

(2011) 11 KAR CK 0384

In the Karnataka High Court

Case No : Writ Petition. No. 23745 of 2011 (LB-BMP) (PIL)

Dr. Meenakshi Bharath and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Karnataka Town And Country Planning (Amendment) Act, 2004 — Section 19, 20, 21, 22

Citation : (2012) ILR (Kar) 2068 : (2012) 4 KarLJ 248

Hon'ble Judges : N. Kumar, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : K.G. Raghavan for Sri Udwardia and Udeshi, for the Appellant; Basavaraj Kareddy, Prl. Govt. Advocate, for R1 and R4, Sri Nanjunda Reddy for Sri K.N. Puttegowda, for R2 and R3, Sri Jaykumar S. Patil for Sri H. Shanthi Bhushan and Assts, for R5-R12, Sri K. Krishna, for R13, for the Respondent

Judgement

N. Kumar J

1. In this public interest litigation the petitioners are seeking a declaration that the road widening between Cauvery Junction and Yeshwanthpur Circle is illegal and contrary to law and for a restraint order to the second respondent - Bruhat Bangalore Mahanagara Palike from proceeding with the widening of the road between Cauvery junction and CNR Rao Circle without following the Karnataka Town and Country Planning Act and the Karnataka Preservation of Trees Act and without hearing the residents of the areas around the said road. They are also seeking a direction to the respondents to follow the provisions of the Karnataka Town and Country Planning Act as well as the Karnataka Preservation of Trees Act.

BRIEF FACTS

The facts in brief leading to this litigation are as under:

Petitioner Nos. 1 to 5 are the residents of Bangalore and petitioner No. 6 is an

association constituted by the residents of Malleshwaram for their welfare and benefits. It is registered under the provisions of the Karnataka Societies Registration Act, 1960. The petitioners learnt that the second respondent proposes to widen the entire stretch of road between Cauvery junction and CNR Rao Circle, and subsequently till Yeshwanthpur fly over. The proposal of the second respondent is to widen the existing road from Cauvery junction to CNR Rao Circle, Malleshwaram, which currently has four lanes up to Bhashyam circle junction from Cauvery junction and thereafter two lanes till the CNR Rao Circle. The second respondent proposes to make the entire stretch into six lanes. The respondents have not initiated any public discussions in this regard and have not conducted any manner of scientific study for the widening of the road. The actions of the respondents are in complete contravention of law.

2. The petitioners are not aware of any notifications being issued in respect of the proposed widening. Despite several meetings with the officials of the second respondent, the petitioners have not been provided copies of any such notifications. They have come to know about the same through newspaper articles. They also came to know that the second respondent is proposing to go ahead, post-haste with the proposed widening of the road without any kind of regard for ecological damage that would be caused by such unnecessary widening of the road. The second respondent has abdicated its responsibility in protecting green cover and is only proposing "developmental" projects at the cost of the environment and by cutting down trees. Such large scale cutting of trees would have an adverse effect on the environment, which is an aspect the second respondent has wholly lost sight of. The stretch between Cauvery junction and CNR Rao Circle junction has nearly 400 trees which have been standing on the said road for the last over 70 years. The trees include keystone species like Ficus Bengalenses (Aalada Mara), Ficus Eligiosa (Ashwath Mara), both of which are keystone species which support a variety of other life forms, Jamun, Jackfruit, Mango, Tamarind and several other species. The said trees provide a green canopy for the said areas. It serve to increase the green cover in the city. The proposal to widen the said road would unnecessarily include cutting of trees which would have an adverse ecological effect. The stretch of the road from Bhashyam Circle junction to CNR Rao Circle is virtually an elevated road with the Sankey tank on one side and the low lying areas of Vyalikaval on the other, which includes schools and convent. About 2800 children study in one school alone. Any widening of this stretch would not be possible as there is danger of the tank bund itself being breached which would have severe and adverse consequences. Without considering all these aspects the second respondent is proposing to go ahead with the widening without there being public consultations and without any proper scientific study. They also produced copy of the report of the Directorate of the Urban Land Transport (DULT) in support of their case. In page 7 of the said report the traffic study conducted at Yeshwanthpur bus stop shows that vehicular movement in 24 hours is 38135 no. /43645.60 PCU. This report is not relevant for the purpose of widening the

stretch of road in question as the Yeshwanthpur junction is a major junction which includes convergence of highways. This report which the respondent heavily rely on does not mention or provide segmental traffic flow data of the relevant stretch of road. It is obvious that no study has been conducted.

3. The petitioner conducted an independent survey through Mr. Rohit of Transportation Infrastructure Planning Systems, Bangalore, on March 2011, to check the traffic flow. The segments from Cauvery junction to Bhashyam Circle has a PCU of about 952 per hour, and the segment from Bhashyam Circle to CNR Rao Circle is a mere 1062 per hour. As per Indian Road Congress Regulations a one way 2 lane carriageway should take 2400 PCU per hour. Copy of the said report is enclosed.

4. The petitioners learnt that the second respondent proposes to make the entire stretch between Cauvery junction to CNR Rao Circle as a signal free road. The same is also without any regard to the areas lying on either side of the road and any such proposal for signal free road, without there being any service road, underpasses, flyover or alternates for pedestrians would result in the areas of Sadashivanagar and Upper Palace Orchard on one side and the areas of Vyalikaval and Lower Palace Orchard on the other side being completely separated and with no way for persons from one area to commute to the other. Also there are several schools and colleges in the vicinity including one at Bhashyam Circle junction. The said action of the second respondent is completely irrational and the decision has been taken without any application of mind only with a view to serving certain vested interests. The respondent seem to have not taken into consideration that there cannot be a signal free zone/area where there is a school, nor is it permitted to have fast moving traffic.

5. The ostensible reason given by the second respondent for the widening of the roads is that there has been an increase in the traffic density on the said road. The petitioners submit that the said reason cannot be the sole reason on which the road being widened without exploring any other alternatives and without involving the persons who will be affected by such actions of the Government by way of public consultations. In any event, the entire action of the second respondent in widening the road every time there is a perceived increase in the traffic density is wholly unscientific and is entirely self defeating.

6. The reasons given for widening the road being traffic congestion is unacceptable considering that the second respondent is already expanding the two lane road from Mekri Circle to international Airport into a 6 lane road, a 6 lane road from CNR Circle to Jayamahar via Mekhri circle. Therefore, proposed widening of the road from Cauvery circle to CNR Rao Circle is illogical as it is not a main road connecting to any vital place of the city. It is only a road tributary in nature. Also making such a wide road with the intent to make it signal free will result in two communities within the city being completely cut off from each other, in addition to the danger that will be caused by high speed traffic to school children, pedestrians and senior citizens and the residents of the adjoining

localities. Therefore, there is no proper justification for expanding the road when the main road itself being widened for the reason of traffic congestion.

7. The funds being used for these road widening projects is from the funds procured under the Jawaharlal Nehru Urban Renewal Mission (JNNURM), which clearly mandates reforms at the level of urban local bodies and to provide for community participation, to institutionalize citizen participation and to create accountability platforms in all urban civic service providers. None of these mandates have been complied with. Therefore, they contend that the respondents have not followed the mandatory provisions of Section 14A of the Karnataka Town and Country Planning Act, 1961 (for short hereinafter referred to as "Act").

8. No approval of the Technical Advisory Committee (TAC) of the second respondent which is mandatory has been obtained. The petitioners objected for widening the roads. However, it is not at all considered. The draft of the RMP 2015 which was displayed to the public calling for objections did not disclose the exact road widths for the widened roads. As a result the petitioners could not formulate their objections based on the same. The respondents have obtained permission to cut nearly 19 trees for the purposes of widening of the road between the stretch from Bhashyam Circle to Ayyappa Temple. This stretch is 1 kilometer long. However, newspaper reports indicated that more than 350 trees will be cut in a phased manner. The same would adversely affect the environment and have a deleterious effect, which violates the right to life as enshrined in Article 21 of the Constitution of India. Therefore, they have preferred this writ petition for the aforesaid reliefs.

9. After service of notices, the respondents 2 to 4 have filed a common statement of objections to the writ petition. They contend that the BDA is the planning authority for the Bruhat Bangalore Mahanagara Palike (BBMP). As and when the Planning Authority prepares the plan or revises the plan in the Bangalore Mahanagara Palike area it is the BBMP to implement the same. The Planning Authority has revised the Comprehensive Development Plan (CDP) and published Revised Master plan 2015 after due notice to the public and following the formalities as contemplated under the Act. The Planning authority published a draft revised master plan for the entire BBMP area in the year 2004 inviting objections from the public authorities, organisations etc. to file objections. The Planning Authority received 6202 representations, after considering the said objections/representations, the planning authority published a final revised master plan. In the revised master plan 2015, it is proposed for widening of the existing road from Kaveri Junction to CNR Rao circle with width of 30 Mtrs. and CNR Rao Circle to Yeshwanthpur with width of 45 meters. In the year 1998, at the time of preparing the CDP, the BDA sought the help of M/s. SEE, a French Consulting Company under the assistance available in the Indo-French protocol and thereafter, on the basis of the studies and recommendations made by the French Consulting Company, revised Master Plan has been prepared. From the

revised master plan the road in dispute is suggested for widening to 30 mts. In addition to revised master plan 2015 the Principal Secretary, Urban Development Department State of Karnataka constituted an expert committee called "DULT" consisting of several technical experts with regard to study of Sankey Tank Road widening. The aforesaid committee submitted its detailed report to take up the work of widening road in between Kaveri junction and Yeshwanthapura Circle. From Kaveri junction to Bhashyam circle the BBMP is not taking up any road widening work because there is already 27 mts road existing. Though as per the revised master plan 2015, the road situated is to be widened to a width of 30 meters to avoid removal of trees and acquisition of private properties, the BBMP restricted the road width to 27 mtrs, in between Cauvery junction and Bhashyam circle and BBMP has not removed any trees in this area. In between Bhashyam circle and 18th Cross Malleshwaram, the road passing on the Sankey Tank bund measures only 12 metres. On the northern side of the road, the Sankey Tank is situated. On the southern side of the road, there is a tank bund and the BBMP is taking up the widening of the road by putting up RCC retaining wall from the bottom of the bund. In fact, it strengthens the bund and by constructing the retaining wall, it will get 15 mtrs., additional width so that the existing road can be widened upto the required 27 mtrs. The cavity between the retaining wall and the existing bund will be filled up with suitable material and compacted which will in turn stabilize the existing bund. Insofar as the trees are concerned, in between Bhashyam Circle and 18th cross, Malleshwaram, there are 55 trees. Out of the 55 trees there are 13 trees situated on the north western side of Sanky Tank bund. The rest of 42 trees are situated towards the south eastern side of the tank bund. Out of 42 trees, 23 trees are situated in the stretch of Stella Mary School which is encroached by the school authorities and Stella Mary school authorities have filed original suit against the Corporation and have obtained an interim order directing the BBMP to maintain status quo. Insofar as the remaining 19 trees are concerned, the BBMP has taken the permission to remove those trees and removed 17 trees between 30.6.2011 and 1.7.2011. Only two trees, one jamoon tree and one bamboo tree are not removed. Now the BBMP has taken up the work of widening the road in between Bhashyam circle and 18th cross Malleshwaram as the first phase which is critical and badly needed for widening in the interest of public at large. If the road widening on the tank bund area is completed,. it will be helpful to the residents of the Bangalore and the floating population who are visiting the city. The BBMP has already called for tender notification and awarded work to the contractors. The trees which were removed were on the tank bund. In fact, they were situated on the tank bund and were causing damage to the tank bund. As per the report of the Department of Conservation and Recreation, existence of trees on the tank bund is not at all safe. Therefore, these respondents have removed the trees and felling of the trees is justified on that count. From 18th cross, Malleshwaram upto CNR Rao Circle, the width of the existing road is 16.50 mtrs., average and from C.N.R. Rao circle to Yeshwanthapur, the existing road width is 24 mtrs. Which is to be widened to 25 metres all along from Kaveri Junction to Yeshwanthpur Circle in

between 18th cross, Malleshwaram to Yeshwanthapura. On the either side of the road, the BBMP has to remove 270 trees. Out of 270 trees only 40 trees belonged to important species like mango, jack fruit, jamoon, tamarind etc. The rest of 230 trees are not exotic in nature and which are likely to fall and broken during rainy and windy seasons. Out of 40 important species, 10 trees are above 2 mtrs. Girth which are more than 30 years, 13 trees are 1 to 2 mtrs girth which are below 25 years of age and 17 trees are below 1 mtrs in girth and may be of 10 years age. A report to this effect is also furnished. Though the Corporation is required to remove 270 + 19 trees i.e. 289 trees from Bhashyam Circle to Yeshwanthapura Circle it has planted 300 saplings of different kind of species to the upper side of the Sankey tank. In fact, though the respondent is required to remove 23 + 19 trees towards the down stream of the tank, there is a proposal to plant 115 saplings after completion of the construction in the same vicinity. From the year 2010, the BBMP has planted 600 saplings in and around the Sankey tank area, copies of the photographs showing the said planting of the samplings is produced. The BBMP has given much importance to maintain ecology and environment and trying to sustain the name of garden city. It has planted 3.35 lakh saplings in the city during the year 2010 till this time and for the rest of the year 2011, it would plant another 3 lakh saplings. The road between Yeshwanthapur circle and Cauvery junction is one of the important and busiest road which connects NH4 and NH7. The traffic from Yeshwanthpur to Airport bifurcates at junction of C.N.R circle. As per the petitioners since the road from Yeshwanthpur circle to Mekhri Circle is wide, the road from CNR circle to Cauvery junction is not all required for widening is not correct. The residents of Bangalore particularly coming from Airport side for them, every day there will be traffic congestion in between Mekhri circle and Guttahalli circle. If suitable action is not taken to curb the traffic congestion from Yeshwanthapur Circle to Mekhri Circle, it will further aggravate in Bellary road. Hence, to avoid traffic congestion in between Mekhri Circle and Guttahalli Circle, the BBMP is taking up widening of road from C.N.R.circle to Cauvery Junction so that the traffic congestion will not be there in Bellary road. Apart from that the public at large coming from Yeshwanthapur via Sankey road and from Malleshwaram, Rajajinagar and other parts of the city are using the Sankey Tank Road and Bhashyam Circle and Cauvery junction. It is very much necessary to widen the said road in the interest of the public at large. Therefore, the BBMP has no alternative except to provide basic infrastructure to the residents of Bangalore by implementing the revised master plan-2015.

10. The BBMP is implementing the Revised Master Plan-2015. In fact, when the planning authority-BDA proposed the revised CDP, it had published the draft notification of the revised master plan-2015, calling for objections. After receipt of the objections/suggestions, it has finalised the Revised Master plan 2015. If the petitioners or any other persons are having any grievance for the revised master plan 2015, they could have filed their objection and opposed the proposal for widening of the road. Once the planning authority approves the revised

master plan it is the duty of the BDA to implement it in the interest of public at large. Accordingly, it has taken steps to implement the revised master plan by increasing the width of the road. They have denied all other allegations made in the petition.

11. They contend that they (BDA or BBMP) have not violated any provisions of law either at the point of preparation of revised master plan or at the time of implementation of the revised master plan-2015. Both the authorities have followed all the provisions contemplated in the Karnataka Town and Country Planning Act and Karnataka Preservation of Trees Act and Environment and Ecology Act and KMC Act. Therefore, the allegation that the proposal to widen the road is contrary to Zoning Regulations is false and incorrect and are denied. In fact, the tank is existing since more than 100 years and the entire surroundings of the tank is already developed long back and the buffer zone was fixed in recent years. Therefore, as the widening of the road is in the interest of public, they have sought for dismissal of the writ petition.

12. The BDA which is the planning authority is impleaded and has filed its statement of objections. The BDA prepared CDP-1984 (CDP 1984 for short) in accordance with the then prevailing Sections 19, 20 and 21 of the Karnataka Town & Country Planning Act, 1961 (KTCP Act). In the said CDP-1984, the provision was made for 30 metres road or 100 ft. road from Yeshwanthpura Circle to Cauvery junction. The State Govt. has approved the said CDP-1984 vide Govt. Order No. HUD 3 TTP 83, Bangalore dated 12th October 1984 u/s 22 of the KTCP Act. They have produced copy of the CDP as well as the Govt. Order. The BDA prepared the Revised Comprehensive Development Plan-1995 (RCDP-1995 for short) in accordance with then prevailing Section 25 of the Karnataka Town & Country Planning Act, 1961 (KTCP Act), In the said plan, the provision was made for 30 metre road or 100 ft. road from Yeshwanthpura Circle to Cauvery junction. The State Govt. has approved the said RCDP-1995 vide Govt. Order NO. HUD 139 MNJ 1994, Bangalore dated 5th January 1995 u/s 22 of the KTCP Act. Copy of the said plan and the Govt. order are also produced. The BDA prepared the Revised Master Plan-2015 (RMP - 2015 for short) in accordance with Section 12 of the Karnataka Town & Country Planning Act, 1961 (KTCP Act) In the said plan, the provision was made for 30 metre road or 100 ft. road from Yeshwanthpura Circle to Cauvery Junction. The State Government has approved the said RMP-2015 vide Govt. Order No. UDD 540 BEM AA SE 2004, Bangalore dated 25th June 2007 u/s 13 of the KTCP Act. Copy of the said plan and the Government order are also produced. Therefore, they contend that Revised Master Plan-2015 is strictly in accordance with law and cannot be found fault with.

13. Respondents 5 to 12 who also claimed to represent the public were impleaded at their instance. They opposed the case of the petitioners and supported the case of the respondents. They contend that the widening of the road is in public interest. No adverse affect would be caused to the residents of the area if the road widening work is taken up. The respondents and the public

are finding it extremely difficult to travel in the road as the traffic in the said road is heavy and most of the time there is blockage of traffic resulting in traffic jams due to small narrow road. They further contend that respondents 1 to 4 earlier had widened the Race Course Road, Sheshadri Road and many roads to ease free flow of traffic. The road widening is welcome for the development of the city and to ease free flow of traffic. They submit that over 60,000 trees were to be felled for road widening from Hazaribag to Ranchi on NH 33 in support of which the copy of news paper article dated July 10, 2011 is produced. The clearance was however given on the condition to plant trees in 271.55 hectares of land, and the forest ministry had also directed Jharkhand forest department to plant three times the number of trees to be felled to compensate environment loss in the region. About 900 trees were axed in Ludhiana for eight-laning the Ferozepur road. The copy of the news paper article is enclosed. Therefore, they contend that road widening is essential and the petition is to be dismissed.

RIVAL CONTENTIONS

14. Sri K.G. Raghavan, learned Senior counsel appearing for the petitioners assailing the impugned action of respondents 1 to 4 raised four points for consideration.

15. Firstly, he contended in terms of Section 12 r/w. Section 13 of the Act when the Planning Authority proposes to widen the road to the extent of 30 metres, they were expected to show the same in the draft plan, publish the same by way of a notification and invite public comments within 60 days of such publication. It is thereafter after considering the said objections filed by the public, the master plan could have been approved after obtaining approval of the State Government. In the instant case, the draft plan now produced by the BDA is silent about the width of the road. It is only in the approved master plan the width is mentioned as 30 mts. It is only then the public came to know about the intentions on the part of respondents 1 to 4. Therefore, he contends that the master plan prepared and approved is contrary to Section 13 (1) of the Act.

16. Secondly, he contended Section 26 of the Act provides for making of a planning scheme for the area by the planning authority. In the instant case no such planning scheme is prepared at any rate not produced before the Court. Therefore, the action of the respondents is contrary to Section 26 of the Act and therefore, it has to be declared as illegal.

17. Thirdly, he contended that even if the argument of the Planning Authority is to be accepted that in the year 1984 when the outline development plan was prepared, in the said plan the width of the road is shown as 30 mtrs. when the widening is to be done in the year 2011 in pursuance of the plan of 2005, there is total non-application of mind by the authorities concerned to the existing position on the day they are trying to widen the road. Therefore, it is a clear case of arbitrary exercise of power conferred on them. It is hit by Wednesbury principle and is liable to be struck down.

18. Fourthly, he contended that, preservation of ecology is now accepted as the Government policy. Though development cannot be curtailed, a balance has to be struck between preservation of ecology and development and therefore, as a policy of the Government is based on the doctrine of sustainable development, it was necessary for the authorities to have a dialogue with the public, hear them, consider their suggestions and then see what best could be done both in the interest of public and the environment and ecology. In support of his submission, he relied upon the judgment of the Apex Court and contends that the respondents conduct runs counter to the law declared by the Apex court.

19. Lastly, he contended in the event the court were to permit widening of the road, as the road is to be widened on a tank bed, in order to protect the tank, the trees around the tank and also to see that this widening work is done within the time schedule, a task force is to be appointed by this court to keep vigil on the activities of the respondents so that their actions in no way affect the public.

20. Per contra, the learned senior counsel appearing for the BBMP, Sri. Nanjunda Reddy, submitted that the land in question which is sought to be widened falls in the old city of Bangalore in the Outline Development Plan which was prepared in the year 1984 after following the procedure prescribed under the Act. The formation of a 30 metres road is approved by the Government. When the CDP came to be prepared, the same was adopted. In 2005, this concept of master plan is introduced in the Act, by way of amendment and it also provides for preparation of the master plan and for other consequential acts. Section 13(b) categorically declares that the outline development plan and the CDP prepared under the Act shall be deemed to be the master plan. It is only when any alteration, addition or development to the existing master plan is proposed, then an obligation is cast u/s 13(1) of the Act to hear the public and then approve the plan. Therefore, the allegation that Sub Section (1) of Section 13 of the Act has been violated has no substance. Insofar as the non-compliance with Section 26 is concerned, he submits it has no application to the facts of this case because no fresh scheme is formulated in pursuance of the master plan. Insofar as irrationality or arbitrariness alleged is concerned, he submits in 1984 it was felt that a 30 mtrs. road was the need. To say that in 2011 things have dramatically changed and a road of that width is not required is contrary to the admitted material on record and therefore, he submits this is not a case where the Wednesbury principles have any application to the facts of the case. He contended certainly respondents 1 to 4 being the instrumentality of the State are bound to keep in mind the doctrine of sustainable development while taking up developmental activities in the city of Bangalore. The same has been kept in mind i.e. on one side the public interest, the obligation of the authorities for free flow of the vehicles or movement and to prevent traffic jams. On the other side, they have to protect the ecology, the trees and the fair name of Bangalore as a garden city. Keeping in mind both these obligations, they have taken up the responsibility of widening the road which was over due and have removed only those trees, without which, the road cannot be widened. Immediately thereafter,

in accordance with the provisions of Tree Protection Act, they have planted sufficient saplings and they would take all steps to see that the tree growth is restored at the earliest. Insofar as the appointment of a Task Force is concerned, he has no objection.

21. Sri Krishna, learned counsel appearing for the BDA submitted that, the BDA prepared the CDP in the year 1984 with 30 mtrs road on the Sankey Road. The same is carried over when the said plan was revised in 1995 and now in the draft plan also as they are not varying the width of the road. Therefore, they have not mentioned the width of the road in the draft plan. Even in the final master plan 2005, they have not varied the width of the road. Therefore, the contention that the master plan is prepared contrary to Section 13 (1) of the Act is misconceived.

22. Sri Shanthi Bhushan, learned counsel appearing for respondents 5 to 12 contended it is in public interest that the road should be widened. This problem is faced not only in Bangalore, but also in various cities in India and the paper cuttings produced by them shows that insofar as the widening of the road is concerned, if the felling of trees is required it has been permitted. The only condition being that the steps should be taken to plant sufficient tree saplings and therefore, he submits no case for interference is made out.

POINTS FOR CONSIDERATION:

23. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration in this writ petition is as under:

- i) Whether the master plan which is now being implemented is prepared in contravention of Section 13(1) of the Act?
- ii) Whether the master plan which is being implemented is in contravention of Section 26 of the Act?
- iii) Whether the public at large should have been heard before implementing the master plan as contended by the petitioners?
- iv) Is the formation of 30 mts road in any way infringes upon the doctrine of sustainable development?

POINT NO. 1

CONTRAVENTION OF SECTION 13(1) OF THE ACT

24. After the re-organisation of the states and with the birth of new state of Mysore, it became necessary for a uniform law for a regulation of planned growth of land use and development and for the making and execution of town planning scheme in the States. Therefore, the then Mysore Legislature enacted the Karnataka Town and Country Planning Act, 1961. Karnataka Act No. 11 of 1963 providing for the regulation of planned growth of land use and development and for the making and the execution of the town planning schemes in the State of Karnataka. Section 2(7) defined the "Planning Authority". It means in the case of

local planning area comprising the City of Bangalore, the Bangalore Development Authority. Therefore, the BDA is the planning authority for the city of Bangalore. Section 9 deals with the preparation of Outline Development Plan. It provided that every planning authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of declaration of the planning area, prepare and publish in the prescribed manner an outline development plan for such area and submit it to the State Government through the Director for provisional approval.

25. u/s 10 of the Act, the planning authority before carrying out a survey of the area under its jurisdiction under sub-section (1) of Section 9, for the purpose of preparing an Outline Development Plan for such area, shall make a declaration of its intention to prepare such plan and shall dispatch a copy thereof to the State Government for publication in the official gazette and publish the same in the prescribed manner for inviting suggestions from the public within a period of two months. Section 12 deals with contents of outline development plan which included proposals for roads and highways and widening of roads and highways in congested areas.

26. In the year 1984, in pursuance of the outline development plan when the planning authority prepared the CDP, a proposal was made for 30 mts or a 100 mts road from Yeshwanthpur circle to Kaveri Junction. A draft of the said plan was duly published in accordance with law. The State Government has approved the said CDP 1984 by order dated 12.10.1984 u/s 22 of the Act. The BDA revised the CDP in 1995 in accordance with Section 25 of the Act. The provision for widening this road from Yeshwantpur circle to Kaveri junction was retained. The Government has approved the said plan also by its order dated 5.1.1985. It is thereafter by the Karnataka Town and Country Planning (Amendment) Act, 2004, Karnataka Act No. 1 of 2005 substantial amendments were effected to the Act where the concept of master plan was introduced. The definition of master plan is contained in Section 2(3-b) which reads as under:

Section 2(3-b). "Master Plan" means a plan for the development or re-development of the area within the jurisdiction of a planning authority.

27. The word "Development" is also defined in Section 2(1-c) as, with its grammatical variations, means the carrying out of building, engineering, mining, or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land.

28. Similarly, Sections 9, 10, 12 and 13 were also amended. In Section 10 only the word Master Plan was substituted to the word Outline Development Plan. However, Section 12 has been substituted to the old section, which reads as under:-

12. Contents of Master Plan: (1) The Master Plan shall consist of a series of maps and documents indicating 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, such plan shall include proposals for the following namely:-

- (a) zoning of land use of residential, commercial, industrial, agricultural, recreational, educational and other purposes together with Zoning Regulations;
- (b) a complete street pattern, indicating major and minor roads, national highways, and state highways, and traffic circulation pattern, for meeting immediate and future requirements with proposals for improvements;
- (c) areas reserved for parks, playgrounds, and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic developments;
- (d) areas earmarked for future development and expansion;
- (e) reservation of land for the purses of Central Government, the State Government, Planning Authority or public utility undertaking or any other authority established by Law, and the designation of lands being subject to acquisition for public purposes or as specified in Master Plan or securing the use of the land in the manner provided or under this Act;
- (f) declaring certain areas, as areas of special control and development in such areas being subject to such regulations as may be made in regard to building line, height of the building, floor area ratio, architectural features and such other particulars as may be prescribed;
- (g) stages by which the plan is to be carried out.

Explanation:

(i) "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:

(ii) "Floor Area Ratio" means the quotient of the ratio of the combined gross floor area of all the floors, excepting areas specifically exempted under the regulations, to the total area of the plot.

(2) The following particulars shall be published and sent to the State Government through the Director along with the masterplan, 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 the Master 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.

3. Master Plan shall indicate "Heritage Buildings" and "Heritage Precincts" and shall include the regulations made therein for conservation of the same.

29. Similarly, Section 13 is also substituted, which reads as under:

"Section 13; Approval of the Master Plan:

(1) On receipt of the Master Plan with the reports referred to in Section 12 from the Planning Authority under sub-section (1) of Section 9, or after such plan and reports are prepared and published under sub-section (2) of Section 9, the State Government after making such modifications as it deems fit or as may be advised by the Director, shall return through the Director, the plan and the reports to the Planning Authority, which shall thereupon publish, by notification, the plan and the reports inviting public comments within sixty days of such publication.

(2) If within sixty days of the publication under sub-section (1), any member of the public communicates in writing to the Planning Authority any comments on the plan and the reports, the Planning Authority shall consider such comments and resubmit the plan and the reports to the State Government, through the Director with recommendations for such modifications in the plan and reports as it considers necessary in the light of the public comments made on the plan and reports.

(3) The State Government, after receiving the plan and the reports and the recommendations for modifications from the Planning Authority, shall, in consultation with the Director, give its final approval to the plan and the reports with such modifications as the Director may advise in the light of the comments and the recommendations of the Planning Authority or otherwise.

(4) The Planning Authority shall then publish in the prescribed manner the Master Plan and the reports as finally approved by the State Government. The plan and the reports shall be permanently displayed in the offices of the Director and the Planning Authority and a copy shall be kept available for inspection of the public at the office of the Planning Authority.

30. Relying on these two provisions, it was argued that the draft Master Plan u/s 12 should indicate that the road in question is sought to be widened to the extent of 30 meters and the authority should invite public comments within sixty days of such publication. It is only, thereafter, the Planning Authority could have finalized the plan after obtaining the approval from the State Government. It is in this context, it is necessary to take note of corresponding provision inserted by way of amendment such as Sections 13(a), 13(b), 13(c) and 13 (d), which reads as under:

Section 13 (a): Interim Master Plan: (1) Pending the preparation of Master Plan,

a Planning Authority may, where it considers it expedient, and shall, when so directed by the State Government, prepare and publish the Interim Master Plan for the entire area within the jurisdiction of the Planning Authority, or for any part thereof; and their upon, the provisions of Section 13 shall, so far as may be, but subject to the provisions of this section, apply in relation to such Interim Master Plan as they apply in relation to the preparation and publication of the Master Plan.

(2) The Planning Authority shall prepare and publish such plan not later than one year from the date of notice in the official Gazette of its declaration of intention to prepare a Master Plan or not late than such further period not exceeding one year as may be extended by the State Government.

(3) The Interim Master Plan shall provide only for matters mentioned in clauses (a), (b) and (c) of Section 12 and if necessary, such other matters specified in that section as the Planning Authority may decide to include or as may be directed by the State Government.

(4) The Interim Master Plan shall consist of such maps and such descriptive matters as the Planning Authority may consider necessary to explain and illustrate the proposals made in such plan.

Section 13(b): Preparation of Master Plan for Additional Area.- If at any time after a Planning Authority has declared its intention to prepare a Master Plan or after a Master Plan prepared by a Planning Authority has been sanctioned the jurisdiction of the Planning Authority is extended by inclusion of an additional area, the Planning Authority after following the provisions of this Act for the preparation of a Master Plan, prepare and publish a Master Plan for such additional area either separately or jointly with the provisional or final Master Plan prepared or to be prepared for the area originally under its jurisdiction, and submit it to the State Government for sanction after following the same procedure as it followed for submission of a Master Plan to the State Government for approval: Provided that, where a Master Plan for the additional area requires modification of the final Master Plan or where the State Government directs any such modifications, the Planning Authority shall revise the final Master Plan after following the procedure laid down in Section 9, so far as may be relevant

Section 13(c): Existing Outline Development Plan or Comprehensive Development Plan deemed to be Master Plan - (1) The declaration of intention of making an Outline Development Plan published by the State Government under sub-section (1) of Section 10 immediately prior to the commencement of the Karnataka Town and Country Planning (Amendment) Act, 2004 (hereinafter in this section referred to as the Amendment Act), shall be deemed to be the declaration of intention of making Master Plan under this Act.

(2) The Outline Development Plan or Comprehensive Development Plan prepared by any Planning Authority and provisionally or finally approved by the State Government u/s 13, or as the case may be, u/s 22 prior the commencement of

the Amendment Act shall be deemed to be the Master Plan provisionally, or as the case may be, finally approved under this Act.

(3) The Comprehensive Development Plan prepared by any Planning Authority revised u/s 25 prior to the commencement of the Amendment Act shall be deemed to be Master Plan revised under this Act.

Section 13(d). Revision of Master Plan:- At least once in every ten years from the date on which the Master Plan has come into force, subject to the provisions of Section 13C, the Planning Authority may and if directed so by the State Government shall carryout a fresh survey of the area within its jurisdiction, with a view to revising the existing Master Plan and the provisions of Section 9 to Section 12 (both inclusive) shall mutatis mutandis apply in respect of such revision of the Master Plan.

31. Section 13(c) in particular deals with existing Outline Development Plan or Comprehensive Development Plan. It provides the declaration of intention of making an Outline Development Plan published by the State Government under Sub-Section (1) of Section 10 immediately prior to the commencement of the Karnataka Town and Country Planing (Amendment) Act, 2004, shall be deemed to be the declaration of intention of making Master Plan under this Act. Therefore, it follows that the declaration of intention of making Outline Development Plan or Comprehensive Development Plan published prior to this amendment is deemed to be the declaration of intention of making Master Plan under the Act. Though it is not a Master Plan by virtue of Sections 12 and 13 and by virtue of Section 13(c), it is deemed to be a Master Plan. It is in this background, if we look at Section 12, it deals with contents of the Master Plan. It is clear that Master Plan shall consist of a series of maps and documents indicating 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, such plan shall include a proposals for a complete street pattern, indicating major and minor roads, national highways, and state highways and traffic circulation pattern for meeting immediate and future requirement with proposals for improvements. The said plan clearly indicates the existing street pattern indicating major and minor roads, which is not in dispute. However, Section 19 deals with approval of a Master Plan. It provides, on receipt of the Master Plan with the reports referred to Section 12 from the Planning Authority under sub Section (1) of Section 9 or after such plan and particulars are prepared and published under Sub- Section (2) of Section 9, the State Government after making such modification as it deems fit or as it may be advised by the Director, shall return through the Director, the plan and report to the Planning Authority, which shall thereupon publish, by notification, the plan and reports, Inviting public comments thereon within six days of such publication. Therefore, it is clear that if the Planning Authority makes any modification to the plan as contained in the Outline Development Plan or Comprehensive Development Plan and forwards the same to the Government

and the Government in turn makes any further modification and report the said modified plan to the Planning Authority, then the Planning Authority shall publish, by notification of the plan and the reports inviting public comments within sixty days of such publication. After receipt of such public comments, the Planning Authority shall consider such comments and resubmit the plan and report to the Government for such modification in the plan and the report as it is necessary in the light of such publication made in the report and plan. The Government after receiving the plan and report and the modification from the Planning Authority shall, in consultation with the Director, give final approval and the Director may advise in the light of the comment and the argument of the Planning Authority or otherwise. It is thereafter, the Planning Authority shall then publish in the prescribed manner the Master Plan and the Reports as finally approved by the State Government in terms of Sub-Section (4) of Section 13 of the Act.

32. Therefore, it is clear from the scheme of the Act every time whether it be an Outline Development Plan or Comprehensive Development Plan or a Master Plan as finally approved, a draft requires to be published inviting comment from the public. But, once after hearing the public, the plan is approved, when it is sought to be revised, it is only in respect of those aspects concerning revision, the particulars are to be mentioned in the draft plan inviting objection. If at the time of revision, existing position is not to be revised and it has become final, after hearing the public comments, it is not necessary to mention in the draft plan every time all the particulars, which are already concluded. Therefore, in the instant case, while preparing the Comprehensive Development Plan in the year 1984 the draft plan was published showing the intention to widen the road to 30 mtrs. After hearing the public, the same was approved. In the year 1995, when they revised the Comprehensive Development Plan there was no proposal for further widening of the road. Again in the year 2005, when the Master Plan was to be finalized, a draft Master Plan was duly published. In that Master Plan, the road in question is specifically mentioned, but they have not mentioned the width of the said road because, there was no proposal to alter the width of the road. Only in respect of alteration, additions, revision, particulars are to be mentioned in the draft plan inviting public comment and after hearing the public, the Master Plan is to be approved. Therefore, the contention that in the draft plan the measurement of 30 mtrs., is not mentioned, which finds place in the Master Plan and thus the public had no opportunity to have their say in the matter has no substance. From the facts of this case in the light of the statutory provision as, they were not altering/modifying the width of the road in question in the Master Plan and the width of the road were finalised as long back in the year 1984, there was no obligation cast upon the Planning Authority, when it published the draft Master Plan, to mention the width of 30 mtrs. Road. Therefore non-mentioning the width of the road in the draft Master Plan will not any way violate the provision of law and therefore, we do not find any substance in the first contention.

POINT No. 2

CONTRAVENTION OF SECTION 26 OF THE ACT.

33. In so far as Master Plan being violative of Section 26 is concerned. Section 26 reads as under:

Section 26: Making of town planning scheme and its contents- (1) Subject to the provisions of this Act, a Planning Authority, for the purpose of implementing the proposals in the comprehensive Development Plan published under sub-section (4) of Section 22, may make one or more town planning schemes for the area within its jurisdiction or any part thereof

(2) Such town planning scheme may make provisions for any of the following matters namely-

(a) the laying out or relaying out of land, either vacant or already built upon;

(b) the filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land;

(c) lay-out of new streets or roads; construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications;

(d) the construction, alteration and removal of buildings, bridges and other structures;

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts and dairies, transport facilities and public purposes of all kinds;

(f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(g) lighting;

(h) water supply;

(i) the preservation of objects of historical or national interest or natural beauty and of building actually used for religious purposes;

(j) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, size, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the subdivision of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs;

(k) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order, made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend.

(I) Such other matter not inconsistent with the objects of this Act as may be prescribed.

34. A perusal of the aforesaid provision makes it clear that the Planning Authority for the purpose of implementing the proposals in the Master Plan published under Sub Section 4 of Section 13 may make one or more town planning scheme for the area within its jurisdiction or any part thereof. Sub Section (4) of Section 13 as set out above deals with publication of the Master Plan in the prescribed manner as finally approved by the State Government. As stated earlier, in the instant case, Section 13(4) is not applicable. In the Master Plan prepared u/s 13(4) they have not dealt with the width of the road at all. The width of the road is retained as provided for in the Comprehensive Development Plan in the year 1984. As rightly pointed out by the learned senior counsel for the Corporation after finalisation of the Master Plan u/s 13 (4), in the area, which falls under the Master Plan, if in the town planning activity as contemplated under Sub Section (2) of Section 26, then a planning scheme for that area is, what is required. In the instant case, they are not implementing any town-planning scheme but what is sought to be implemented is widening of a road, in a scheme which was approved in the year 1984 under the Comprehensive Development Plan. Therefore, the said argument is misconceived and without any substance.

POINT NO. 3

WEDNESBURY PRINCIPLE

35. Next it was contended that the public ought to have been consulted before the implementation of widening of the road. The widening of the road was decided as far back as in the year 1984. It is being implemented only in the year 2011. Conditions that were prevailing in the year 2005 is totally different from the condition which is prevailing in 2011. The authorities ought to take public interest have to discuss with public and they should form a decision after taking into consideration the inputs given by such public who are the users of the road. In that context, learned senior counsel has referred to the judgment of the Apex Court in the case of Tata Cellular Vs. Union of India reported in AIR 1998 SC page No. 111). He relied on the following passage in the aforesaid judgment to support his contention:

Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matter whether contractual or political in nature of issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. Judicial review is concerned with reviewing not merits of the decision in support

of which the application for judicial review is made, but the decision making process itself.

The duty of the Court is to confine itself to the question of legality. Its concern should be;

- (1) Whether the decision making authority exceeded its power?
- (2) Committed an error of law.
- (3) Committed a breach of rule of natural justice.
- (4) reached a decision which no reasonable Tribunal would have reached; or
- (5) abused its powers.

36. Then they have referred to the principles of Wednesbury's Principle.

Page No. 98. At this stage, the Supreme Court Practice 1993 Volume, 1 pages 849-850 may be quoted;

4. Wednesbury principle - A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it" (Associates principal Picture Houses Limited V. Wednesbury Corpn., (1948) I KB 223: (1947 2 All ER 680 per Lord Greene M.R.)

99. Two other facets of irrationality may be mentioned.

(1) It is open to the Court to review the decision maker's evaluation of the facts. The Court will intervene where the facts taken as a whole could not logically warrant conclusion of the decision maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes.

37. Relying on these principles laid down by the Apex Court, it was contended that the authorities have not kept in mind the legal principles and need of the hour. The question whether there is a scientific advancement in the last five years and whether it is really necessary to form a 30 mtrs., road in the area in question. This contention has to be appreciated in the background of this case.

38. The facts are not in dispute. The BBMP is widening the existing road in question from Cauvery Junction to Yeshwantpur. From Cauvery Junction to Bhashyam Circle the width of the road is 27 mtrs., from Bhashyam Circle to 18th Cross Malleshwaram - the width of the road is 12 mtrs., from 18th cross Malleshwaram to C.N.R.Rao Circle -the width of the road is 15.5 mtrs., from C.N.R.Rao Circle to Yeshwantpur -the width of the road is 24 mtrs. In the year

1984 itself, the BBMP proposed to widen this road to 30 mtrs. The Bangalore needed a 30 mtrs., road in this stretch and in the Comprehensive Development Plan it is approved. Even after 26 years, the civic authorities were unable to provide the said road to the people of Bangalore. The public criticism and the fear of flight of industries and commerce from Bangalore to adjoining states has prompted, atleast now to open their eyes, see the urgency and implement the road widening programme, which was approved 26 years back. In 26 years there were a lot of changes in that area. Despite this, taking into consideration the exigencies and the need, they have kept the width of the road from Kaveri Circle to Bhashyam Circle to a width of 27 mtrs., though they could have extended it to 30 mtrs. If they want to extend by another 3 mtrs. that would result in felling of trees and more particularly, acquisition of private property which would be a huge burden on the public exchequer. Therefore, they have taken a decision to confine the width of the road throughout to 27 mtrs. The real bottleneck in this road is near Bhashyam Circle, near 18th Cross Malleshwaram where the existing road is hardly 20 mtrs. To the north side of the road is Sanky Tank. The Corporation contends that a portion of the property is encroached by private school for which they have taken steps. It is here they want to widen the road by another 15 mtrs. In this stretch of road, they are required remove 19 trees. Already 17 out of 19 trees are removed. Now what is remaining is only 2 trees. From 18th Cross Mallesharam to CNR Rao Circle the width of the road is 16.5 mtrs. It is submitted that in order to widen this road to 27 mtrs., throughout, the BBMP is not acquiring any private land. The road widening is done either in their property or in the government property. The price that has to be paid for widening the road is, felling of some trees. From CNR Rao Circle to Yeshwantpur - the width of the road is 27 mtrs, hardly another 3 mtrs., has to be widened. So, it is only between 18th cross Malleshwaram and CNR Rao Circle some 14 well grown valuable trees have been removed. In the entire body of the writ petition or in the course of the argument, no malafide is imputed or suggested to the authorities in widening the road. The fact that, there is traffic jam in the road and it is very important road, which connects Yeshwanthpur to Cauvery Junction, is not disputed and cannot be disputed.

39. Before taking up this expansion programme, the authorities have referred this matter to an expert committee, Director of Urban Land Transport. The report is produced by the petitioners themselves. That report specifically deals with widening of Sankey Road. A road sketch of the entire length has been given. That report makes it very clear there is no need to widen the road between A and B i.e. from Cauvery Junction to Bhashyam circle. However, after the Bhashyam circle, the report observes as under:

The segment starts from Bhashyam Circle to Sankey Tank Park Entrance. This is one of the most critical segments as it lies on the tank bund. The upstream side of the road is the Sankey tank and the downstream is the government land and some unauthorized structures have come up in the course of time. In other words the downstream land which belongs to government has been illegally

encroached.

When this stretch is compared to the segment A-B, the dissimilarity of road width from 33m to 11m can be noticed, creating the bottle neck and thus resulting in long traffic queues during the peak hours.

As per the ground reality this segment has to be widened up to decongest the traffic flow. Slight changes in alignment have to be done to protect some of the trees on the upstream side. The positive part of this stretch is that no property acquisition is required as the property belongs to the government. The only land to be acquired is about 600 sqm (as per the BBMP records the 600 sqm land is also illegally encroached). This is as shown in figure 5.

40. In the said report photographs are printed. The movement of the traffic is shown. How the road is used for parking of vehicles is set out.

41. From a reading of the entire petition, it gives an impression though the prayer in the writ petition is to prevent the widening of the road from Cauvery Junction to Yeshwanthpur, the grievance appears to be the stretch of the road between Bhashyam circle and Malleshwaram 18th cross. As said earlier 19 trees had to be removed excluding the area encroached by an educational institution. Out of the 19 trees, they have already removed 17. Educational institution has filed a suit preventing the BBMP from taking action against them. It is here 600 sq.mts. which appears to be the subject matter of encroachment there are 23 trees. It is in this circumstance we cannot make out from the material on record it is really a public interest litigation or private interest litigation. Be that as it may, as already 17 trees out of 19 trees are already removed, the trees to be removed is hardly two. It in this background we have to apply the doctrine of *Wednesbury unreasonableness*. Applying the aforesaid judgment of the Supreme Court it is not possible to hold that the decision of the authorities to widen this road is irrational, arbitrary. In fact, it is seasonal. It was over due. We are satisfied that it is done in public interest and therefore, that principle is not violated.

POINT NO. 4

SUSTAINABLE DEVELOPMENT.

42. Insofar as keeping in mind the doctrine of sustainable development which is the policy of the government is concerned, the learned counsel has relied on the judgment of the Apex Court in *BOMBAY DYEING 81 MEG. CO. LTD. Vs. BOMBAY ENVIRONMENTAL ACTION GROUP AND OTHERS* reported in (2006(3) SCC 434 at para 251 this is what the Supreme Court has held;

It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development

The harmonisation of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development simply put, is a process in which development can be sustained over generations. Brundtland Report defines "sustainable development" as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

The Indian judiciary has time and again recognised this principle as being a fundamental concept of Indian law.

43. In *VELLORE CITIZENS WELFARE FORUM Vs. UNION OF INDIA* reported in (1996) 5 SCC 647, the Apex Court laid down the salient principles of sustainable development consisting of the precautionary principle and the polluter pays principle being its essential features.

44. The Apex Court referring to Articles 48-A and 51-A (g) of the Constitution, observed that the aforementioned principles are part of the constitutional law.

45. In *Intellectuals Forum, Tirupathi Vs. State of A.P. and Others*, the Apex Court held as under:

That merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellant alleges.

46. Further, the Apex Court in the case of *Friends Colony Development Committee Vs. State of Orissa and Others*, held as under:

In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological

considerations, though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

47. Ultimately, the Supreme Court held that, development of the doctrine of sustainable development indeed is a welcome feature, but while emphasising the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore intergenerational interest, it is also not possible to ignore the dire need which the society urgently requires.

48. The Supreme Court in the case of N.D. Jayal and Another Vs. Union of India (UOI) and Others, held as under:

the adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development Right to environment is a fundamental right On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21. The weighty concepts like intergenerational equity, public trust doctrine and precautionary principle which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

To ensure sustainable development is one of the goals of the Environment (Protection) Act, 1986 and this is quite necessary to guarantee the "right to life" under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of "life" under Article 21. Acknowledgment of this principle will breathe new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance with the directions under the Act. The object and purpose of the Act; "to provide for the protection and improvement of environment" could only be achieved by ensuring strict compliance with its directions. The authorities concerned by exercising their powers under the Act will have to ensure the acquiescence of sustainable development Therefore, the directions or conditions put forward by the Act need be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfillment of conditions or direction under the Act Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act.

The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment has to be viewed from the above perspective.

49. From the aforesaid judgment of the Apex Court it is clear the concept of

sustained development has taken deep roots in our country. The Indian judiciary has time and again recognised this as fundamental concept of Indian law. While emphasising the need of economic development, a delicate balance between it and the necessity for development must be struck. Right to environment is a fundamental right. Right to development is also a fundamental right. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to simple construction activities. The right to development encompasses much more than economic well being and includes within its definition the guarantee of fundamental human rights. The right to development includes the whole spectrum of civic, cultural, economic, political and social process for the improvement of people's well being and realisation of their full potential. It is an integral part of human rights. The adherence to sustainable development principles is a sine-qua-non for the maintenance of the symbiotic balance between the rights to environment and development. The right to sustainable development cannot be singled out. The concept is to be treated as an integral part of life under Article 21.

50. The courts cannot sit in judgment over the cutting edge of scientific analysis relating to the developmental activity. Experts in science, they themselves differ in their opinions while taking decisions on such scientific matters and allied matters. The opposing new points of the experts will also have to be given due consideration after full application of mind. When the government or the authority concerned after due consideration of all points and full application of mind takes a decision, then it is not proper for the court to interfere. Such matters must be left to the wisdom of the Government or its instrumentalities. In such cases, if the situation demands, the court should take only a detached decision based on the pattern of the well settled principles of administrative law. If any such decision is based on irrelevant consideration or non-consideration of the material or is arbitrary, then the Court will interfere. Here, the only point to consider is, whether the decision making agency took a well informed decision or not. If the answer is yes, then there is no scope for interference. The consideration in such cases is in the process of decision and not in its merits.

51. The balance between the environmental protection and developmental activities will have to be maintained by strictly following the principles of sustainable development. This is a development strategy that caters to the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. Strict observance of sustainable development means a path that ensures development while protecting environment. A path that works for all people and for all generations.

52. In the city of Bangalore we have trees on the side of the roads. At the junctions of the roads we have small island like constructions where we find greenery and flower plants.

We have number of parks apart from Lalbagh and Cubbon Park, in the heart of the city. It is because of these tree growth and maintenance of parks, the city is

known as garden city.

This was the position when Bangalore was known as pensioners paradise. But after it became the capital of the State of Karnataka, with industrialisation, urbanisation, free flow of people from all over the country, setting-up of innumerable educational institutions and recently being the hub of information technology related activities and is now also known as "IT city of India", the population of Bangalore has multiplied several folds. The city has grown by leaps and bounds and it also has the distinction of one of the fastest growing city. The roads which are formed 30 or 40 years back did not keep in mind this enormous growth the city may achieve in such short span of time. That apart as Bangalore does not have a good public transport system, we find people owning their own vehicles, in particular two wheelers. With the spurt in the economic activity, four wheelers are also on rise in the roads. The net result is the Bangalore roads are not able to take in its hold this enormous traffic. The motor vehicles are multiplying everyday. It has become a nightmare for the people who are employed to reach their work places and to return home. Similarly the students have to spend hours either in public transport systems or in private vehicles while reaching schools or coming back home. Really the life in the city of Bangalore with all material comforts has become a hell because of these traffic condition. It is in this background widening the roads is the only means to overcome this traffic congestion. As on the side of the roads trees are planted, without cutting the same it is impossible to widen the roads.

These trees and the shade it gives and other advantages to the public of Bangalore cannot be valued in terms of money. At the same time in spite of such wonderful green cover, life has become miserable for the residents of Bangalore. On one side there is a need to preserve this green cover, on the other hand there is a need to widen the roads which cannot be achieved without cutting these trees. In this background the authorities approached the experts in the field, obtained their opinions and thereafter, applied their mind and took a decision to fell these trees for the purpose of widening the roads. It is the only way public interest can be served. The planners of Bangalore felt from Kaveri Junction to Yeshwanthpur, a 30 mts road is required in the year 1984. In the last 26 years, Bangalore has grown many fold. If in 1984 they needed 30 ft road, now they need 100 mts road. This is not a case of a forest being devastated and in the name of mining, thousands of sq.mts. of forest land is converted into a barren land or many trees being cut in the forest. This is a case where to widen a road which is used by the public of Bangalore, few trees along the road side have to be cut. It is to ease the traffic jam, the authorities intend widening the road. It is purely in public interest. There is no malafide intention. No doubt, trees on the side of the road has to be felled and probably, that is the price we have to pay for the sake of development, in the context of Bangalore and its roads. The authorities have already taken steps to plant saplings in accordance with law. What the court can do is to see that the road is formed within the time schedule so that the public interest is served. Under the guise of forming the road, they do

not cause any damage to the tank bund which is dear to the petitioners and the residents nearby. Further, the task of monitoring the growth of the saplings can be entrusted to an NGO.

53. It is in this context, it is useful to refer to the judgment of this Court in Writ Petition No. 14101/2005 (GM-PIL) Disposed off on 02.12.2005 in the case of Environment Support Group Vs. Commissioner, Bangalore Mahanagara Paliket wherein it is held as follows:

With regard to the cutting of the trees within the jurisdiction of the Bangalore City, a meeting was held under the Chairmanship of the Chief Secretary and, in furtherance of the said meeting, it has been directed that with regard to the trees falling within the jurisdiction of the Bangalore Mahanagara Palike (including those on roads), it has been decided that permission has to be obtained under the Karnataka Preservation of Trees Act and permission will have to be given on top priority and that further with respect to every instance, the Bangalore Mahanagara Palike is to send details to the concerned Tree Officer in every case and the Tree Officer has to take a considered decision in a fair manner, after exercising due caution. The contents of the said letter would further indicate that, before granting permission to cut the trees, an opportunity would be given to the representatives of "Hasire Usiru", wherever possible"

54. In the circumstances, we deem it proper to associate such an NGO organisation in the developmental activity, so that they would keep vigil over the activities carried by the respondents. If there is any deviation or their action is prejudicial to the public interest, certainly they will bring to the notice of this Court, so that this Court will be in a position to monitor and see that this road widening is implemented at the earliest so that the purpose of benefiting the public at large will be achieved and in the meanwhile, this authority will also take appropriate action in terms of the Tree Protection Act for not only planting saplings, but also to ensure that cutting of unnecessary tress are prevented.

55. It is also necessary for the BBMP to take all such steps to see that the suit which is pending in the civil court is expedited and if anybody is in possession of the property as encroachers, such encroachments are removed and such property is also utilised for public good..In that view of the matter we pass the following order:

(a) The interim order granted by this Court preventing the Corporation from widening the Cauvery Junction to Yeshwanthpur Road is vacated. They shall proceed with the widening of the road.

(b) The said road widening work shall be completed within twelve months from today.

(c) Respondent Nos. 1 to 4 shall take all effective steps to see that the tank bund is not breached under the guise of development and widening of the road.

(d) They shall also take effective steps to see that, all the tree saplings, which

are planted in accordance with the Tree Protection Act after felling of the trees, are protected, nurtured.

(e) The "Hasire Usiru" Organisation is at liberty to co-ordinate with the Corporation authorities in protecting and preserving the tree growth and also extend their support for improvement of the tree growth along the 30 mtrs. road and nearby area and the Corporation shall also extend full co-operation in this environmental protection programme.

(f) In future, if the Corporation Authorities have to remove the trees on the side of the road, they shall strictly comply with the provisions of the Tree Protection Act and as directed in the earlier writ proceedings, the authority shall issue notice to the "Hasire Usiru" Organisation and pass appropriate orders in accordance with law.

(g) In the working of this order, if there is any difficulty to the parties to this proceeding, they may approach this Court.

(h) Further, the Corporation shall take active steps in the suit which is pending and impress upon the Court below that public interest is involved and see that the matter is disposed of at the earliest.

The writ petition is disposed of, accordingly.