

(2003) 05 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 39079 and 39344 of 2002

Dr. H. Jayaram Reddy and Another

APPELLANT

Vs

Bangalore Mahanagara Palike and Others

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Karnataka Planning Authority Rules, 1965 — Rule 30

Karnataka Town and Country Planning Act, 1961 — Section 13, 14, 14 A, 9

Citation : (2003) ILR (Kar) 2682 : (2004) 3 KarLJ 122

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : L. Govindaraj, for the Appellant; Ashok Haranahalli, for R1, K. Krishna, for R2, S.K.V. Chalapathy, for R3 and R.N. Narasimhamurthy and M.R. Naik, for R4, for the Respondent

Final Decision : Allowed

Judgement

Rangavittalachar, J.—The two residents of Dollar Scheme Layout in Madiwala Bangalore have filed these two Writ Petitions for a writ of mandamus to, the Bangalore Mahanagara Palike and Bangalore Development Authority for revoking the sanctioned plan and for a direction to demolish the college building constructed in the two sites by the 3rd respondent herein and for quashing of the special permission granted by the Bangalore Development Authority (BDA for short) to establish a college.

2. They contend in the petition that the Dollar Scheme Layout in Madiwala is a residential colony notified as such by the BDA in its Comprehensive Development Plan (CDP for short). They have constructed two residential houses in premises No. 4 and 5A at 36th Main, II Cross, BTM I Stage. The adjacent two sites bearing No. 2 and 3 which were allotted by the BDA purely for purposes of constructing residential houses by the allottees, was purchased by 3rd respondent herein from the allottees. Subsequently, he has amalgamated the two sites to one and obtained a sanctioned plan for constructing a college. On coming to know of the

same, the residents of the layout objected for the same before the Corporation authorities. The Corporation authorities realizing their mistake, directed the 3rd respondent not to proceed with the construction without seeking for a change of land use" as required under the Karnataka Town & Country Planning Act. On being told so by the Corporation authorities, respondent 3 approached the BDA seeking for change of land use by making an application in that regard. The application was taken on file and objections were invited from the residents by a notice published in the local daily - Annexure E. All the residents objected. However, without proceeding to consider the said application on merits, the BDA granted permission sought for by the 3rd respondent vide Annexure H, to build and establish a college without notice and without regard to the provisions of the Karnataka Town & Country Planning Act, zonal regulations, building bye laws and the interests of the residents. This action of the BDA in granting special permission vide Annexure H is questioned as arbitrary, illegal and in violation of the principles of natural justice, and is liable to be quashed.

3. During the hearing of the Writ Petitions, one Alliance Business Academy got impleaded as 4th respondent on the ground that the said respondent is a lessee of the premises and he has put up the building and running classes in computer training.

4. Statement of objections has been filed by the BDA defending its action in granting permission to put up a construction for establishment of a college under special circumstances". It has stated that during the processing of the application for change of land use, 3rd respondent made a request that his application may be considered for grant of permission under special circumstances" as provided under the Zonal Regulations for establishing a college. In consideration of the said application and in exercise of its powers under the Zonal Regulations, Annexure H has been issued, BDA has not committed any irregularity or illegality.

5. Respondent 3 and impleaded respondent 4 also has filed detailed statement of objections. While the facts stated by the petitioner regarding the area in which the complained building is being constructed is notified as a residential zone under the Zoning Regulations and that the fact of the 3rd and 4th respondents have put up their constructions for establishing a college in computer training and that the 3rd respondent had made an application for grant of permission for change of land use is not denied, what is contended is that, when the 3rd respondent became aware that the Zoning Regulations permitted for establishing college in the residential zone under special circumstances", he abandoned his application for change of land use and sought to invoke the power of the BDA for granting permission under special circumstances". Since the BDA had the power to grant such permission, It's action cannot be challenged, the petitioners are not entitled to be heard before granting such permission as none of their rights have been affected. It is also contended that these Writ Petitions are filed with a malafide intention to avenge the act of the 3rd respondent in complaining to the

Corporation the petitioner's encroachment of the Corporations' property 3rd respondent has also stated petitioners are guilty of delay and laches.

6. The 4th respondent, apart from taking up similar defense of the 3rd respondent, has also stated that it has put up the college building and has already started functioning. Petitioners having allowed the building to come up cannot turn around and complain.

7. Sri Govindaraj, learned counsel for the petitioners contended that, the Dollar Scheme Layout, Madiwala where the petitioners are residing, is notified purely as a residential zone in the CDP prepared by the BDA. This Dollar Scheme Layout was formed by the BDA after acquiring private property for formation of residential sites only. The sites were allotted purely for construction of residential house to the allottees who had fulfilled the eligibility criteria stated in the Allotment of House Site Rules subject to the restriction on the usage of the site as per the provisions of the BDA Act, Regulations and Planning Act. No commercial or industrial activity is permitted in this residential zone unless the owner of the land obtained permission under the Karnataka Town and Country Planning Act for permission for change of land use. The allottees cannot amalgamate two sites and convert it into one single unit and build commercial complexes etc. The activity of the 3rd respondent in putting up a college without obtaining permission for change of land use was impermissible under the Planning Act and the Zoning Regulations. 3rd respondent having made the application for change of land use, and when the application was being processed, objections being invited and the petitioners and residents filed their objection, the 3rd respondent realized the difficulties in obtaining permission, devised an ingenious method of seeking permission under special circumstances for constructing a college and when the said application was taken up for consideration by the Committee, though all the official members of the Committee felt the need for hearing the objections; two non-official members overruling the said objection, arbitrarily without regard to law has passed the order at Annexure H. The order therefore, is illegal and violative of the principle of natural justice.

8. In support of the above contentions, learned Counsel relied on the following decisions of this Court and the Supreme Court.

1. K. Chandrashekar Hegde Vs. Bangalore City Corporation,
2. SRI KRISHNAPUR MUTT v. N. VIJAYENDRA SHETTY AND ANR. 1992 (3) KarLJ 326
3. Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,
4. B.K. Srinivasan and Others Vs. State of Karnataka and Others,
5. Padma Vs. Hiralal Motilal Desarda and Others,
9. In reply to the said contention, Sri R.N. Narasimha Murthy learned Sr. Counsel

appearing for 3rd respondent submitted by relying on the Zoning of Land use and Regulations in particular Annexure II 2(b) and contended that the Planning Authorities have been conferred with a power to grant permission for land owners for construction and establishing colleges even in residential zones if there are special circumstances for doing so. It is in exercise of this power, permission has been granted to respondents 3 and 4 for establishing the college. While exercising such power it is not necessary to hear the residents of the locality as according to the learned Counsel, the residents would have been already heard at the time of preparing the CDP and a second hearing is not contemplated.

10. On the contention of the petitioner that an allottee of a house site by the BDA under the provisions of the BDA Act and the House Site Allotment Rules cannot amalgamate two sites into one block as per the decision in Chandrashekar Hegde's case. Learned Counsel submitted that the decision in Chandrashekar Hegde's case merged with the order of the Supreme Court in CA 6040/1990 decided on 13.12.1990. The Supreme Court in its order has permitted amalgamation of two sites by the allottee for putting up construction thereon. In view of the said decision and having regard to the doctrine of merger as enunciated by the Supreme Court in Kunhayammed and Others Vs. State of Kerala and Another, , Chandrashekar Hegde's case has to be read in the light of the decision of the Supreme Court and not independently.

11. Learned Counsel nextly submitted that the Writ Petitions lack bonafides. According to him, the 3rd respondent when complained about the encroachment of the petitioners of the corporation property, as an act of retaliation, they have come out with these petitions.

12. It was lastly submitted that the petitioners are guilty of delay and laches.

14. Sri S.K.V. Chalapathy, appearing for 4th respondent submitted while adopting the arguments of Sri R.N. Narasimha Murthy, petitioners cannot be said to be aggrieved persons by the act of 3rd and 4th respondent in establishing and running a college in their own land. Their grievance if any, at best be one under tort to be remedied before a Civil Court after establishing by evidence the manner in which their right is affected. It was also contended by him that the petitioners having allowed the construction of the college to be completed and the classes to be run, cannot be permitted to turn around at this stage and make complaint. On this ground also, petitions are liable to be dismissed.

15. In order to appreciate the rival contentions, it is necessary to briefly refer to the provisions of the Planning Act, 1961 and the purpose of passing it.

16. The purpose of planning is to provide planned development of a city, town, etc., and for the benefit of city dwellers. In "Corpus Juris Secundum1 Vol 101 at page 30, emphasizing the importance of Zoning and Land Planning, it is stated zoning laws are intended to promote the public health, safety, welfare, convenience, morals or prosperity of the community from dangers such as fires,

disease, congestion, noise, unsanitary conditions and they act not only negatively but also affirmatively for public welfare. The benefit accrues not only to the municipality but also to the abutting and neighbouring property owners. Furtherance of social as well as the economic and political advantages of a community are reasonable zoning objectives. Thus, permissible zoning objectives are to prevent over crowding of land undue concentration of population and in the case of residential properties to provide for adequate living area. On the principal on which zoning laws are made, it is stated at page 33 as "zoning laws are based upon the principle that, what is best for the body politic in the long run must prevail over the interests of particular individuals".

17. The Supreme Court in *PADMA v. HIRALAL MOTILAL DESARDA AND ORS.* has emphasised the need and importance of city planning as under.

Laws dealing with development planning are indispensable to sanitation and healthy urbanization. Development planning comprehensively takes care of statutory, manual, administrative and land use laws hand in hand with architectural creativity. In the words of a well known architect, development planning is the DNA of urbanization - the genetic code that determines what will get built. A development plan is essential to the aesthetics of urban society. American Jurisprudence, 2d (Vol 82, at p 388) states.

"Planning, as that term is used in connection with community development, is a generic term, rather than a word of art, and has no fixed meaning. Broadly speaking, however, the term connotes the systematic development of a community or an area with particular reference to the location, character, and extent of streets, squares, and parks, and to kindred mapping and charting. Planning has in view the physical development of the community and its environs in relation to. Its social and economic well-being for the fulfillment of the rightful common destiny, according to a master plan" based on careful land comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality, and embodying scientific teachings and creative experience"

The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards".

18. So also this Court in the case of *SRI KRISHNAPUR MUTT, UDUPI v. N. VIJAYENDRA SHETTY AND ANR.* has stated about the purpose of enacting the Planning Act as "the purpose of the enactment is only the orderly growth of a city and it regulates each area of the City with regard to the nature of buildings that could be put up namely, commercial, industrial or residential". This aspect should

be taken care of by the Planning Authorities.

19. The Karnataka Town & Country Planning Act, 1961 was enacted by the State Legislature for achieving the purpose of a planned growth of land use and its development with a view to provide civic and social amenities for the people. In the State, to preserve and improve the existing recreational facilities and other amenities contributing towards balance use of land and, to provide for environmental health, hygiene and general standard of living through a legislation.

20. For effectively carrying out the purpose, the Act has created a "Planning Authority" which is given the power first to conduct a survey, locate the area for development by declaring it as a planning area and u/s 9 publish an Outline Development Plan (for short ODP) for such planning area. What the ODP should contain is stated in Section 12 of the Act, which reads

12. Contents of Outline Development Plan

(1) An Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include-

- (a) a general land use plan and zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes,
- (b) proposals for roads and highways, and widening of such roads and highways in congested areas,
- (c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India,
- (d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed,
- (e) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf

Explanation Building line means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme

(2) The following particulars shall be published and sent to the State Government through the Director along with the Outline Development Plan, namely -

- (i) A report of the surveys carried out by the Planning Authority before the preparation of such plan,

- (ii) A report explaining the provisions of such plan,
- (iii) Regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority,
- (iv) A report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan,
- (v) An approximate estimate of the cost involved in the acquisition of lands reserved for public purposes

21. The ODP has to be forwarded to the State Government u/s 13 by the Planning Authority. The same shall be published for general information by inviting objections or comments. The State Government, after applying its mind to the contents of the ODP and the objections submitted after giving its approval, shall publish in the notice board for information of the general public which becomes final and enforceable u/s 14 of the Act. Since Section 14(1) & (2) with the proviso also has a bearing to the facts of the case, the same is extracted.

22. Section 14 Enforcement of the Outline Development Plan and the Regulations

1. On and from the date on which a declaration of intention to prepare an outline is published under sub-section (1) of Section 10, every land use, every change in land use and every development in the area covered by the plan shall subject to Section 14A conform to the provisions of this Act, the Outline Development Plan and the regulations, as finally approved by the State Government under sub-section (3) of Section 13.

2. No such change in land use or development as is referred to in Sub-section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed.

23. By a reading of Section 14, it is clear that on and from the date on which the ODP has been published, every owner of land shall use / should develop his land strictly in accordance with the permitted use. However, if he wants to use the land for a different purpose than what is mentioned in the ODP, he has to apply and obtain permission from the Planning Authority u/s 14A of the Act which reads Section 14A Change of land use from the Outline Development Plan

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

Provided that,

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

(2) The provisions of sub-section (2) and (3) Of Section 14 shall apply mutatis mutandis to the change in land use or development from the Outlines Development Plan.

24. Section 14A inserted by amended Act 17/1991 states the circumstances under which the change of land use may be obtained conditioned by the factors that, it must be in public interest and it should not contravene any of the provisions of the Act, and before granting such change, the proposed change of land use has to be published in a daily newspaper and objections by public is invited and heard, similar are the procedure and contents of a Comprehensive Development Plan. For metropolitan area of Bangalore a special provision is made by Section 81A inserted by Act 15 of 1964 which reads

81-A Outline Development Plan of Bangalore Metropolitan Area

(1) Notwithstanding anything contained in this Act-(a) The Outline Development Plan for the Bangalore Metropolitan Area prepared by the Bangalore Metropolitan Planning Board constituted in G O No PLM 130 GBA 61, dated 14.11.1961 shall be deemed to be the Outline Development Plan of the planning area comprising the City of Bangalore, prepared under this Act, by the Planning Authority of such area, and the said plan along with the particulars specified in clauses (ii), (iii), (iv) and (v) of sub-section (2) of Section 12 shall, as soon as may be, after the constitution of the Planning Authority for such planning area, be published and submitted to the State Government for provisional approval,

(b) on receipt of the plan and particulars under Clause (1), the State Government shall after making such modifications as it deems fit, return the plan and the particulars to the Planning Authority, which shall thereupon take further action. In accordance with the provisions of Section 13.

2. In respect of the Outline Development Plan to which the provisions of Sub-section (1) are applicable, the reference to the date of publication of the declaration of intention to prepare the Outline Development Plan referred to in Section 14, Section 15 and Section 16, shall be construed as reference to the date of constitution of the Planning Authority u/s 4-C for such planning area.

25. u/s 81B , the Bangalore Development Authority has been designated as the

Planning Authority for planning area of the City of Bangalore. Bangalore Metropolitan Area is also governed by the provisions of Section 12 and other relevant Sections extracted above.

26. The Government of Karnataka has framed rules in exercise of its power u/s 74 known as the Karnataka Planning Authority Rules, 1965 Rule 30 states the particulars a map prepared by the Planning Authority should contain. It has divided the areas and the uses in the map under the headings called as residential, commercial, industrial, transport and communication, public utilities, public and semi public uses, open spaces, agricultural land. Under the heading public and semi public use's is included the educational, cultural and religious institutions, etc.

27. The CDP has been published under GO HUD 139 MNJ 94 dated 5.1.1995 containing the zoning, land use, regulations of Bangalore Development Authority in exercise of powers u/s 12 and 21 of the Act. The object of the CDP as stated in the Notification is to promote among other things, general social welfare of the community and to put reasonable limitation on the use of the land for the said purpose. The Notification has divided the entire Bangalore City into residential, commercial, industrial, public and semi public zones. Annexure I to the Government Notification establishes zones land zoning maps. Annexure 2 classifies the land use of the zones into eight classifications under the headings residential, commercial (retail and wholesale business), industrial (light and service industries, medium and heavy industries), public and semi public, utilities and services, parks and open spaces and play grounds {including public recreational area), transportation and communication, agricultural land and water sheet. It also states the uses that may be permitted by the BDA under the different zones. For residential zone, the permissible uses are classified under two headings (a) uses that are permissible (b) uses that are permissible under special permission of the Authority. The same is extracted for ready reference;

Residential Zone

(a) Uses that are permissible Dwellings, hostels including working women and gents hostels, Dharmashalas, places of public worship, schools offering general education course upto Secondary education, public libraries, post and telegraph offices, KEB counters, BWSSB Counters, Clubs, Semi-public recreational uses, milk booths and neighborhood or convenience shops, occupying a floor area not exceeding 2000 sq. mts. doctor's consulting rooms, offices of advocates, other professions in public interest not exceeding 2,000 sq mts. of floor area in a building.

(b) Uses that are permissible under special circumstances by the Authority Municipal, Statutory Authorities, State and Central Government Offices, Banks, Public Utility Buildings, Colleges, Cemeteries, golf clubs, tailoring, laundry, hospitals for human care except those meant for mental treatment, nursing homes, philanthropic uses, fuel storage depots, filling stations, huller and floor

mills, coffee grinding machines including service industries, with a maximum power up to 5 HP for all the industries as per the list given in Schedule I and 10 HP in case of huller and floor mills. The power required for air conditioners, lifts and computers shall be excluded while calculating the horse power specified above.

28. Thus, a reading of the extracted portion show that while preparing the ODP or the CDP, the Planning Authority is entitled to indicate what a demarcated residential zone should contain, therein mentioning also the permissible uses under ordinary circumstances" and special circumstances" as stated in clause (a) and (b) of Annexure 2 to the Zoning Regulation. The point of time at which this demarcating areas in the respective plans with reference to the ordinary and special uses must be at the time the State Government receives the CDP or ODP u/s 3(1) of the Planning Act before it is published" in the notice board for the information of the general public and their comments are solicited. If the affected members of the public make any representation agreeing or objecting to the said uses, the State Government, after taking the same into consideration with or without modification of the ODP or CDP, approve the same which thereafter will be published as the approved ODP or CDP u/s 13(4) of the Planning Act. Once, the ODP or CDP is notified u/s 13(4) of the Planning Act, the said plan with its zones containing the permissible land uses both under ordinary and special circumstances becomes final, binding and undeviatable. In other words, the permissible uses in a residential zone both under ordinary and special circumstances should form part and parcel of the ODP or the CDP map or plan. If after the plan or map is so published and becomes final and any owner of the land seeks for any deviation, from the permissible uses stated in the said plan, such a owner has to necessarily resort to Section 14A of the Planning Act. Other than resorting to the said section, there is no provision either under the Planning Act or Rules to which the owner of a land can look to.

29. The contention of learned Sr. Counsel Sri R.N. Narasimha Murthy that, under Clause (b) of annexure 2, at any point of time, the land owner can seek permission from the Planning Authority without resorting to the provisions of the Planning Act for usage of the land would only mean that the said clause i e, clause (b) would be conferring an independent power to the Planning Authority dehors of the Planning Act and Rules to permit the owner of a land to use it for the purposes stated in clause (b) without resorting to Section 14A. That is not the intendment of the Planning Act Per contra, Zoning Regulations itself state that the same has been prepared in exercise of powers under Clause (3) of Sub-section (2), Section 12 and Section 21 of the Planning Act Unless the Planning Act or the Rules confer power on the State Government to permit the owner of a land to use the land for any purpose not originally mentioned in the ODP or the CDP, such a power cannot be available to the State Government to do so in the guise of framing zonal regulations. Zonal Regulations must be in consonance with the Planning Act and the Rules. Therefore, the contention of Sri R.N. Narasimha Murthy deserves to be rejected.

30. Reverting to the facts of this case, there is no denial that the 3rd respondent acquired a residential site from one of the allottees of the BDA. Equally there is no denial that the Comprehensive Development Plan does not provide for using this land for the purpose of putting up a college. The 3rd respondent has also clearly understood this position of law when he made the application u/s 14A of the Planning Act. As required under the said section, Planning Authority published the contents of the application on 5.6.2002 in local Dailies and inviting objections. The residents of the locality on 19.6.2000 filed their objections. When the said application of the 3rd respondent thus became fully ready for consideration, what factors influenced him to change his mind and abandon the said application and change his course by resorting to clause 2(b) of the Zoning Regulations, is difficult to guess and his explanation that when he realised the correct position of law, he made the application for permission to use the land under special circumstances" is too artificial to accept. Another factor requires to be noted is though the official members insisted that the public be heard. In the matter, the non-official members prevailed upon them not to resort to such a course and without any further consideration, granted permission vide their endorsement dated 19.10.2002 produced at Annexure H by the petitioner along with his application under Order 6 Rule 17 of the CPC. Having regard to these facts, the order under Annexure H certainly does not inspire confidence that it was made with best of public interest apart from being against to the provisions of the Planning Authority Act. Therefore, the order at Annexure H deserves to be quashed.

31. However, Sri R.N. Narasimha Murthy and Sri SKV Chalapathy have raised certain preliminary objections referred to above. The first objection is that the petitioners are guilty of delay and laches in as much they allowed the 3rd respondent from putting up the construction and it is only when the construction is complete, they have approached this Court. The Writ Petitions were filed on 22nd October, 2002. They have been agitating right from the beginning about the act of the 3rd respondent in putting up the construction. The corporation authorities had directed the respondent vide Annexure D dated 19.4.2002 not to proceed with further construction until the 3rd respondent obtained change of land use. The 3rd respondent in pursuance to the said order of the Corporation approached the BDA for change of land use and objections were invited on his application on 5.6.2002. When the said application was being processed, the 3rd respondent suddenly changed his mind and resorted to Clause (b) of the Zoning Regulations referred to above. It is only without obtaining the permission by the authorities the 3rd respondent has proceeded with the construction. Petitioners have filed these Writ Petitions when the planning authorities granted permission vide Annexure H dated 19.6.2002 when these petitions were being heard. Under the circumstances, it is difficult to appreciate how the - petitioners could be held guilty of laches disentitling them for any relief.

32. In so far as the 2nd objection of the respondents that when the 3rd respondent complained to the corporation authorities of the petitioners

encroachment of the corporation and, as an act of retaliation, they have filed these petitions. Therefore, the petitions lacks bonafides is concerned, such a conduct displayed even if it is true can at best be in respect of a totally different event unconnected with the facts of the present case and therefore is not relevant to non-suit the petitioners on that ground. It is well known that if a petitioner has to be non-suited for objectionable conduct, such objectionable conduct must have a bearing to the facts stated in the petition and the relief prayed for. That is not the case here. The said objection is over ruled.

33. In so far as the objection of Sri S.K.V. Chalapathy, learned Counsel that the petitioners have to establish by leading evidence before a Civil Court the actual inconvenience suffered by them for an action at Tort and they cannot make any complaint of violation or deviation before this Court is concerned, it is now well recognised by the decision of the Supreme Court in Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, that every citizen has an unquestionable right to complain any deviation made by a neighbour or a private person either from the Building Laws or the Town & Country Planning Act apart from complaining a special tortuous injury caused to them. That cannot be a ground to non-suit the petition.

34. In so far as the last objection of Sri S.K.V. Chalapathy that the petitioners had kept quite while the 3rd and 4th respondents were putting up construction and they cannot now be permitted to turn around and question the same is concerned, this contention over looks the factual position in as much as the facts disclose ever since the corporation authorities had granted the license, petitioners have been agitating against grant of such permission and even the corporation authorities had directed the 3rd and 4th respondents not to proceed with the construction until they obtained permission under the Town & Country Planning Act for change of land use and in spite of a direction from it, the 3rd and 4th respondents have proceeded with the construction and that cannot give them any extra right to defend their illegal activity. The contention therefore, is rejected.

35. For the reasons stated above, the impugned endorsement Annexure H is quashed and the Planning Authority is directed to dispose of the application filed by 3rd and 4th respondents for change of land use u/s 14A of the Act after hearing the petitioners and such other residents of the locality who have already filed objections. Until the said application is decided, the 3rd and 4th respondents shall not conduct any activity including the running of college in the premises complained.

Petitions are allowed with costs of Rs. 2000/-