

**(2004) 07 AHC CK 0042**

**In the Allahabad High Court**

**Case No : Writ Petition No. 1133 (M/B) of 2002**

|                                                 |            |
|-------------------------------------------------|------------|
| Ansal Housing and Construction Ltd. and Another | APPELLANT  |
| Vs                                              |            |
| State of U.P. and Others                        | RESPONDENT |

**Date of Decision : 29-07-2004**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 141  
Uttar Pradesh Municipal Corporation Act, 1959 — Section 133, 133(2), 133(3)

**Citation : AIR 2005 All 23**

**Hon'ble Judges : R.K. Chatterji, J; Jagdish Bhalla, J**

**Bench : Division Bench**

**Advocate : Waseeq Uddin Ahmed, for the Appellant; Ashok Kumar Srivastava, Virendra Singh and R.K. Singh, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

Jagdish Bhalla, J.—The main crux of the controversy, which is involved in the present writ petition is whether the decision given by the Hon''ble Supreme Court in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, would be applicable in the present case and affect the resolution dated 12-7-1993 so far as it relates to the petitioner and whether the order dated 9th January, 2002 passed by the respondent No. 3 is correct and justified by means of which the Agreement dated 16-11-1993 entered into between the petitioners and the respondents has been declared void-ab-initio and non est in view of pronouncement of the judgment and order dated 23-8-1994 passed by this Court in Writ Petition No. 89 (MB) of 1994, Amit Puri v. Nagar Maha Palika, Lucknow and in other connected writ petitions which was latter approved by the Hon''ble Supreme Court in M. I. Builders (P) Ltd. case (supra).

2. Before referring the actual controversy involved in the present matter, we deem it proper to mention, in short, the facts of the M. I. Builders" case (supra) decided by Hon''ble Supreme Court. On 6-7-1993, a notice was issued for meeting of the Mahapalika for 12-7-1993 with the following agenda :-

"1. Discussions on the accepted proposals passed by the Executive Committee on 27-5-1993 and 27-6-1993.

2. Discussions on the various proposals.

3. Other subjects, subject to the permission of Presiding Officer.

3. On 12-7-1993, the following resolution constituting the High Power Committee for disposal of the properties of the Mahapalika was passed under the aforesaid Agenda, Item No. 3 :

"The full details, maps conditions of allotment in respect of Shri Rafl Ahmad Kidwai Nagar Yojna and Rajajipuram Vistar Yojna may be prepared at the earliest. And for this act a committee may be constituted under the Chairmanship of the Nagar Pramukh in which two Sabhasad and three officers be appointed. For nominating the members, the Nagar Pramukh may be authorised. The powers of disposing of the entire land, allotment and transfer in respect of both the schemes shall be vested in the above Committee.

It was also decided that the Committee constituted under the Chairman of the Nagar Pramukh shall have the rights of disposing of all the properties, allotment, transfer etc. situated within the limits of the Nagar Mahapalika and the above Committee shall have the right to give the final shape to the conditions of allotment and agreement etc. In this manner the sub-committee is authorised to exercise the aforementioned rights of the Mahapalika conditions of allotment and agreement etc. In this manner this sub committee is authorised to exercise the aforementioned rights of the Mahapalika."

4. On 13-10-1993, the Meeting of the High Power Committee, which was constituted under the resolution, referred to above, was to be held but the same was adjourned for 19-10-1993, On 19-10-1993, the meeting of the High Power Committee was held which was preSided over by Nagar Pramukh as Chairman. There was discussion regarding construction of the underground air conditioned Palika Bazaar at Aminabad Jhandawala Park on the lines of Palika Bazaar in New Delhi. The draft of the contract to be entered into between the Mahapalika and M.I. Builders was approved. The minutes ended with the recording as under :

"Amended and final draft of the contract was read by the advocate before the Committee. On this, the opinion of the members was asked for by the Chairman on which all the members were unanimous and that all the members after discussing over the suggestions and conditions set out by the Mahapalika advocate took the decision that the prescribed project may be got executed by M.I. Builders Pvt. Ltd. and the Mukhya Nagar Adhikari should be authorised for conducting all forthcoming actions and formalities."

5. In view of the directions of the High Power Committee, the matter was placed before the Executive Committee on 20-10- 1993 and the following resolution (resolution No, 85) was passed :

"As per the decision taken in the meeting dated 12-7-1993 of the Mahapalika subcommittee constituted under the Chairmanship of the Hon"ble Nagar Pramukh was entrusted with the powers of developing, leasing and to transfer the immovable property of the Mahapalika. In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking In Aminabad submitted the proposal of the Hon"ble Members, namely, Kalraj Misra (President Bhartiya Janata Party, U.P.) and Shri Ejaz Rizvi, Ex. Minister for the construction of an air conditioned Palika Bazaar and parking place in Jhandewala Park (Aminabad Park) on the pattern of Delhi Bazaar, with a parking place for about 1000 vehicles through M/s. M.I. Builders Pvt. Ltd. presented before the Executive Committee for information which was welcomed by. all and the proposal was approved."

6. Later on. the matter was placed before the Mahapalika in its meeting 21-10-1993"and the following minutes were recorded."

"In view of the decision taken by the General House of the Mahapalika dated 12-7- 1993, a sub-committee under the chairmanship of the Mayor was entrusted to transfer, to develop and to give on lease immovable properties of the Mahapalika . In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking in Aminabad submitted the proposal of Shri Kalraj Misra (President), Bhartiya Janta Party, U.P. and Shri Ejaz Rizvi (Ex. Minister) for construction of an air conditioned Palika Bazaar and parking place in Jhandewala Park (Aminabad Park) on the pattern of Delhi (air conditioned) Palika Bazaar and a parking in which there should be a provision for parking of about 1000 vehicles through M.I. Builders Pvt. Ltd. presented before the House for information which was welcomed and a unanimous resolution was passed and the Nagar Pramukh was congratulated for this important work."

7. Ultimately, the agreement dated 4- 4-11-1993 was entered into between the Mahapalika and M.I. Builders Pvt. Ltd.

8. The decision of Lucknow Nagar Mahapalika permitting the M.I. Builders Pvt. Ltd. to construct an underground shopping complex in Jhandewala Park at Aminabad market, Lucknow was challenged in three writ petitions before this Court and Division Bench of this Court by a judgment and order dated 23-8-1994, held that the decision of the Nagar Mahapalika was illegal, arbitrary and unconstitutional and as such, this Court quashed the relevant resolution of the Mahapalika including the agreement dated 4-11-1993 entered into between the Mahapalika and M.I. Builders Pvt. Ltd.

9. M.I. Builders Pvt. Ltd. challenged the judgment and order dated 23-8-1994 before the Hon"ble Supreme Court in Civil Appeal No. 9323-25. The Hon"ble Supreme Court while dismissing the appeal with costs held in paragraph 53 of the report as under :-

"If we now refer to the provisions of law relating to notice of meetings and business of the Mahapalika and its committees it is apparent that these

provisions were not adhered to. There is no authority with the Mahapalika to constitute a High Power Committee and to delegate its functions to that High Power Committee. There was no agenda at any time in any of the meetings of the Mahapalika for consideration of the underground shopping complex. There were no proposals, no documents, no plan, no study, no project report or feasibility report on the basis of which the Mahapalika could have given a green signal for construction of the underground shopping complex. There was no discussion and no informed decision. The Mahapalika completely abdicated its functions. The Mahapalika delegated its functions to the High Power Committee in contravention of the Act. Constitution of the High Power Committee itself was wholly illegal. The High Power Committee took the decision to hand over the park to the builder for construction of underground shopping complex and also approved the terms of the agreement dated 4-11-1993. The decision of the High Power Committee was put before the Executive Committee and the General Body of the Mahapalika for the purpose of "information" and both these bodies stamped their approval. As noted above there was no agenda for consideration of these resolutions of the Executive Committee of the Mahapalika. The Corporators had no time to apply their minds. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, Subject to the Permission of Presiding Officer". Section 105 of the Act protects and act done or proceeding taken on account of any defect of irregularity in procedure affecting the substance. In the present case it is not mere irregularity or defect in the procedure but the whole procedure is in clear breach of Sections 91 and 119 of the Act which are mandatory."

10. In paragraph 54 of the report it was further observed by the Hon"ble Supreme Court that;

"The law mandates that not only the notice of the date and the time of the meeting but the notice of the business to be transacted at such meeting should be given at least 4 clear days before the date of the meeting for the Mahapalika and 3 days for the Executive Committee. When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee,"

11. Lastly, in paragraph 73 of the report the Hon"ble Supreme Court has held that no consideration should be shown to the builder or any other person where construction is unauthorised and further the judicial discretion cannot be guided by expediency. Paragraph 73 of the report reads as under:-

"The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous, decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dictum is now almost bordering the rule of law.

Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way, out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

12. In nutshell, the Hon"ble Supreme Court expressed the view that the Mahapalika has no power or authority to constitute a High Power Committee and to delegate its functions to that High Power Committee. There were no details regarding Agenda Item 3. There was no agenda for consideration of these resolutions of the Executive Committee of the Mahapalika. The Corporators had no time to apply their minds, such an important matter where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, subject to the Permission of the Presiding Officer," There was not only irregularity or defect in the procedure but the whole; procedure adopted by the Mahapalika was in clear breach of Sections 91 and 119 of the Act, which are mandatory.

13. Before proceeding further, we would like to discuss in short, the relevant facts of the present case.

14. The petitioner No. 1 is said to be Public Limited Company having its registered office at UGF Indira Prakash, 21, Barakhamba Road, New Delhi and is engaged in Real Estate Development in the country. In para 15 of the writ petition the petitioners have given detail of the various projects executed by them in the State of U.P. The petitioner No. 2 is the Assistant General Manager (Legal) of petitioner No. 1.

15. According to the petitioners, the Executive Committee of the Lucknow Nagar Nigarn passed a resolution on 27-6-1993, which has been detailed in paragraph 16 of the writ petition. The relevant resolution as detailed in paragraph 16 of the writ petition is being reproduced hereinbelow.

"(1) That portion of the sludge farm land which has not yet been transferred to Lucknow Development Authority be not transferred to L.D.A. and the respondent No. 2 should construct there a residential colony, which should be named as Rafi Ahmed Kidwal Nagar.

A residential colony be constructed by the respondent No. 2 on the 80 bighas of land on Ring Road juxtaposed to Rajaji Puram."

16. Later on, on 6-7-1993, an agenda for the meeting scheduled to be held on 12-7-1993 was issued for consideration of the aforesaid resolution dated 27-6-1993, passed by the Executive Committee, Lucknow Nagar Nigam in addition to other items mentioned in the notice dated 6-7-1993. On 12-7-1993, the meeting of the Mahapalika was held and following resolution was also passed :-

"The full details, maps, conditions of allotment in respect of Shri Rafi Ahmad Kidwal Nagar Yojna and Rajajipuram Vistar Yojna may be prepared at the earliest. And for this act a committee may be constituted under the chairmanship of the Nagar Pramukh in which two Hon"ble Sabhasad and three officers be appointed. For nominating the members of Nagar Pramukh may be authorised. The powers of disposing of entire land, allotment and transfer in respect of both the schemes shall be vested in the above Committee.

It was also decided that the Committee constituted under the chairmanship of the Nagar Pramukh shall have the rights of disposing of all the properties, allotment, transfer etc. situated within the limits of Nagar Mahapalika and the above committee shall have the right to give the final shape to the conditions of allotment and agreement etc. In this manner this sub-committee is authorised to exercise the aforementioned rights of the Mahapalika."

17. After the series of correspondence between the Mahapalika, Lucknow Development Authority and the petitioner, an Agreement (Annexure-(sic) to the writ petition) was entered between the petitioner and the Mahapalika respondent No. 2 whereby 70 acres of land was allotted to the petitioner on licence for development and construction of houses/plots in Rafi Ahmed Kidwai Nagar at Gomti Nagar. In pursuance of the agreement, the petitioner deposited 5% of the total consideration i.e. Rs. 42,49,350/with the Mahapalika.

18. On 1-2-1994, the petitioner wrote a letter to the opposite party No. 2 mentioning therein that the agreement executed on 16-11-1993 between the parties does not carry the Seal as per provisions of Section 133 of the Act. The petitioner wrote another letter (Annexure 17) requesting the Mahapalika to hand over the possession of the land within 30 days as provided in the agreement. On 7-5-1994, land measuring about 31 bighas of the land was handed over to the petitioner by the Mahapalika. By the letter dated 21-5-1994, the Mahapalika asked the petitioner to deposit Rs. 2,07,107/ - towards Mulba charges regarding the demolition of the boundary wall etc. and in response thereof, the petitioner by a Demand Draft dated 13-6-1994 deposited the aforesaid charges. In the meantime, the Army evicted all the staff of the petitioner No. 1 and took physical possession of the land, claiming themselves to be the owner of the land. The details in this, regard have been narrated from paragraph 47 onwards in the writ petition. The petitioner on 1-12-1998 and 5-4-1999 handing over of the possession of the land comprised in the Yojna and to assist and to intervene in resolving the dispute about the forceful occupation of the land by the Army. Later on, the Army after conducting a survey of the land, came to the conclusion that

about 60% of area allotted by the respondent No. 2 to the petitioner did not fall within the Rifle Range and thus vacated the same. Consequently," the petitioner vide letter dated 31-5-2000 (Annexure 60) addressed to respondent No. 2, tendered an amount of Rs. 75 lacks by Demand Draft dated 31 -5-2000 being 15% consideration in respect of the land vacated by the Army. However, the Mahapalika returned the same by the letter dated 6-6-2000. Aggrieved by this action, the petitioner made a representation dated 23-6-2000 to the Mahapalika and also made representation dated 24-7-2000 (Annexure 63) to the Minister for urban Development, Government of U. P.

19. On account of inaction on the part of the respondents, the petitioner filed a writ petition No. 60777/(MB) of 2000 before this Hon"ble Court praying inter alia to quash the show cause notice dated 9-4-1997 and to direct the respondents to hand over the vacant physical possession of the land comprised in Yojna. A Division Bench of this Court passed a detailed order dated 18-12-2001 in writ petition No. 6077 of 2000 (MB), which reads as under :-

"Learned counsel for the petitioners brought to our notice that on the last occasion a statement was made on behalf of re spondent-Nagar Nigara Lucknow that orders have been passed in compliance with the directions issued on 24-5-2001 by the State Government. However, today learned Chief Standing Counsel and Shri Umeshwar Prasad learned counsel for the Nagar Nigam have clarified the position to the extent that the Nagar Nigam has referred the matter back to the State Government by letter dated 14-12-2001. While considering the letter dated 14-12-2001 the State Government has reiterated its stand and informed the Nagar Nigam that a decision has already been taken by the State Government by its order dt. 24-5-2001 and has called upon Nagar Nigam to decide the matter before 18-12-2001 when the case is listed. Shri Umeshwar Prasad learned counsel for the Nagar. Nigam informs that this letter is yet to be received by the Nagar Nigam. It may be in transit as there were two days holiday in the Nagar Nigam. The learned counsel for the petitioner submits that the petitioner had entered into an agreement for construction with the Nagar Nigam and had remitted certain amount of money as well. Subsequently a dispute was raised by the Indian Army authorities with regard to the disputed plot, therefore, according to the petitioners the land in dispute was not handed over to the petitioners for construction purposes. It has also been contended by the learned counsel for the petitioners that the agreement still subsists and they be allowed to go with the construction work over the disputed land and it has also been brought to the knowledge of this Court that the order passed by the State Government is statutory in nature because it has been passed u/s 533 of the U.P. Municipal Corporation Adhiniyam 1959 and under the provisions the State has directed the Nagar Nigam by order dated 24-5-2001 calling upon Nagar Nigam which is an Autonomous Body to act upon and decide the representation while taking decision on the seven issues referred to in the order dated 24-5-2001. From a perusal of the said order, it appears that the signature and the common seal were not affixed by the Nagar Nigam and further whether after allotment,

agreement and remittance of first instalment and further before the Army could take possession over the plot in dispute, the Representation of the petitioners was decided. Similarly there are few other points which have been pointed out by the learned counsel for the petitioners and which are clearly indicated in the order dated 24-5-2001.

Learned counsel for the petitioner submits that since the dispute with regard to the Army has been finalised in the earlier part of 2001, accordingly they be allowed to start their construction work and be also allowed to deposit the rest of the money.

Shri Umeshwar Prasad learned counsel for the Nagar Nigam submits that in the light of the statement made by the learned Chief Standing Counsel, a photostat copy of the letter dated 14-12-2001 has been handed over to him, the Nagar Nigam will take necessary action to dispute of the Representation as directed by the State Government.

Let the Representation be decided within three weeks from today and no more, although the State had allowed only four days time to the Nagar Nigam. After considering the matter as directed by the State Government, the Nagar Nigam shall file an affidavit bringing on record the orders passed by the Nagar Nigam.

List this case on 14-1-2002 within first five cases. Counsel for the Nagar Nigam is further directed to produce the relevant record on the date fixed.

Sd/- J. Bhalla, J.

Sd/- Imtiyaz Murtuza, J.

18-12-2001."

20. By the order dated 9-1-2002, the Mukhya Nagar Adhikari (respondent No. 3) rejected the representations of the petitioners dated 10-1-2001 and 25-1-2001 and further declared the agreement dated 16-11-1993 entered into between the petitioner No. 1 and respondent No. 2 void ab initio, hence this writ petition.

21. Learned Counsel for the petitioners has vehemently argued that the Nagar Nigam has palpably and grievously erred in confusing the case of the petitioners with that of M.I. Builders case as the judgment in M.I. Builders Pvt. Ltd. case is entirely contextual to the facts of that case and no sustenance can be drawn from the said judgment for the purpose of dealing with the facts of the petitioner's case. The respondent No. 3 has incorrectly foisted the said judgment upon the petitioners and declared the Agreement dated 16-11-1993 null and void. Learned Counsel for the petitioner has also contended that the impugned order dated 9-1-2002 (Annexure 1 of the writ petition) is non est, arbitrary and without jurisdiction apart from being contrary to the provisions of U.P. Municipal Act, 1959.

22. It has also been pointed out by the counsel appearing for the petitioner that Rail Ahmad Kidwai Nagar Yojna had come into existence much before the

constitution of High Power Committee. Further, the Nagar Nigam had entered into an agreement with another construction company, namely, Eldeco as such, terminating the agreement of the petitioner is discriminatory and violative of Arts. 14 and 19(1)(g) of the Constitution.

23. Learned Counsel for the petitioner has placed before us following chart to point the distinguishing features of the petitioners' case with that of M.I. Builders and contended that in view of the distinguishing features, the opposite parties have erred in declaring the Agreement dated 16-11-1993 entered into between the petitioner and the Nagar Mahapalika, to be void and illegal. According to him, by no stretch of imagination, M.I. Builder's case can be applied in the case of the petitioner ;

SI. No. ANSALS [PETITIONER] M. I. BUILDERS (decided by Hon. Supreme Court)

1. The project involves construction of a housing colony in a Sullage farm which historical Jhandewalan Park which has been abandoned and is a public nuisance and therefore, in public interest. and not against any act of the legislature. 2. The project is consistent with the Master Plan where the use of the land is residential. 3. In this case, Gomti Nagar Residential Colony had already come up in adjacent area and Sullage farm has been selected proposals, no documents no plan, made by the executive committee in its meeting study, no project report or feasibility report dated 27-6-1993 for constructing Rafi Ahmed Kidwai Nagar Colony and the Ex-ground shopping complex could be submitted by the executive Committee had submitted specific proposal to the Nagar Nigam, 4. In the agenda, there was a specific issue for considering the proposals submitted by the executive Committee and specific issue of underground shop therefore, the project of Rafi Ahmed Kidwai Nagar Colony was put up for consideration in the meeting dated 12-7-1993. 5. The resolution dated 12-7-93, after full consideration passed the Rafi Ahmed Kidwai Nagar Colony proposed by the Executive Committee. 6. In this case Nagar Nigam, in the light of government policy to involve reputed private builders enlisted three reputed builders viz.; Unitech, Ansals and Eldeco who had already been selected after tenders by the LDA and who had done prestigious works in Lucknow under LDA. All three were invited for negotiations and Ansals were allotted land. Subsequently, Eldeco were also given land. 7. In the case of Ansals no violation of doctrine of public interest is involved. In this case destruction of Park in doctrine of public interest is involved. Rather public interest is enforced by impost as expounded in spanning housing scheme. case M. C. Mehta v. Kamal Nath. 8. The agreement fixes a total consideration of more than Rs. 10 crores. Submissions of Bank Guarantee amounting to

Rs. 25 Lacs and interest is to be paid ? 18% per annum in case of default in payments. So Nagar Nigam gains substantially and the builder had to get land vacated from encroachers and defence department. There is no run away profit.

24. In an attempt to bring the present matter out of the periphery of M.I. Builder's case, learned Counsel for the petitioner has relied upon The Regional Manager and Another Vs. Pawan Kumar Dubey, H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , Prakash Chandra Pathak Vs. State of Uttar Pradesh, Shiva Shankar Pandey and Others Vs. State of Bihar,

25. In Prakash Chand Pathak, the Hon''ble Supreme Court was deciding the criminal appeal preferred by the appellant against the judgment convicting him for the double murder of this mother and infant son. The case was of circumstantial evidence and as such the Supreme Court while dismissing the appeal observed in paragraph 8 of the report (which has been relied upon by the learned Counsel for the petitioner) as under :-

"It is enough to say that decisions even of the highest Court on questions which are essential questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts. The general principles governing appreciation of circumstantial evidence are well established and beyond doubt of controversy. The more difficult question is one of applying those principles to the facts and circumstances of a particular case coming before the Court. That question has to be determined by the Court as and when it arises with reference to the particular facts and circumstances of that individual case. It is no use, therefore, appealing to precedents in such matters. No case on facts can be on all fours with those of another."

26. In Scindia's case the Hon''ble Supreme Court was whether the erstwhile rulers were entitled to their respective privy purses and persons rights and privileges which they were getting under the provisions of the Covenants and Merger Agreements. The Hon''ble Supreme Court while answering in affirmative observed in paragraph 138 as under :-

"It is difficult to regard a word, a clause or a sentence occurring in a judgment, of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

27. The Hon''ble Supreme Court while deciding criminal appeal in Krishna Mochi and Others Vs. State of Bihar, observed in paragraph 50 that "there is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. It is moreso in a case where conclusions relate to appreciation of

evidence in a criminal trial". In Delhi Administration (supra) the emphasis was laid on the facts that the High Courts and all other courts in the country were no doubt ordained to follow and apply the law declared by the Supreme Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and apply it appropriately, to the cases before them. In Shiv Shanker Pandey's case, on which the petitioner has placed reliance, the Hon'ble Supreme Court admitted that though the legal position is well settled, in its actual application to the facts of a given case, difficulties do arise. It is not an easy task to draw a parallel between two cases. The presence or absence of even a single material fact or circumstance may make a world of difference in reaching the ultimate conclusion.

28. Learned counsel appearing for Nagar Mahapalika, contended that the present writ petition is not maintainable as on the same set of facts, the petitioner has filed writ petition No. 6077 (MB) of 2000 which was pending at the relevant time when the present writ petition No. 1133 (MB) of 2002 was filed before this Court and further the relief claimed in both the writ petitions is for the implementation/enforcement of the agreement dated 16-11-1993. The other reliefs in the said writ petition are ancillary or incidental to the main relief. The writ petition No. 6077 (MB) of 2000 was got dismissed as infructuous by an order dated 12-12-2002.

29. According to learned counsel for the Nagar Mahapalika, by getting the writ petition No. 6077 (MB) of 2000 dismissed as infructuous, the petitioners, have waived/ abandoned their alleged rights and have accepted that enforcement of agreement dated 16-11-1993 from this Court could not be fruitful for them. Elaborating further, learned counsel contended that no fresh cause of action had actually accrued to the petitioners as the order dated 9-1-2002 was passed in compliance of the interim direction of this Court dated 15-12-2000 and 18-12-2001. In case the petitioners wanted to bring that very order on record, they could have easily done it by filing an application in writ petition No. 6077 (MB) of 2000 as at the time of institution of present writ petition the first writ petition, referred to above was pending. As regard the contention of the petitioner that the impugned order dated 9-1-2002 is without jurisdiction, learned Counsel for Nagar Nigam submitted that all the representations made by the petitioners to the Nagar Nigam were addressed to the Mukhya Nagar Adhikari and the direction of this Court was to decide the representation. It is in this background that the order dated 9-1-2002, impugned in the present writ petition has been passed, and thus it is wholly incorrect to say that the order is without jurisdiction. Further the provisions of Section 132(6) of the Municipal Corporation Act, as alleged by the petitioners, are not applicable in the present case.

30. Learned counsel for the Nagar Nigam next submitted that the impugned order dated 9-1-2002 has been passed taking into consideration the facts of the present case as well the facts in the case of M.I. Builder and the proposition of law as laid down by the Hon'ble Supreme Court in M.I. Builder's case (supra).

According to him, item No. 3 mentioned in the agenda of the meeting dated 12-7-1993, of which reference has been given by the petitioner, was the subject matter before the Hon'ble Supreme Court in M.I. Builders case. The said agenda is the seed which gave birth to the alleged agreement dated 16-11-1993 in case of the petitioner and to the agreement dated 4-11-1993 in the case of M.I. Builders. The only difference between the two cases can be said to be the date of execution of the Agreement, as mentioned above.

31. Learned counsel for the Nagar Nigam argued with vehemence that the present case is squarely covered by the decision laid down by the Hon'ble Supreme Court in M.I. Builders case, reported in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, as in both the cases, the agreements were executed in violation of statutory provisions. In M.I. Builders case the agreement executed did not have the common seal and there was no signature of the Sabhasad. Similarly, in the present case, the agreement executed on 6-11-1993 did not have the common seal of the Mahapalika and there was no signature of the Sabhasad as required u/s 133 (2) and (3) of the Act. Further, both the agreements had bloomed from the common seed i.e. the resolution dated 12-7-1993 by which a High Power Committee was constituted and the decision was taken for execution of the agreement in favour of M.I. Builders and the petitioners. Further, the resolutions in both the cases were same and statutory provisions were violated while entering into the Agreement as such, there is no illegality or infirmity in the impugned order dated 9-1-2002 which has been passed after taking into consideration the proposition laid down by the Hon'ble Supreme Court in M.I. Builders case (supra).

32. Arguing further, learned counsel for the Nagar Nigam stated that writ is not the appropriate forum as seriously disputed questions or real claims of the parties with regard to breach of contract, are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising prerogative of issuing writs. Proceedings under Article 226 are summary proceedings and the exceptional powers of the Court are invoked in extraordinary cases. A writ is not the remedy for enforcing contractual obligations, (cases relied : Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., Learned counsel for the respondents has also relied upon Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, wherein the Hon'ble Apex Court has held that an agreement not enforceable in law is void.

33. Now, we would like to examine in the present controversy in the backdrop of oft quoted M.I. Builders case.

34. In M.I. Builders case, the Agreement dated 4-11-1993 came to be executed between the Mahapalika and the builder after passing of several resolutions by the Nagar Nigam. The proceedings started with the notice on 6-7-1993 with the agenda quoted in preceding paragraphs. The item No. 1 of the agenda was

regarding discussions on the accepted proposals passed by the Executive Committee on 27-5-1993 and 27-6-1993. A perusal of the proposal passed on 27-6-1993 indicates that the Executive Committee passed a resolution (item No. 1 Ga) that the land of sullage farm which has not been transferred to Lucknow Development Authority, shall not be transferred and a Colony shall be developed by the Nagar Mahapalika, name of which will be "Raft Ahmad Kidwai Nagar". On 12-7-1993, the Nagar Mahapalika in Its meeting resolved for constitution of the High Power Committee for disposal of the properties of the Mahapalika under the agenda No. 3. The resolution dated 12-7-1993 has been reproduced in paragraph 27 of the judgment of M.I. Builder's case. The aforesaid facts clearly establish that the agenda dated 12-7-1993, of which reference has been made by the petitioner, was the subject matter before the Hon''ble Supreme Court in M.I. Builder's case.

35. A perusal of paragraph 28 of the report reveals that the High Power Committee so constituted under the aforesaid resolution dated 12-7-1993 was held on 13-10- 1993 in respect of M.I. Builders Pvt. Ltd. Similarly, In respect of Rafi Ahmad Qidwai Nagar colony, the meeting of the High Power Committee was held on same day i.e. 13- 10-1993. On 19-10-1993. the meeting of the Executive Committee under the Chairmanship of Sri Akhilesh Das. took place in which the proposal of the High Power Committee for construction of underground air conditioned market at Jhandehvala Park was approved. In the same very meeting dated 19- 10-1993, the recommendation of the High Power Committee for development of Rafi Ahmad Kidwai Nagar was also approved. It may be mentioned that both the matters i.e. regarding construction of underground market at Jhandewala Park and development of Raff Ahmad Nagar Colony by the petitioners were approved by the Executive Committee on 20-10-1993 by a common resolution No. 85 reproduced at page 3. Thereafter, the matter was placed before the General House of Nagar Mahapalika on 21 -10-1993 and the minutes in respect of M.I. Builder have been quoted In paragraph 30 of the judgment. In respect of Rafi Ahmad Kidwai Nagar a unanimous resolution was passed with the condition that any amount received in connection with the Kidwai Nagar shall be deposited in a special account, which shall be utilized only for the developmental work of the City. Consequent to the said resolution, Mukhya Nagar Adhikari wrote a letter dated 29-10-1993 to the petitioner company. Along with this letter a draft agreement was also sent. Thereafter an agreement dated 16-11- 1993 was entered into between the Nagar Mahapalika and the respondent No. 2. a copy whereof has been enclosed as Annexure 14 to the writ petition. On the other hand in respect of the M.I. Builders the agreement was entered on 4-11-1993 in pursuance of the resolution dated 21-10-1993.

36. In the case of M.I. Builders, the Hon''ble Supreme Court found that the agreement dated 4-11-1993 has not been executed as required u/s 133 of the Act. There was no common seal affixed on the agreement. The Hon''ble Supreme Court following its earlier view taken in Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee, held that the agreement dated 4-11-1993 was not a

valid contract and not binding on the Mahapalika. Admittedly, in the present matter the agreement entered into between the petitioner and Nagar Nigam did not bear the common seal and the signature of the Sabhasad as provided under law and as such the agreement was in contravention of the provisions of Section 133 of the Act which requires the common seal of the Mahapalika to be affixed on every contract. Further, the common seal is to be affixed only in the presence of the Corporator, who shall attach his signature to the contract in token that the same was sealed in his presence. It is settled law that an agreement, which is not binding, is not enforceable in law and is void.

37. Taking the holistic view of the matter, we are of the considered opinion that agreement dated 16-11-1993 entered into between the petitioner No. 2 and the Nagar Mahapalika has similar serious defects and irregularities as were detected in the agreement of 4-11-1993, which the Nagar Mahapalika entered with M. I. Builders. Thus it can easily be said that the agreement was in contravention of Section 133 of the Act and the necessary formalities as provided u/s 133(2) and (3) which were required to be followed were not observed. Further the Hon''ble Supreme Court has held in very clear words in M. I. Builders, case (supra) that there was no authority with the Mahapalika to constitute a High Power Committee and to delegate its function to that High Power Committee. The Mahapalika delegated its functions to the High Power Committee in contravention of the Act. Constitution of the High Power Committee itself was wholly illegal. Lastly, the Supreme Court said that there was not merely an irregularity or defect in the procedure but the whole procedure was in clear breach of Sections 91 and 119 of the Act, which are mandatory in nature.

38. While keeping regards to the proposition of law laid down by the Hon''ble Supreme Court in The Regional Manager and Another Vs. Pawan Kumar Dubey, H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, ; Prakash Chandra Pathak Vs. State of Uttar Pradesh, ; Shiva Shankar Pandey and Others Vs. State of Bihar, we should also keep in mind that ratio decidendi of a judgment has to be found out only on reading the entire judgment and not by reading a line here and there from the judgment (See Islamic Academy of Education and Another Vs. State of Karnataka and Others, . Thus, the contention of the petitioner''s counsel that their case stands on different footing and is not covered by the decision rendered in M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, cannot be digested.

39. It is significant to mention at this juncture that the decisions of Hon''ble Supreme Court have a binding effect on all Courts, Tribunals and authorities as laid down under Article 141 of the Constitution and reiterated in various Supreme Court''s decisions. It would amount to judicial impropriety for the subordinate Courts including the High Courts to ignore the settled position as a result of judicial pronouncement of the Hon''ble Apex Court and pass a judicial order contrary to it. Moreover, the High Courts cannot and should not resurrect life in a judgment on the same set of questions, the answer of which have been given in

negative by the Hon"ble Apex Court. In Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others, it was laid down by the Hon"ble Supreme Court that the binding effect of a decision of the Supreme Court does not depend upon whether a particular argument was considered or not. The principles upon which the M. I. Builders" case (supra) was decided by the Hon"ble Supreme Court, is fully applicable in the present case and it is highly impossible to hold that the present case is distinguishable with the M. I. Builders" case In view of the detailed reasons narrated in the preceding paragraphs.

40. Before concluding, we would like to mention that the Rafi Ahmad Qidwai Nagar Yojna is a residential scheme, which is being developed by the respondents. The petitioners will have a right to participate in the bid. Needless to say that the authorities would invite tenders soon after the ultimate decision of the present writ petition where, as stated above, the petitioner will have equal opportunity to participate.

41. For the reasons aforesaid, we find no good ground to show our interference in exercise of jurisdiction conferred by Article 226 of the Constitution and the writ petition is dismissed.

The interim order dated 14-3-2002 stands vacated.