executors, administrators legal representative and assigns do hereby under- take as under:-

2.I am the owner of House No._____a portion of which is under the tenancy of on a monthly rent of Rs._____. That the said house is a purely a residential house.

3.The House/a portion of house consisting of_____is being used by the_____for funning a_____which has been treated as a mis-use of the said premises by the Mcd as violation of Section 347 of Dmc Act. The Mcd has consented to recover the mis-use charges temporarily on year to year basis with the specific condition that I shall continue to pay one month's rent annually byway of penalty till such time the mis-use of the premises is removed. I fully understand this acceptance of the penalty by the Mcd, however, does not amount to the regularisation of the mis-use of the premises. I shall see that the mis-use of the property is removed as early as possible without any lapse on my part and I shall continue to pay the aforesaid penalty till the mis-use is completely removed.

4.The recovery of mis-use charge is only for violation of Section 347 of the Act and I am fully aware that it shall not confer any right with respect to any unauthorised construction existing in the premises and Mcd reserve its rights to launch any other proceedings under any other section of the Act, Bye-laws, rules and regulations enforced from time to time. It will further have not bearing against any action by Govt./ Semi-Govt. Autonomous bodies etc. under their respective rules and regulations.

5.This undertaking is binding and irrevocable. I undertake to abide by terms and conditions contained in these presents and further under take that the Mcd or any other appropriate authority shall have power to get the mis-use discontinued in such manner as they deem fit and proper.

In witness where of I the above named have affixed by hands on these present after understanding the contents thereof."

(96) Regarding the petition for impleadment of Mr. Rupinder Singh, we did not entertain the petition and, Therefore, it does not require any consideration,

(97) The learned Counsel while meeting the submission on behalf of the petitioners, with reference to the resolution dated 28th December, 1965, it was submitted that it has absolutely no relevance and that resolution cannot be a charter for a perpetual violation of the municipal laws.

(98) The argument about the comparison of some multi-storeyed commercial flats in some residential areas is not at all tenable. Because it would depend

upon the Master Plan and the Zonal Plans and also the nature of the development of the District Centres and the authorities had permitted those constructions in accordance with the Rules. If there is any building put up without the sanction and permission from the authorities it would be demolished. The learned Counsel submitted that it is for the municipal authorities keeping in view the public interest and for maintaining healthy environment to devise means for the performance of the plans. He referred to Vol. 82 American Jurisprudence 2nd Edition page 5711. He also referred to Vol. 82 American Jurisprudence page 431 and submitted that one of the established principles of law is that the legislative judgment of the zoning authorities should not be annulled by a Court on the sole ground that it is in disagreement with the wisdom of the judgment. So long there is a rational and justifiable basis for the law and it is within the parameters delineated by the constitution. The Court will not substitute its judgment for that of the experts in the field.

(99) One thing which is very clear is that the petitioners in the writ petitions are claiming rights through the owners who had approached the Civil Courts and failed to get interim orders against the orders passed by the Mcd for demolition. Another important fact about which there is no dispute and there cannot be any dispute is that the constructions made by the petitioners and the parties to the civil litigation were without proper sanction or permission from the authorities and they are in violation of the rules and regulations and bye-laws. Mr. P.N. Lekhi, learned Senior Counsel made a categorical statement, as we had already noticed, while arguing the matter, that he is not on the question of the constructions being unauthorised but he is focusing attention of the Court on the jurisdiction of the Mcd with reference to the area in which the buildings are situated to take action for the alleged violations of the municipal laws. Therefore, the factual matrix need not be considered any more to deal with the points of law raised by the learned Counsel for the parties. In C.W. 4545/94, the petitioner is Mr. Anil Kumar Khurana. The facts briefly are:- 27.9.1948 Delhi Improvement Trust granted 90 years lease to Smt. Vidya Wati in respect of 11/5-B Pusa Road (Road No. 34). 27.8.1952 Smt. Vidya Wati transferred lease-hold rights to S. Hardit Singh. 3.10.1953. S. Hardit Singh transferred the property to National Investment Trust Ltd. 12.12.1955. National Investment Trust Ltd. transferred leasehold rights and super-structure constructed to Mrs. Madhu Sudan Ltd. 15.4.1969. Mrs. Madhu Sudan Ltd. sold lease-hold rights to Mrs. Toshi Talwar. 4.5.1992 Mrs. Toshi Talwar by eight different registered sale deeds sold rights, titles and interest including the leasehold rights in the property to the following persons for a total consideration of Rs. 2.05 crores:-

1. Hemant Kumar S/o Sh. Krishan Kumar
2. Pawan Kumar S/o Sh. Gopal Chand
3. Kamal Kumar Taneja S/o Sh. R.C. Taneja
4. M/S.D.N. Taneja Huf
5. Smt. Saira Taneja w/o Sh. K.K. Taneja
6. Smt. Veena Taneja w/o Sh. D.N. Taneja
7. Ms. Anjali Rani d/o Sh. Devki Nandan
8. Ms. Anjali Rani d/o Sh. Devki

Nandan The petitioner filed CM.817/95 for the production of office order dated

11.1.1995 by Govt. of India and office order dated 12.1.1995 by MCD.

(100) CM.827/95 was filed for an amendment of the petition. Mr. Rupinder Singh sought to implead himself as a party on the ground of public interest litigation in CM.908/95, which was dismissed as withdrawn on 20th February 1995. Another CM-/95 was filed on 21st February 1995 for the production of Mislbundh Register by the Municipal Corporation of Delhi.

(101) The learned Counsel for the Mcd in his written arguments in Annexures A & B has given the details about the suits filed by the parties before us. In Annexure C, the report by the local Commissioner in suit No. 159/94 on the Original Side of this Court filed by Pramjit Kaur and others. All this report shows that the constructions have been made after ad-interim orders passed by this Court and in spite of public notice issued by the Mcd on 9.11.1994.

(102) We have carefully considered the facts and circumstances and have analysed the cases cited before us and we have also considered the relevant provisions under the D.D.A. Act and D.M.C. Act. The point put forth at the forefront is the want of jurisdiction on the part of Mcd to take action. The principal contention is that the lands concerned in these cases are nazul lands dealt with by the Delhi Improvement Trust. The successor-in-interest of the Delhi Improvement Trust is Delhi Development Authority and, Therefore, the municipal functions would vest with the Delhi Development Authority and if at all there is any violation the authority that could take action or issue notice to the owners is the authority under the D.D.A. Act and the Mcd has no jurisdiction to take any action in respect of the violations alleged. As stated above, the learned Counsel dealt with elaborately about the concept of Nazul land and stated that even the D.D.A. after the commencement of D.D. Act had maintained the distinction in the guidelines issued on land management under the Heading "Scope of Land Management by DDA". The same reads as follows:-

"Scope of Land Management of Dda -

1.10The lands dealt by Dda can be broadly categorised under the following heads:- Nazul Lands

(A)Old Nazul lands The Govt. of India placed various Nazul Estates at the disposal of the erstwhile Delhi Improvement Trust with effect from 1.4.1937 through the Nazul Agreement of March, 1937. These Nazul lands, popularly known as Old Nazul Estates, are now under the management of Delhi Development Authority as the successor body of Delhi Improvement Trust. These lands are managed as per provisions of the Nazul Agreement 1937 and Punjab Land Revenue Act, 1887. The receipts and expenditure relating to these Nazul Estates are being booked under a separate section of Account called "Nazul Account-1".

(B)Land transferred from the Land & Development Office- The Govt. of India, Ministry of Works and Housing transferred from the control of the Land &

Development Office to Dda certain nazul lands for management u/s 22(1) of the Delhi Development Act subject to the condition that the Authority shall not make or cause or permit to be made any construction on the said land and shall when required by the Central Govt. so to do, replace the said lands or any portion thereof, as may be so required, at the disposal of the Central Govt. These lands are treated as Nazul lands and the receipts and expenditure relating to the land is book under "Nazul Account-r.

(C)Lands of urbanised villages earlier vested in gaon-sabha: The Govt. of India, Ministry of Works & Housing transferred to the Authority u/s 22(1) of the Delhi Development Act, 1957 certain lands vested in Central Govt. on urbanisation of specified villages for the purpose of development and maintenance as green subject to the condition that the Dda shall not make or cause or permit to be made any construction on these lands and shall when required by the Central Govt. so to do, replace the said lands or any portion thereof, as may be so required, at the disposal of the Central Govt. These lands are treated as nazul land and the receipts and expenditure relating to these lands is booked under "Nazul Account-1". Nazul Lands These lands are acquired by Delhi Administration (Land & Bidg. Deptt.) through the Land Acquisition Collectors Delhi under the scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi framed by the Govt. of India, Ministry of Home Affairs, New Delhi in 1961. For this purpose, a Revolving Fund has been placed at the disposal of Delhi Admn. (Land & Bidg. Deptt.) out of which the cost of acquisition is met. The lands so acquired, amongst others, are placed at the disposal of the Delhi Development Authority u/s 22(1) of Delhi Development Act, 1957 for development and disposal. These lands are managed as per provisions of D.D. Act, 1957 and Delhi Development Authority (Disposal of Developed Nazul land) Rules, 1981. The receipts and expenditure on account of these lands are booked under a separate section and accounts called "Nazul Account-11".

Nazul Account-111 Lands These lands are placed at the disposal of the Dda by the Central Govt. for implementation of the Jhuggi Jhopari Removal Scheme being executed by the Authority on behalf of the Central Govt. The receipts and expenditure on account of these lands are booked under a separate section of accounts called "Nazul Account-111". These lands vest in the President and are given out only in his name on lease hold basis. General Development Lands These lands are required by the Dda out of General Development Accounts Funds as its own property. These lands also include the unutilised lands within the urbanisation limits of Delhi previously under the management of Ministry of Rehabilitation, Govt. of India purchased by the Authority on as is where is"" basis on payment of Rs.30 crores out of the General Development Account Fund. The receipts and expenditure on account of these lands are booked under a separate section of accounts called "General Development Account".

1.11The Authority considered and approved guidelines on principles/ procedures governing transfer of amenities and services from Dda to Mcd in development

areas u/s 36 of the Act. As per these guidelines, transfer of amenities and civic services to Mcd shall not effect DDA's role in management, control and disposal of Nazul lands. Training of revenue staff and handling of litigation.

1.12 In view of the difficulties faced by the Authority in getting the trained revenue staff. Authority decided to form its own cadre of revenue staff and approved syllabus for training of various categories of revenue staff keeping in view requirement of Authority, land laws applicable in Delhi and to increase general knowledge of the staff to equip them to shoulder their responsibility efficiently.

1.13 There are large number of legal cases pending in various Courts pertaining to Lands Deptt. Proper contesting of these cases form an integral part of the duties of officers posted in the Lands Deptt. Detailed instructions for streamlining the handling of litigation work in various Deptts. of Dda were issued by Vc, Dda in September, 1990. The procedure for conducting Court cases in Lands Deptt. was further rationalised in the meeting taken by Commissioner (L) on 19th September, 1990."

Then learned Counsel referred to office order dated 23.1.1995 issued by Delhi Development Authority, Office of Commissioner (LD) with reference to the execution of agreements for renewal in respect of Nazul lands. This was given to us at the time of arguments on 21st February, 1995. This deals with the guidelines relating to the renewal of lease deeds with reference to Nazul lands and it does not speak of the municipal functions. A resolution dated 20.10.1986 on transfer of amenities and civic services from Dda to Mcd u/s 36 of the D.D. Act, 1957. The resolution reads as follows:-

"The Authority considered the item at length and resolved that the agreement regarding the principles and procedures governing the transfer of services and amenities from Dda to Mcd in development areas and the time-frame as contained in Appendix "C" to item No. 10 of the agenda be approved. The Authority further resolved that the Dda staff as is working in these colonies shall stand transferred to the Mcd and these colonies shall not include any of the slum and Jj Colonies or the Urban Villages. It further resolved that the payment "of the deficiency charges will be made only after the approval of the Authority."

This has absolutely no bearing on the question at issue. For administrative convenience matters are considered by the authorities then and there depending upon the exigencies and that cannot confer any right on the petitioners. Section 2 (e) of the D.D.A. Act, 1957 defines development area. The definition reads as follows:-

"2(E)- "development area" means any area declared to be a development area under sub-section (1) of Section 12."

A reading of the provisions of the Delhi Development Act, with particular reference to Sections 12, 22 and 22A, would make it clear that the contention on

behalf of the petitioners is not at all acceptable in law. The petitioners have completely misunderstood the scope of the jurisdiction and the functions of the Municipal Authorities with reference to the buildings situated within the area of the MCD. It is clear from the reading of the provisions of the Delhi Municipal Corporation Act, the only authority relating to the construction of buildings within its area is the Municipal Corporation of Delhi and the contention that Mcd has no jurisdiction is not at all acceptable. The various authorities relied on by the petitioners do not touch on the question at issue. Therefore, there is absolutely no difficulty in accepting the submissions made on behalf of the Mcd in this behalf. Another argument that Dda did not file any independent counter, even though it adopted the counter filed by the Mcd cannot avail the petitioners.

(103) Mr. Shanti Bhushan, learned Senior Counsel submitted, inter-alia, that this Court can direct the authorities to frame a scheme for the purpose of regularising the unauthorised constructions by imposing such terms and conditions that may be expedient in this behalf. He produced a Bill No. 28/91, presented before the Karnataka Legislative Council which reads the Karnataka Regularising of Unauthorised Construction in Urban Areas Bill, 1991. The document produced mentions Bill as passed by the Legislative Assembly. When a question was put by my Lord, the Hon"ble Mr. Justice Y.K. Sabharwal, whether it has become law, the learned Senior Counsel replied stating that he was not aware of it. The document was produced on 21st February, 1995 at the time of arguments. We do not see any relevancy at all for us to consider in the light of the law and the facts and circumstances of this case. The law is clear governing the construction of buildings in the area and, Therefore, the situation does not call for framing of any scheme by this Court.

(104) We have no hesitation in rejecting the arguments on the question of the scope of the resolution dated 28.12.1965 and the ground of estoppel and legitimate expectations.

(105) The judgment under appeals, rendered by the learned Single Judge, with great respect, is correct and we find no reasons to interfere with it.

(106) For all these reasons, all the writ petitions are dismissed and the appeals against the order of the learned Single Judge and C.M.(M) are also dismissed. It is made clear that all interim orders pending the writ petitions and appeals stand vacated. This judgment disposes of the other connected writ petitions also.

(107) MY brother Justice Sabharwal was so kind to send me the draft of the judgment prepared by him. I read it with pleasure for its brevity and beauty besides being very instructive. Before I could bestow any thought on the judgment, I marveled at the way in which the learned Judge could capsule the entire arguments. With great respect and admiration I allowed myself to be enticed by the splendor of the language. With due deference and respect I concur my Brother in all respects.