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**(2016) 10 AHC CK 0133**  
**In the Allahabad High Court**  
**Case No : Writ C No. 19837 of 2010**

Dr. Santosh Dixit

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 21-10-2016

**Acts Referred:**

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 13, Section 26, Section 26(2), Section 32

**Citation :** (2017) 3 ADJ 401

**Hon'ble Judges :** Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

**Bench :** Division Bench

**Advocate :** U.P. Singh, Ashok Kr. Lal, V.B. Singh and J.N. Sharma, Advocates, for the Petitioner in Writ C No. 19837 of 2010.; C.S.C Rajesh Kumar Singh and V.B. Mishra, Advocate, for the Respondent in Writ C No. 19837 of 2010.; U.P. Singh, Ashok Kr. Lal and V.B. Singh

**Final Decision :** Dismissed

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## Judgement

1. Pursuant to order of date passed on recall application, the writ petition is restored to its original number.
2. Heard Sri J.N. Sharma, learned counsel for petitioners, Sri Rajesh Kumar Singh, learned counsel for Ghaziabad Development Authority and learned Standing Counsel for State.
3. Dispute in all these writ petitions involve common question of facts and law, though with minor variations, therefore, all these matters have been heard together and are being decided with this common judgment.
4. For narration of facts, we propose to give relevant facts involved in all these writ petitions separately and thereafter deal with issues raised in these writ petitions collectively.
5. Writ Petition No. 19837 of 2010 (hereinafter referred to as "first petition") has been filed by two petitioners, one Dr. Santosh Dixit and another Branch Manager,

State Bank of India. They have assailed notice dated 16.3.2010 (Annexure 5 to writ petition) issued by Ghaziabad Development Authority (hereinafter referred to as "G.D.A.") to petitioners informing that notice under Section 26(2) of U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as "U.P. Act, 1973") was already served upon petitioners and published in daily newspaper "Hindustan" and they should stop commercial activities of running "Bank" in disputed premises, else appropriate action would be taken under U.P. Act, 1973. Second impugned notice dated 5.4.2010 (Annexure 1 to writ petition) issued by G.D.A. stating that petitioners are running commercial establishment i.e. "Bank" in the premises sanctioned for residential purpose i.e. D12D, Kaushambi, District Ghaziabad, they should stop commercial use of disputed premises, else disputed premises shall be sealed under Section 28A( 1) of U.P. Act, 1973.

6. Petitioner - 1 is owner of disputed premises and has let-out it to petitioner no.2 State Bank of India for running a branch of Bank in the said premises under lease deed executed on 1.3.2009. It is for a period of 15 years. Bank is running banking activities in the aforesaid premises. A show cause notice was issued by G.D.A. on 25.6.2009 under Section 26/27 of U.P Act, 1973 which was replied by petitioner-1 on 31.7.2009 stating that similar banking activities are continuing in other residential areas of Kaushambi and other residential colonies of G.D.A., therefore, it should not be disturbed, and, if any, conversion charge is payable, petitioner-1 is ready to pay the same. Petitioners also informed G.D.A. in respect to area under New Okhla Industrial Development Authority (hereinafter referred to as NOIDA), question, whether banks and other commercial activities can be allowed to continue in residential areas is under consideration in Special Leave to Appeal (Civil) No. 9706 of 2002 (R.K. Mittal and others v. State of U.P. and others) arising from the judgment dated 9.1.2002 passed by this Court in Writ Petition No. 36709 of 2001, wherein Supreme Court has permitted "banking activities" to continue but has stopped other "commercial activities".

7. Writ Petition No. 20881 of 2010 (hereinafter referred to as "second petition") has been filed by two petitioners, one Gagan Nijhawan and another Branch Manager, State Bank of India, Branch Surya Nagar, District Ghaziabad. There also facts are similar except that it is in respect to premise No. C22, 1st Floor, Surya Nagar, District Ghaziabad, where under the lease deed dated 23.12.2008, State Bank of India's branch is running at the aforesaid premises.

8. Writ Petition No. 34137 of 2010 (hereinafter referred to as "third petition") has been filed by single petitioner, Amar Pal Singh in respect to premise No. C24, Sector 23, Sanjay Nagar, Ghaziabad, where at also a branch of State Bank of India is running and petitioner has said that under a compounding scheme launched by G.D.A. in 2002, it has also deposited an amount and requested for conversion of land user for commercial one.

9. Last Writ Petition No. 11656 of 2011 (hereinafter referred to as "fourth petition") has been filed by two petitioners, that is Som Dutt Tyagi and Branch Manager Indirapuram Branch, State Bank of India, District Ghaziabad, which

relates to House No.1/13, Niti Khani I, Indirapuram, District Ghaziabad and here also, in residential house of petitioner - 1, branch of State Bank of India is running under lease deed dated 9.1.2007. Rest of the facts are common.

10. Sri J.N. Sharma, learned counsel for petitioners vehemently contended that all banking operations in residential areas are permitted under Regulations and therefore, G.D.A. in issuing notice to petitioners for stopping use of premises in question for commercial activities i.e. banking operations has acted wholly illegally. Petitioners cannot be restrained from carrying on banking operations in the residential accommodations. He has placed reliance upon Zoning Regulations of G.D.A. He further submitted that judgment in R.K. Mittal and others v. State of U.P. and others (2012) 2 SCC 232 is not applicable to banking activities and will apply only on Nursing Homes. He further submitted that in any case the aforesaid judgment relates to area under NOIDA and not for development authorities governed by U.P. Act, 1973 where provisions are different, hence taking recourse to judgment in R.K. Mittal (Supra), banking activities in residential buildings under jurisdiction of G.D.A. cannot be stopped.

11. In the counter affidavit filed by G.D.A., stand taken is that use of land cannot be changed and letting out residential buildings by petitioners for running banking operations is patently unauthorized, illegal and in utter violation of provisions of U.P. Act, 1973. For the purpose of making residential accommodation, suitable for banking operations, additional constructions have been carried out without any permission or sanction of G.D.A. and, therefore, additional constructions raised by petitioners are wholly unauthorized, illegal and liable to be demolished. It is also said that dealing with unauthorized use of buildings and unauthorized constructions, this Court in Writ Petition No. 56542 of 2003 filed by petitioner Som Dutt Tyagi has issued following directions :

"This writ petition has been filed merely having an apprehension that the respondents may demolish the construction raised by the petitioner, though it is strictly in accordance with the sanctioned plan. It has also been submitted that if there is a variation, it is compoundable as per the law, the same requires to be compounded.

Learned counsel appearing for the Ghaziabad Development Authority, Ghaziabad assures the Court that if the construction is in accordance with the sanctioned plan, it shall not be interfered with and if it is found to be in deviation thereof, the authority will consider the application for compounding and if it is not compoundable, the petitioner shall demolish the same.

In view of the above fact situation, we dispose of this writ petition requesting the respondents to consider the case of the petitioner that there will be no occasion for interfering with the construction, if it is in accordance with the sanctioned plan and if it is found in deviation, it may be compounded, if it is compoundable. If it is not compoundable, petitioner is directed to demolish the said construction."

12. Som Dutt Tyagi then filed an application on 4.1.2005 admitting constructions raised, other than sanctioned map, and requested for compounding of such constructions and also change of user. Under Ghaziabad Master Plan, 2021 and Zoning Regulations, it is provided that land or building shall not be used in contravention to let-out plan by competent authority. Regulation 1.93 reads as under :

"vf/kfu;e ds vUrxZr fdLh ifj{ks= (tksu) dh ifj{ks=h; fodkl ;kstuk ;k fdLh LFky dk ys&vkmV Iyku l{ke Lrj ls vuqeksfnr gS rks ,slh fLFkfr esa mDr LFky@Hkw[k.M dk vuqeU; Hkw & mi;ksx ifj{ks=h; fodkl ;kstuk ;k foU;kl ekufp= esa fufnZ"V mi;ks ds vuqlkj gh gksxkA"

"As per the Act, in case the Zonal Development Plan or the lay out plan of any place under a zone is approved at the level of a competent authority; then, the permissible land use of the aforesaid place/plot shall be carried out strictly as specified in the Zonal Development Plan or layout map."

(English translation by Court)

13. Use of premises, which are admittedly residential buildings and maps were sanctioned for residential purposes, by G.D.A., for commercial activities like banking operations, is patently illegal, unauthorized. Also the construction raised without sanction of map is not compoundable, therefore, petitioners are not entitled for any relief, hence writ petitions are liable to be dismissed.

14. The facts stated above make it very clear that all the premises involved in these writ petitions are in areas which are residential as per master plan. The construction of buildings on the premises in question were sanctioned for residential buildings and maps were sanctioned for the said purpose. Petitioners owners of premises submitted their maps for sanction of construction of building proposing residential buildings. G.D.A., considered those maps accordingly and granted sanction for raising residential buildings. However, without any permission or sanction from G.D.A., petitioners have raised additional constructions so as to make residential building in question, suitable for banking activities, and no sanction of such construction has been obtained from G.D.A. Petitioners have also allowed after making the above alteration in construction of buildings to be used for banking activities and here also there is no permission, sanction or authority obtained from G.D.A. Now the question is "whether such user of residential buildings for banking activities is permissible for it is a mere irregularity which is rectifiable by paying some compounding charges or the aforesaid activities are illegal and not only to be stopped forthwith but unauthorised construction also liable for demolition".

15. The principal issue raised in these writ petitions involves the extent to which user of a premise in an area within development authority can be flouted, deviated or altered either by occupant or owner, on its own or even by development authority concerned. Here we cannot ignore the very concept of constitution and establishment of development authorities under U.P. Act, 1973.

16. In the context of Ghaziabad, which was earlier a Tehsil of Meerut and due to its closeness with national capital Dehli has shown a remarkable development in last few decades. It would be appropriate to have a retrospect over certain historical facts, development of regulatory provisions for making Ghaziabad more comfortable, more environment friendly and an example of developed city. The land within the jurisdiction of Ghaziabad city situated between Ganga and Yamuna and it is highly fertile. The industrial development due to its vicinity to the national capital is outstanding and to some extent has excelled over another most industrial district of this province i.e. Kanpur. The land in this area, by virtue of all round industrial development, has become the biggest asset and business of land owners. Simultaneously, it is also one of the biggest reasons of all kinds of illegalities and irregularities prevailing in this area. Mushroom growth of land mafias, land grabbers and indiscreet use of land violating all laws is a common feature.

17. Historically it is said to have been founded by the Vizir, Ghaziuddin in 1740 AD who named it Ghaziuddinagar. To start with, a spacious Sarai consisting of 120 rooms of masonry was constructed. The details are given in the District Information Booklet of the Department of Information of State of Uttar Pradesh. It says that Sarai constructed by its founder consisted of pointed arches. Presently it is in almost ruined conditions and only a gate, few portion of boundary wall and a massive pillar of fourteen feet in height remains. In fact it is in bad stage of preservation. The area got prominence when Jat Raja, Surajmal was killed here in 1763. Thereafter there was an encounter between the freedom fighters and a small British force in May, 1857. The area has three main rivers surrounding namely Ganga, Yamuna and Hindon, besides, some small rainfed rivers. Prominent among them is Kali river. Earlier it was a Tehsil of District Meerut and became District under U.P. Land Revenue Act, 1901 in 1976. Its population, as per 1991 census was 2,703,933 which has gone up to 4,661,452 as per census of 2011. The development, sanitation and maintenance etc. in Ghaziabad Town earlier was in the hands of Ghaziabad Municipality. It was succeeded by Improvement Trust Ghaziabad created in 1960 under U.P. Town Improvement Act 1960. A development scheme was notified in 1961.

18. In 1973, U.P. Act, 1973 was enacted by President of India in exercise of powers under Section 3 of U.P. State Legislature (Delegation of Powers) Act, 1973 which has been continued by virtue of the provisions of U.P. President's Act (Reenactment with Modification) Act, 1974. However, no notification under Section 3 was immediately issued in respect to Ghaziabad and therefore in 1973 and even thereafter, for some time, it continued to be operated by Ghaziabad Improvement Trust. Ghaziabad was made a Revenue district on 14.11.1976. A notification under Section 3 of Act, 1973 was issued in 1977 declaring certain parts of Ghaziabad District as "development area" for which a Development Authority was also constituted w.e.f. 9.3.1977. The assets, liabilities, obligations etc. for the area declared as "Development Area" of Ghaziabad vested in Ghaziabad Development Authority resulting in complete cessation of control and

authority of Ghaziabad Improvement Trust.

19. Besides above, the common public amenities including water supply arrangement was being looked after into the area by State Government through its department namely Local Self Government Engineering Department, Ghaziabad (hereinafter referred to as "L.S.G.E.D."). In 1975, U.P. Water Supply and Sewerage Act, 1975 came to be enacted with the establishment of U.P. Jal Nigam w.e.f. 18.6.1975 and thereafter assets, work, responsibilities, obligations etc. with respect to water supply in certain areas in State of Uttar Pradesh including that of Ghaziabad stood transferred and vested in UPJN. This arrangement has continued even after constitution of G.D.A.

20. The U.P. Act, 1973 gives due importance to Master Plan and Zonal Development Plan. What shall contain in Master Plan is provided in Section 8 of Act, 1973 which reads as under:

"8. Civil survey of, and master plan for the development area: ( 1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall

(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of framework within which the zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area."

21. The procedure of preparation and approval of Master Plan is provided in Sections 10, 11 and 12 which need not be discussed at this stage since sanction of Master Plan and its enforcement on various dates with respect to different periods under the relevant statute is not disputed. Prior to Act, 1973, in Ghaziabad, the plan which was made applicable was termed as "Improvement Scheme" and the area upon which it operated was termed as "Regulated Area". Basically the two in effect are not different whether termed as "Improvement Scheme" or "Master Plan". The question is that of changes permissible in an Improvement Scheme or Master Plan as also the user of land and building in contravention thereof.

22. Section 13 talks of amendment of plan. Section 16 prohibits use of land and building in contravention of plans.

23. Section 10 (1) clarifies that the word "Plan" in Sections 11, 12, 14 and 16 would mean Master Plan as well as the Zonal Development Plan for a Zone.

24. Section 13 permits an "Authority" to make such amendment in the Plan which do not affect important alterations in the character of the plan and do not relate to the extent of land uses or standards of population density. Subsection (2) of Section 13, however, confers full power upon State Government to make amendment in the plan. Subsections (3), (4) and (5) however provide procedure of such amendments whether proposed to be made by "Authority" or by the "State Government". It read as under :

"(3) Before making any amendments in the plan, the Authority, or, as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any person with respect to the proposed amendments before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the State Government.

(4) Every amendment made under this section shall be published in such manner as the Authority or the State Government, as the case may be, may specify, and the amendments shall come into operation either on the date of the first publication or on such other date as the Authority or the State Government, as the case may be, may fix.

(5) When the Authority makes any amendment in the plan under subsection (1) it shall report to the State Government the full particulars of such amendments within thirty days of the date on which such amendments come into operation."

(emphasis added)

25. Whenever a dispute would arise about the amendment sought to be made by Authority that it effects important alternations in the character of plan etc., the dispute has to be settled by State Government.

26. A perusal of above provision shows that compliance of procedure is mandatory.

27. Section 16 puts an embargo on use or permission to be used of any building or land in a plan area otherwise than in conformity with such plan. However, if on the date of enforcement of plan, the land or building was used in any other manner, the same would continue subject to terms and conditions as may be prescribed by bye-laws. Use of land or building in violation of plan and where development of land has been allowed to any person or body; in violation of the conditions of such development, such infraction is an offence punishable under Section 26 of U.P. Act, 1973.

28. Section 27 provides for demolition of a construction made in violation of the plan and procedure to be observed before passing such order of demolition.

29. The offences under U.P. Act, 1973 are compoundable under Section 32 which reads as under:

"32. Composition of offences. - (1) Any offence made punishable by or under this

Act may either before or after the institution of proceedings, be compounded by, the Vice Chairman or any officer authorised by him in that behalf by general or special order, on such terms, including any term as regards payment of a composition fee, as the Vice Chairman or such officer may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded."

30. Section 53 confers power upon State Government to exempt, by issuing a Notification in the Gazette, any land or building or classes of land or buildings from all or any of the provisions of the Act or Rules or Regulations framed thereunder.

31. Then power to make rules has been conferred upon State Government vide Section 55 for carrying out the purposes of Act. The Authorities have been given power to make Regulations under Section 56 which must be consistent with the Act and the Rules framed thereunder. Such Regulations can be made for the administration of affairs of Authority.

32. It may also be pointed out at this stage that where the development is allowed to any person or body, such development shall also be consistent with the plan.

33. This Court finds no provision under the U.P. Act, 1973 which entitles the Authority to go for profiteering on an illegal act of encroachment or unauthorized construction in the name of compounding. The compounding contemplated in Section 32 is in respect to offences punishable under the Act. It nowhere provides that once an offence is compounded, an act, which is in violation of Plan, shall also stand regularized or become valid. The effect of compounding is provided in Subsection (2) of Section 32 that an offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect to the "offence" compounded. This is with regard to the criminal liability fastened upon the person for committing an offence under the Act, 1973. But the prohibition contained in the Act and statutory obligation upon Authorities to set right a person who has faulted/breached such provision by taking appropriate action, e.g. demolition of building by exercising power under Section 27 has not been made unoperated when an offence is compounded. The proceeding prevented as a result of compounding an "offence" relates to offence and illegality/irregularity so prohibited/controlled under another provision. It may also be noticed that by U.P. Act No. 3 of 1997 (hereinafter referred to as "Act, 1997"), certain other offences have been provided vide Sections 26D and 28A. However, removal of any construction raised in contravention of Plan and removal of encroachment etc. are governed by a different procedure and steps which would remain unaffected by such compounding. In other words, the compounding under the Act, 1973 is to avoid the criminal liability and punishment on conviction but not to regularize a construction prohibited under



the Act for which no relaxation is permissible except when the plan is amended in accordance with Section 13 of the Act.

34. Counsel for petitioners argued that amendment of plan was permissible under Section 13(1) of U.P. Act, 1973 and it is within the competence of G.D.A.

35. The stand of G.D.A., in counter affidavit is that the area where disputed premises are situated are residential areas and that is why construction of houses by petitioners as residential houses were sanctioned by G.D.A., except of referring to Zonal Regulations.

36. Counsel for petitioners has not been able to place anything to show that disputed area could have been treated to be a mixed residential area or of any otherwise nature wherein some deviation is permissible besides residential purposes. We also do not find anything from record that before any such power is conceded with G.D.A., it has to be undergone exercise following the procedure prescribed under Section 13 (3, 4 and 5) of U.P. Act, 1973. We all know it well and law is well settled, when something is required to be done in a particular manner under statute things done otherwise are prohibited. This principle was recognised in *Nazir Ahmad v. King-Emperor* AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by Apex Court in a catena of judgements, which I do not propose to refer all but would like to refer a few recent one.

37. In *Dhananjaya Reddy v. State of Karnataka* 2001 (4) SCC 9 in para 23 of the judgment, Court held :

"It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all."

38. In *Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala* 2002 (1) SCC 633, it was held :

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

39. The judgments in *Anjum M.H. Ghaswala* (supra) and *Dhananjaya Reddy* (supra) laying down the aforesaid principle have been followed in *Captain Sube Singh & others v. Lt. Governor of Delhi & others* 2004 (6) SCC 440.

40. In *Competent Authority v. Barangore Jute Factory & others* 2005 (13) SCC 477, it was held :

"It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning."

41. In *State of Jharkhand & others v. Ambay Cements & another* 2005 (1) SCC 368 in para 26 of the judgment, Court held :

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

42. The cumulative effect of various provisions of Statute shows that before finalizing a Master Plan, competent authority shall take all such steps which would include an opportunity to the residents of area concerned and others to submit their suggestions, objections, claims etc. and thereafter it shall be finalized. Once the "Master Plan" is finalized and submitted to Government and notified, thereafter its sanctity cannot be whittled down in a routine, casual and whimsical manner. The statute imposes an embargo against any action which is not consistent with the plan. However in a changing Society, a status quo for all times to come may not be countenanced. An elbow space thus has to be provided which may authorize competent Authority/body concerned, in a very very limited manner, to make minor deviations to suit the changes. This has been done vide Section 13(1) of Act, 1973. Then the State Government has been empowered to alter the plan. However before doing so, again a well considered but a bit cumbersome procedure has been provided which entitles the residents and others also to have their say if they so desire. All these checks and measures are part of the statute to show that an approved plan has to be adhered as a rule and its deviation is a rarity. The authorities on their own, as and when they like, in a sheer administrative indiscreet manner, cannot clothe upon themselves such power. They, on their own, cannot authoritatively say that a particular change will not substantially alter the Plan or that such alternation can be or should be made.

43. Further violation of Plan not only attracts a criminal liability but there are civil consequences also. The Authority has been empowered and is also under an obligation to make the things right by removing such violation/deviation and restoring the Plan in its notified state. The basic object of Authority is development and not destruction or devastation or diminution of an otherwise development already made.

44. A deviation or violation of a Scheme or Plan cannot be made a means of profiteering by collecting huge amount from offenders/ violators and permitting them to continue to enjoy such deviation. If this stand is sustained, it would mean that the Statute is being read in a manner so as to confer an immunity upon the resourceful people to violate law and permit them to continue to enjoy such violation for all times to come by paying some amount to the authority. These violators basically come from elite class. They find it easier vis-a-vis their status to part away any amount of money so as to retain the information of plan. It adds to their status also. Most of the builders have made it a part of their business. Simultaneously the development authority also stand financially (officially and privately) benefited in allowing contravention of plan and violation of a statutory embargo without exercising its power of restoration by taking action of demolition etc. If such an interpretation is upheld, it would not only encourage corruption and element of extraneous consideration but would also

create two classes; one those who are bound to suffer in their efforts of making any deviation from Master Plan since they lack financial resources to pay the so called compounding fees for continuing to enjoy the illegal and unlawful deviation; and, those who are rich, resourceful and capable to do so. While making certain observations in respect to corruption prevailing in the Society, this Court in *Smt. Mithilesh Kumari v. State of U.P. and others*, 2011(1) ADJ 40 has observed that such creation and classification which encourages corruption, is discriminatory and also against human rights. The Court observes as under:

"39. In the last 60 years of independence, if there is one field we can boast of a national allround development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colours and nuances.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely."

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is

said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer."

45. This Court is of the view that a perusal of Act, 1973 shows that except those cases which are covered by proviso to Section 16, there is a complete embargo against deviation from a plan. The use of land or building which is not in conformity with such plan is totally prohibited. It is also a criminal offence under Section 26 of Act, 1973. In fact when there is a case of unlawful encroachment or obstruction, even those who are responsible for preventing such encroachment or obstruction, if failed to do so, are also liable for criminal prosecution and punishment under Section 26D of Act, 1973. Section 32 providing composition of offences is only in respect to criminal liability but not to retain the contravention of plan which is prohibited by Section 16. That contravention if continues will have to face the legal consequences. The only saving clause one can read is Section 13 whereby a change in plan can be approved by State Government and if that has been done the situation may be different, otherwise the embargo is complete.

46. The reason for making an approved plan sacrosanct and not to be touched easily is very evident. In the developed countries a lot of emphasis is on the planned development of cities and urban areas. In fact there the dividing line in the urban and rural areas is getting obliterated and one can say that every kind of local body is supposed to proceed with an objective of planned development. The object of planned development can be achieved by rigorous enforcement of plans prepared after careful study of intricate issues of city management, scientific research, rationalization of loss and other issues. The people of developed countries have successfully achieved the objective of planned development contributing largely by strictly adhering to plans, local laws and other directions including restrictions necessary for effective implementation of such plans. They respect the laws enacted by legislature for regulating planned development of cities. One finds seldom complaint of violation of master plan etc. in construction of building; residential, institutional or commercial.

47. Unfortunately, the developing countries are example of depicting a scenario substantially different. This includes India and in particular certain northern States like State of Uttar Pradesh. These are example of blatant and scant respect to master plans and the laws relating thereto. The competent legislature though has enacted laws with pious objective of planned development in the cities and area governed by local bodies but the enforcing machinery is extremely poor and casual. They work hand in gloves with violators. The violators, i.e., the beneficiaries of direct violation of plans and the authorities

responsible for restricting such violation both work with a sense of immunity from any consequential act.

48. Reflecting similar ethos, Court in *Shanti Sports Club and Anr. v. Union of India and others*, 2009(15) SCC 705 has said in paragraphs no. 74 and 75 as under:

"74. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc."

"75. Unfortunately, despite repeated judgments by the this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master

plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

49. These very observations have been reiterated and approved in a subsequent decision in *Sanjay Adlakha v. State of Haryana*, 2011(6) SCALE 419.

50. Time and again Courts have observed that contravention of statute, violation of statutory plans and schemes, illegal and unauthorised encroachment, obstruction and illegal construction would never pay and this is also against the interest of Society at large but unfortunately the violators and the officials of local bodies and development authorities responsible for implementation of statute and statutory plans have enjoyed pleasure in more violation than its observance. This has filled rather the coffer of individual officials substantially instead of benefiting the State exchequer. A source of parallel economy commonly known as "black money" has developed which is running unabatedly under the shield provided by the beneficiaries of both the sides, i.e., the public as well as the State. Today it is an open secret that Reality Sector is thriving basically on underhand economy. The apparent finances are like an iceberg comparing the real quantum of money involved. Moreover, the concerted unholy nexus between Reality Sector and Officials cause real loss and detriment to innocent individual homeseeker.

51. In *Priyanka Estates International Pvt. Ltd. and Ors. v. State of Assam and others*, JT 2009 (14) SC 654, Court observed:

"It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose

flats are to be demolished as compared to the Builder."

52. In *M.C. Mehta v. Union of India and others*, JT 2006(2) SC 448, expressed its anguish against the mass violation of master plans and total inaction on the part of authorities responsible to execute it and said:

".. . . this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it.. . . .The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misuses and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens."

53. Courts have appreciated that a lot of technical, scientific and other concepts put forth in preparing a master plan for a coordinated systematic development of an area considering multifold aspects including the past, present and future requirement/objective/ purpose etc. They also take care of environment including flora and fauna. The maintenance of greenery is an integral necessity of a planned development for the purpose of maintaining healthy environment. Its importance cannot be undermined. It is for this reason, in every plan, special attention is paid for open land, greenery, that is called green belt, parks, gardens etc. But, then, after approval of plan, when actual execution comes, the first casualty is the area contemplated as open space, green belt, parks etc. Everybody want to curtail such area by encroaching it, obstructing it, making unauthorised construction etc. It appears that a competition is going on and there is struggle of victory to the more resourceful one. It goes without saying that this competition is equally participated by officials for reasons other than bona fide. In other words, this Court has no hesitation in observing that an over all continuous increasing corruption one can see in development authorities where the development authorities have changed the meaning of "development authority" and read the words as if it amounts to development of officials of authorities. That being so, here come the authority of Courts to check, stop and put the things right.

54. Here it would be useful to refer an earlier occasion out of several when GDA has been found indulged in violating plans and disturbing areas reserved for the purpose of healthy environment etc.

55. In *D.D. Vyas v. Ghaziabad Development Authority*, AIR 1993 All. 57 a grievance was raised before this Court about utilization of open space reserved for a park in Ghaziabad either to construct building or otherwise it would defeat

the purpose of preservation of environment and development of residential colonies shown in Master Plan. The Court observed that the writ petition is an apt example as to how the statutory object to secure preservation of environment and development can be defeated by authorities who lack dynamism, aestheticism and enthusiasm for development though assigned for development duties. Speaking on the objective of Act, 1973 the Court said that earlier growth in the State was haphazard and feeling necessity of developing areas tackling the problems of town planning and urban development in a rational manner and also to have the suitable expert bodies instead of the existing local bodies, found inadequate to cope with problem with passage of time, the Act was brought and development authorities on the pattern of Delhi Development Authority were established including the GDA at Ghaziabad. In the Master Plan an open space was earmarked for public park called "Adu Park" situated in Raj Nagar. However, no steps were taken for its development and on the contrary GDA started carving out plots on such open space dedicated for public park in the plan and alienate the same, with a view to earn huge profits. This was challenged on the ground that GDA cannot alter the plan duly approved by Government to the detriment of public at large. Disapproving such action of GDA and upholding the challenge the Division Bench observed that object of legislation constituting development authorities was to ensure fast and planned development of the areas which was an enormous work and could not be accomplished by the local bodies or authorities existed prior to the Act, 1973. A plan can be said to have executed when entire works are done strictly in accordance with the plan. Unless an open space reserved for development of public park is developed as such, the execution of plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities, civic and others may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been executed fully, if an open space meant for a park is not developed as such. Such failure on the part of development authority would mean that ambition and objective of State that the areas reserved and approved to be developed in a particular manner has not been so developed. The duty of development authority is to implement the plan in its entirety and not to distort it. Court said that the impression gathered by GDA that their job is over when residential area became habitable is a delusion. Habitability and completion of construction work in the entire area according to plan is one thing and development in entirety of the area, strictly in conformity with plan is another. In paras 9, 10 and 16, the Court further said:

"9. It is a matter of great regret that the fond object for which the G.D.A. was constituted remained unaccomplished. The Raj Nagar scheme is meant for the reasonable accomplishment of the statutory object, which is to promote the orderly development of the town Ghaziabad and to preserve open spaces by reserving public parks with a view to protecting the residents from the ill effect of urbanisation. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable



aesthetic features of the town. No town is known for skyscrapers, for myriad industries, for big commercial centres, for big monumental building, but for the attractive lay out of the town, for good landscapes, for beautiful parks and lawns, for expansive verdant cover, and for perfect social ecology. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A Public Park is a gift of modern civilisation, and is a significant factor for the improvement of the quality of life. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surrounding was a privilege of few, but now in a democratic set up, it is gift from the people to themselves. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

10. A benefit which one can get from the developed, well maintained and well manicured lawns in a big park, cannot be secured from undeveloped, morbid and shabby, open space. Whereas the former attract and invite the people to come, suit and rest, the latter is always stinky, dirty and abhorrent.

16.. .. Unless an open space is developed into a full-fledged park having gardens, trees, flower beds, plants, lawn, promenade etc., the environment will not improve and therefore the functionaries of the G.D.A. have remained grossly negligent in discharging their fundamental duty enjoined upon them by clause (g) to Article 5A of the Constitution. Equally they failed to discharge their duty enshrined by Article 5A(j). If the functionaries of the State instrumentalities show their averseness to the developmental activities, which are assigned to them, then the nation can never grow to the cherished heights. An ornamental park with well manicured lawns is not only a source of comfort to the public, but adds to the beauty of a town, as jewellery studded with pearls or diamonds add to the beauty of the person who wears it."

(emphasis added)

56. Court also considered Section 13 and power of authority to make changes in plan and in paras 19, 22 and 23 said as under:

"19.. .. From Section 13(1), it is manifest that the authority may make only those amendments which do not affect material alterations in the character of the plan. It means the respondents do not have an absolute right of amending the master plan or the zonal development plan. The basic characteristic of such a

plan cannot be altered by the authority. Only that amendment is permissible under Section 13(1) which does not affect the basic character of the plan. An open space lying for park in the plan forms a basic feature of the plan and that cannot be amended. A plan cannot be amended so as to denude the plan of such a basic feature. Section 13(1) can in no circumstances be interpreted so as to clothe the G.D.A. to utilise the open space reserved for a park either to construct building or use it in any other manner, which is foreign to the concept of a park.

22. Applying the dictum of the Supreme Court in *Bangalore Medical Trust* (supra), it must be held that the Authority cannot amend the plan under Section 13(1) so as to deprive the public of a public park. Not only the G.D.A. even the State Government cannot alter the plan under section 13(1) carries several limitations, Section 13(2) gives the State Government unlimited powers to make amendments in the plan of the nature specified in subsection () or otherwise. The words "or otherwise" occurring in Section 13(2) cannot be interpreted to mean that the State Government has a right to alter the plan so as to enable the G.D.A. to use the open space, reserved for a park, for the purposes having no semblance of a park. In *Bangalore Medical Trust* (supra), the Supreme Court reiterated that once an open space is dedicated for a park that cannot be converted into any other purpose.

23. We, therefore, hold that under Section 13, neither the Authority nor can the State Government amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for public parks."

(emphasis added)

57. Striking heavily against unauthorised construction, in *M.I. Builders Pvt. Ltd. v. Radhey Shyam Shahu and others*, AIR 1999 SC 2468 it was said that Courts while implementing rule of law show no consideration to the builders or any other person responsible for unauthorised construction etc. Being illegal it cannot be compounded and has to be demolished. The judicial discretion which includes equitable extraordinary exercise of power would not include a discretion to be exercised to encourage illegality or something which would perpetuate illegality. Justice must be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar discretion. The Court clearly said:

"Judicial discretion whenever it is requires to be exercised has to be in accordance with law and set legal principle."

58. Where the authorities are not performing their statutory functions indulging more in violation than maintenance of rule of law, overlooking, ignoring or omitting illegal activities of individuals, private or governmental, as the case may be by doing acts in violation of statutory plans, the Court finds its duty, constitutional and legal both, to cause such authorities to come to task and execute rule of law strictly by issuing a writ of mandamus.

59. In *Mansukh Lal v. State of Gujarat*, 1997 (7) SCC 622, the Court said:

"Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature."

60. The dispute raised by petitioners can also be looked into from another angle where honest owners of land are using their construction only for the purposes the same are meant while petitioners are claiming certain benefit for their misdeed and for that purposes desire that G.D.A., should come to their rescue by permitting that. It is really interesting that in this case G.D.A., is acting to adhere to the purpose for which constructions were permitted and/or to adhere to the sanction plan by normally his experience is otherwise. Though, learned counsel for petitioners has argued at length by referring to Zonal Regulations, but we find nothing therein to show that user of premises in question, for other than residential purposes, would have been permissible under sanctioned master plan or Rules and Regulations framed under U.P. Act, 1973.

61. We are forfeited in taking the above view from judgment in *R.K. Mittal and others (Supra)*, though it is in respect to the area under NOIDA constituted under U.P. Industrial Area Development Act, 1976 (hereinafter referred to as "Act, 1976") but town planning and preparation of master plan etc., to substantial extent, are paramaterial.

62. In *Munshi Ram and another v. Union of India and others* (2000) 7 SCC 22, Court said :

"Development authority should immediate take strong action against those who have started using residential plots, wholly or partially, for other nonresidential uses."

63. In the Zoning Regulations relied upon by petitioners, Pure Residential Area and Mixed Residential Area are as under :

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02.0.1

#### Pure Residential Area

Residential areas identified in the Master Plan/Zonal Plan/Sector Plan/Layout Plan where no other use or change in land use with special permission is permissible except for the land use permissible generally and conditionally.

2.1.2

#### Mixed Residential Area

Residential areas identified in the Master Plan/Zonal Plan/Sector Plan/Layout Plan Area where, on the basis of appurtenance and for completion of work, the change in land use is also permissible apart from the land uses permissible conditionally and with special permission."

(English translation by Court)

64. Nothing has been shown to us that area in question where disputed premises situate can be permitted to be used as other than residential purpose. In paras 47, 48 and 49 of judgment in R.K. Mittal and others (Supra), Court has made observations as to how development authority should work so as to observe and comply requirement of statute strictly. In para 52 it says that user of establishment meant for "residential use" as Bank and Nursing Home is illegal. Paras 52 and 56 of the said judgment is reproduced as under :

"52. Similarly, in the present case, the action of the Development Authority in permitting mixed user was in apparent violation of the statutory provisions in the Master Plan. Establishment of banks and nursing homes in the residential sectors meant for residential use alone is unequivocal violation of the statutory provisions in the Master Plan.

56. The running of a bank or a commercial business by a company in the residential sector is certainly not permissible. In fact, it is in patent violation of the Master Plan, Regulations and the provisions of the Act. We see no power vested in the Development Authority to permit such user and ignore the misuse for such a long period."

(emphasis added)

65. In view of above discussions, we find no apparent illegality on the part of respondent G.D.A., in issuing notice in question in these writ petitions and on the contrary, we appreciate endeavour on the part of G.D.A., to ensure user of a premise for the purpose it is meant and planned and not to enjoy in derogation and blatant defiance of statute. Such a user, if ignored by G.D.A., it will cause great public injustice and would be arbitrary, discriminatory, oppressive for those who are law abiding residents and would confer a premium upon those who

blatantly violate law for their individual gain.

66. In the result, all writ petitions lack merit and are dismissed with cost which we quantify to Rs. 10,000/- to each set of writ petition.