

(1999) 11 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16099 of 1993

K. Srinivasan and others

APPELLANT

Vs

Executive Officer, Cantonment Board, Sec"bad and others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Cantonments Act, 1924 — Section 179, 180, 181(5), 184, 185(1)
Constitution (Forty-Second Amendment) Act, 1976 — Article 29(1), 48A
Constitution of India, 1950 — Article 12, 21, 226

Citation : (2000) 2 ALD 209 : (2000) 1 ALT 353

Hon'ble Judges : N.Y. Hanumanthappa, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. Manjani S. Gahu, for the Appellant; Mr. K.R. Kuppuswamy Iyengar, Mr. K.V. Subba Reddy for Mr. N. Ratna Reddy and Mr. V. Ravikiran Rao, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—This is a taken up writ petition on the basis of a representation sent by the residents of Krishnapuri Colony, West Nehru Nagar, Secunderabad. The said writ petition is taken up as Public Interest Litigation. The contents of the representation are as follows:

The petitioners are the residents of Krishnapuri Colony, West Nehru Nagar, Secunderabad, which comes under the jurisdiction of Secunderabad Cantonment. It is alleged that M/s. Kartik Constructions of West Maredpalli (2nd respondent) constructed 27 flats multi-storied complex, opposite to their houses without making a provision for septic tanks. According to the petitioners the 2nd respondent constructed 27 flats though the cantonment authorities had accorded permission for construction of 10 flats only. Thus the said construction is an unauthorised one. Due to the absence of septic tanks, raw faecal matter is being let in to the adjacent open rain water drain due to which the petitioners are experiencing foul odour and unable to keep their windows open. Even the occupants of the 27 flats seem to be strange human beings in perpetuating this crime against society. This situation creates health. hazards to the residents of

Krishnapuri Colony. The petitioners brought this matter to the notice of Sub-Area Commander on 20-5-1993 who in turn instructed the Executive Officer, Secunderabad Cantonment Board, 1st respondent, to look into the matter and solve the same. As there was no improvement in the matter, the petitioners also met the 1st respondent on 17-7-1993 who replied them that he had inspected the septic tank and certified accordingly and nothing remains to be done in the matter. Having not satisfied with the attitude of the 1st respondent, the petitioners requested the Station Health Officer, Military Hospital, Cantonment who inspected the complex in question and gave report dated 27-7-1993 endorsing the allegations levelled by the petitioners.

2. Apart from the sewage problem, the petitioners stated that due to the continuous pumping of underground water since commencement of the construction work, the petitioners were forced to go in for bore well as their open wells were completely dried. Even now on account of the continuous pumping of ground water by the inhabitants of 27 flats, some of the bore well of the petitioners have dried. Thus, they are facing a desperate water situation.

3. The petitioners further stated that there is also garbage pollution as wet and dry garbage from the complex is being thrown in the open road as the builder did not make arrangement for collection of garbage. The builder instead of installing the transformer within the premises, installed the same by constructing stone masonry plinth of about 5" (6" high) on the colony road, thereby creating obstruction for traffic and nuisance to the residents of the colony. During construction due to the heavy movement of lorries, concrete mixtures etc., the colony road was severely damaged and exposed the road metal leaving it in a miserable state. The cantonment authorities are least bothered in this regard.

4. On the complaint given by the petitioners and other residents of a nearby colony, a notice dated 7-4-1992 was given to the 2nd respondent u/s 185(1) of the Cantonment Act to remove the unauthorised construction within thirty days. Aggrieved by this notice, the 2nd respondent preferred an appeal under Section 274 of the Cantonment Act before the Competent Authority which was dismissed by an order dated 26-10-1993 observing that the construction is illegal and the Board is at liberty to take further action in pursuance of the notice. Pending appeal, the 1st respondent-Cantonment Board filed OS No.438 of 1992 on the file of the XVIII Assistant Judge, Secunderabad and obtained a temporary injunction restraining the 2nd respondent from proceeding with the unauthorised construction. In spite of the said injunction order, the 2nd respondent completed the entire construction, According to the petitioners, the 1st respondent is empowered to take steps for demolition of the unauthorised constructions. Instead of doing so, he approached the civil Court by way of filing a suit, which is incorrect. When the petitioners wrote to the Director of Defence Estates, Southern Command, Pune for taking contempt proceedings against the 2nd respondent for violation of the Court orders, the petitioners were advised to approach the Court for initiating proceedings of contempt. According to the

petitioners, the 1st respondent has got power to order for demolition which he is not exercising for the reasons best known to him. Therefore, the petitioners prayed for the following reliefs :

(i) direct the Executive Officer of the 1st respondent to get the septic tank build and commissioned, to the specifications of the Health Authorities, by a set a date and stop raw faecal matter being let out in the open drain;

(ii) direct the Executive Officer to get the complex garbage collection and disposal, organised properly, to prevent health hazard, pollution etc., by a set date;

(iii)direct the Executive Officer not to abdicate his legitimate duties, and in terms of Section 181(5) of the Cantonment Act, demolish violations from the approved plans and FSI;

(iv)direct the Executive Officer to ensure that the builder repairs the damaged road, immediately and remove the obstruction; and

(v) give such other directions or orders, as the circumstances of the case warrant.

5. Originally the petitioners filed this writ petition against the Executive Officer, Cantonment Board and M/s. Kartik Constructions (respondents 1 and 2 respectively). During the pendency of the writ petition, the flat owners of the Apartment in question were impleaded as respondents 3 to 27.

6. The 2nd respondent filed counter-affidavit sworn to by one Satish Agarwal, a partner of 2nd respondent, denying the illegal construction as alleged by the petitioners. It is stated that he constructed 25 flats with three floors duly following the procedure. He purchased plot Nos. 1, 2 and 3 in Krishnapuri Colony from one B.K. Seshu, an Advocate, and started construction in the name and style of M/s. Kartik Constructions and Builders after obtaining necessary permission from the Cantonment Board. Initially the competent authority sanctioned plan for construction of ten flats on 30-6-1989. Accordingly he raised cellar and ground floor first. After receipt of revised sanction plan he constructed 2nd and 3rd floors in accordance with the rules and regulations of the Cantonment Act. The 2nd respondent stated that by the date of filing of the suit by the 1st respondent, all the flats were constructed and were occupied by the residents in the year 1990 which fact was suppressed by the 1st respondent in the suit. Prior to the filing of the suit the 1st respondent inspected the site on 10-6-1992 and reported that the entire building is completed and 80% of the flats have been occupied and septic tank was also constructed and the occupants are residing there since 1990. In spite of this fact, the 1st respondent filed a suit with a mala fide intention. The 2nd respondent never committed any contempt act. According to him, septic tank was constructed well in advance before occupation of the residents. He stated that except the petitioners, there is none in the vicinity to complain about the alleged pollution. The septic tank constructed by him is very much in use by the occupants and if the petitioners

still feel that the same is insufficient, he is prepared to construct another septic tank. In fact the authorities inspected the complex and found the septic tank in order. It is averred that he is a responsible person in the locality, a social worker and got reputation in that area. He is the last person to violate any rules. It is further stated that to cater to the needs of the occupants of the complex he dug a bore well and every house in that area is having a separate bore well. As such, it is incorrect to state that the bore well dug by him affects the other bore wells of the locality. In fact there is acute shortage of ground water in twin cities. It is lastly stated that the petitioners have no locus standi to file this writ petition as they have already invoked the jurisdiction of the civil Court by way of filing of suit. The petitioners mis-represented the facts to the Court. Therefore, the writ petition is liable to be dismissed.

7. The 2nd respondent also filed additional counter-affidavit sworn to by one S. Puranmal, another partner of the 2nd respondent, taking further stand that two septic tanks were constructed and they also provided other sanitary amenities like collection of garbage etc. The Cantonment authorities visited and found the amenities provided by the 2nd respondent satisfactory. The memo issued by the Station Health Organisation dated 29-8-1996 after visiting the complex reads as follows :

"After inspection of premises along with Mr. O. Gajjaram, Health Superintendent on 24-7-19% it is confirmed that a new septic tank has been constructed which is as per standard guidelines. A demanded garbage big has also been constructed by the builder.

However the foul smell in the area can only be decreased further by covering the large drain following next to the building."

8. The 2nd respondent stated that construction of 25 flats was carried on as per the sanctioned plan and as such it is false to contend that there was unauthorised construction. The 2nd respondent further stated that since the construction was completed as early as in May, 1990, no authority or power now vests in the Cantonment Board to remove any construction as alleged for the reason that any action for such violation has to be taken by the Board within 12 months from the date of the alleged construction as provided u/s 185 of the Cantonment Act.

9. The 5th respondent, a owner of the flat purchased from the 2nd respondent, filed counter-affidavit on his behalf and on behalf of other flat owners namely respondents 6 to 27 stating that construction of Rising Sun Apartments in question completed in the year 1991 and there are 25 flats in the apartment and most of the flats were occupied in the year 1991 itself. They purchased the flats by raising loans from LIC, Housing Finance and other financial institutions. They belong to middle income category and they are the bona fide purchasers. The Cantonment Board made assessment of the property tax and property tax is being collected regularly. He submitted that though initially the septic tank was

not built properly, later a new septic tank was built as per the specific actions. He further submitted that the public drainage which was adjacent to the apartments was recently covered by RCC slab at the cost of the builder. The builder has also provided garbage dump at his own cost which was not provided earlier. They are using the said garbage dump and the surrounding environment is now being maintained neatly. He further stated that neither the petitioners nor the Cantonment Board ever raised any objection regarding the construction of Rising Sun Apartments before they occupied the flats. The petitioners came with the present allegations, 2 years after the completion of apartments. At this length of time, if any order is passed against these respondents they will be put to great hardship and huge loss. Thus contending they sought the writ petition be dismissed.

10. Along with the writ petition, the petitioners also filed WP MP No.24958 of 1993 seeking interim directions to the 2nd respondent to provide a septic tank and make arrangements for collection of garbage etc. This Court after calling for a report from the Health Officer, allowed the petition on 25-1-1996 granting four months time to the 2nd respondent to make necessary provisions. Accordingly then 2nd respondent complied with the directions of this Court as admitted by the petitioners.

11. When the writ petition came up for final hearing, an argument was advanced by the 2nd respondent that there are other buildings in the colony where constructions were made in violation of the sanctioned plans. On this, Division Bench appointed a Committee of Experts by an order dated 10-10-1996 to inspect the buildings in the vicinity and submit its report on the following aspects :--

- (1) To identify 40% area to be left vacant as lung area as per the bye-laws, in Krishnapuri Colony.
- (2) Nature of violations as compared to the plans sanctioned by the Cantonment Board with reference to each of the buildings listed.
- (3) Whether septic tank has been constructed for each of the buildings and if so, its adequacy as compared to the occupants of the building.
- (4) Arrangements made for garbage collection from the flats and its disposal in relation to the buildings.
- (5) Action taken so far by the Executive Officer, Cantonment Board against the violations and illegal constructions as identified by the Committee.

12. Accordingly, the Expert Committee headed by the Chairman Mr. M. Nagaraja Rao, Engineer-in-chief (PRED), Government of A.P., Hyderabad, and other two members namely Mr. B. V. Raghava Swamy, retired Engineer-in-Chief (PWD) Government of A.P., Hyderabad and Dr. R.C. Reddy, Scientist and Head, National Environmental Engineering Research Institute (NEERI) II Ct. Camp, Hyderabad, submitted its detailed report to this Court on 10-10-1996.

13. With regard to identifying 40% area to be left as lung area, the Expert Committee while referring to the layout furnished by EO, Cantonment Board, observed in its report as follows :

"As per the above details, it has been observed that lung space including roads is around 31% as against 40% required as per bye-laws and this is further reduced in the revised layout to 24%.

It indicates that the revised layout approved by the Cantonment Board is in violation of layout bye-laws issued on 9-3-1974 by the Government of India. In the above bye-laws under Rule 13, not less than 40% of the total area of the land to be reserved for streets and open spaces. It is observed by the Committee that the lung space shown in the original layout (i.e.,) in between plots C1 to C6 and B23 and B27 is converted into a plot in the revised layout and shown as plot No.14/A. The back lane towards northern and southern side of plot No.14/A is under encroachment of individual plot holders (i.e.,) plot Nos.11 to 14 and 4 to 7. As per the revised layout the back lanes of plot No.14/A is not paved. It is also observed that the existing well on the western side of plot Nos.61 and 62 is converted into 3 plots in which, Cellar + ground floor + 2 upper floors were constructed by M/s. Kartik Constructions. In the original layout 31% of the roads area and open space, has been decreased to 24% by converting lung open space of triangle area and existing well area.

14. As far as second aspect namely as to the nature of violations as compared to the plan sanctioned by the Cantonment Board, the Expert Committee inspected various apartments located in the vicinity including the apartments in question. In respect of the building constructed by M/s. Kartik Constructions which is the subject-matter of the writ petition, the Committee observed as follows :

"The party has taken permission for the construction of stilt floor for parking and ground floor for residential plots but actually constructed stilt + ground + 2 upper floors. The permitted carpet area is 4/32 sq.ft. But the party constructed with a carpet area of 7828.78 sq.ft. The permissible FSI is 1, whereas the party has constructed FSI of 1.8. The party also did not maintain set backs as per the rules. The number of flats as per the approved plan are 10. But the party constructed 24 flats. The party also converted some of the parking area into built up area on the eastern side of the cellar floor and at present it is vacant. The building is in violation of (1) FSI (2) around open space and (3) also deviations to the sanctioned plan."

15. The other apartments which the Committee inspected are located in plot Nos.45, 48, 50, 62 and 9 of Krishnapuri Colony open plots No. in S.Nos.17 to 23 abutting Maredpally main road (adjacent to plot Nos.62 and 44 and Misha Mansion, H.No. 3-9-105, adjacent to Krishnapuri Colony, which belong to third parties). In respect of all these buildings, the Committee observed that all the constructions are in violation of the sanctioned plans.

16. With regard to the issue whether septic tank has been constructed for each

of the building and if so its adequacy, the Committee observed that the 2nd respondent provided septic tank with a capacity of 16.31 (3 No's 8"x4"x6") as against the required volume of 30.0, thus it is inadequate. Similar is the report in respect of some of the other buildings and in respect of some other buildings no septic tanks were constructed.

17. With regard to the arrangements made for garbage collection from the flats and its disposal in relation to the buildings, the Committee observed as follows :

"As stated by the Cantonment Board, garbage is required to be deposited by the individual households in public dustbins provided in the colony and the same is cleared by the Cantonment Board through its agencies.

But plotwise or apartmentwise dustbins are not provided by the Cantonment Board. It is also observed that the extra dustbins are not provided even after construction of the number of apartments in the Krishnapuri Colony.

No norms have been evolved by the Cantonment Board for the provisions of dustbins in the apartments.

18. With regard to the action taken so far by the Executive Officer, Cantonment Board against the violations and illegal constructions as identified by the Committee, the Expert Committee reported as follows :

"The Annexure-D submitted by the Executive Officer vide his letter dated 30-11-1996 indicating nature of violations, action taken so far by the Cantonment Board is enclosed with the report. After inspection of the site, the Committee requested the Executive Officer to furnish the actual position regarding violations as existing on the ground. Annexures-1 and 2 indicating violations as submitted by Executive Officer, Cantonment Board vide his letter dated 11-2-1997 is also enclosed along with the report.

19. In Annexure-D annexed to the report the nature of violation in respect of the complex in question is stated as follows :

- "(i) plots have been combined;
- (ii) Additional FSI used;
- (iii) setbacks violated
- (iv) Additional storeys constructed
- (v) other deviations from sanctioned plan".

20. Subsequent to the filing of the report by the Expert Committee, the Executive Officer, Secunderabad Cantonment Board filed an affidavit sworn to by one Rabinder Singh stating that the 2nd respondent obtained permission for construction of ten flats whereas he raised 24 flats; one M. Devaraj, Supervisor inspected the site on 22-4-1992 and reported that the builders including 2nd respondent in the locality constructed the complexes in violation of the plans

notices u/s 185(1) of the Cantonment Act were issued as to why unauthorised construction should not be demolished; as there is no provision under the Cantonment Act to restrain the person from selling the unauthorised buildings, the Board filed OS No.432 of 1992 obtained injunction against 2nd respondent; the revised plan said to have been obtained by the 2nd respondent is a false document; all the constructions in the area were made against the bye-laws and contravening the FSI Regulations and without sanction and they cannot be compounded even by the competent authority which is the General Officer Commanding-in-Chief, Southern Command, Head Quarters, Pune u/s 185(2) of the Cantonments Act; necessary arrangements have been made in Krishnapuri Colony for sanitation and adequate number of dustbins have already been provided for collection of garbage and conservancy trucks of the Cantonment Board and frequently removing the garbage in that area; the builders constructed big septic tanks with sufficient capacity to receive the surplus dirty water from the apartments. He lastly submitted that the Cantonment Board is prepared to comply with any directions that may be given by this Court in the matter.

21. According to the petitioners, every citizen has a right for free air, light and water. There shall not be any sewage or drainage problem. It is one of the duties of the local self-government like Municipalities and Cantonment Board that whenever they accord permission for construction of flats, necessary conditions shall be lipped in the sanction plan that the persons intends to put up construction shall provide to such buildings or flats septic tanks in order to prevent foul smell. There shall be garbage dumps so that the waste material can be dumped therein. While approving the lay out or plan care shall be taken that such construction shall be carried on in accordance with the plan approved or sanctioned. Any unauthorised construction shall be removed forthwith; constructions so permitted shall not give room for traffic problem. The case of the petitioners that inspite of bringing the violations of the building rules by the 2nd respondent to the notice of the authorities concerned, no action was taken by the authorities. A notice as contemplated u/s 185(1) of the Cantonment Act was issued to the 2nd respondent calling upon to remove the unauthorised construction. The Cantonment Board also filed a suit OS No.438 of 1992 on the file of the XVII Assistant Judge, Secunderabad and obtained temporary injunction against the 2nd respondent restraining it from proceeding with the unauthorised construction. The said interim order was challenged by the 2nd respondent by way of filing an appeal u/s 274 before the competent authority. On 26-30-1993, the said appeal was dismissed observing that the construction carried on by the 2nd respondent is illegal and reserving liberty to the Board to take appropriate action. The Director of Defence Estates, Southern Command to whom a representation was made by the petitioners about the illegalities committed both by the Cantonment Board and the 2nd respondent in constructing the buildings he advised the petitioners to approach the Court to indicate contempt proceedings.

22. The respondents denied the allegations made by the petitioners as to the violation of the building rules; non-providing of septic tank facilities, adequate drainage facilities and garbage dumping facilities. On the other hand, they took a stand that all the amenities required have been provided. The 2nd respondent submitted that the flats were constructed as per the approved plan; the flats were occupied during 1990-91. As such even if there is any illegality or violation of conditions and building regulations, the Cantonment Board cannot take action against the builders or the flat owners u/s 185 of the Cantonment Act.

23. During the pendency of the writ petition, an application for interim order was filed before this Court which was numbered as WP MP No.24958 of 1993 wherein the petitioners sought a direction to the 2nd respondent to provide septic tank and make arrangements for collection of garbage etc. The said application was allowed on 25-1-1996 directing the 2nd respondent to make necessary provisions within four months. The 2nd respondent submitted that he complied with the said direction. As there were serious allegations as to the violation of building regulations, namely putting number of floors and flats etc., ignoring the sanctioned plan, the Court had to appoint an Expert Committee to look into those allegations made by the petitioners in respect of the flats in question and other neighbouring flats. The Committee had to submit its report on five queries which were already referred to above. The Expert Committee consisting of the expert and experienced persons submitted their report to the Court on 10-10-1996. In the said report it is clearly stated that in respect of lung area, instead of keeping 40% area as vacant as per bye-laws, the builder left only 24% which was reduced in the revised lay out. Approval of such revised lay out is in violation of lay out bye-laws issued on 9-3-1974 by the Government of India. In the said report it is also mentioned that some portions of plot No. 14-A have been encroached and the back lanes of the said plot is not paved. So far as Kartik Constructions is concerned, the Committee observed though the plan was approved for construction of stilt floor for parking and ground floor but it actually constructed stilt + ground floor + 2 upper floors. The permitted carpet area is 4/32 sq. ft. But the builder had constructed with a carpet area of 7828.78 sq.ft. The permissible FSI is 1. Whereas the builder has constructed FSI of 1.8. No set backs have been maintained to the flats. As per the approved plan the number of flats to be constructed are 10. But the builder has constructed 24 flats. Even the parking area had been converted into built up area on the eastern side of the cellar floor. Thus the construction of building is in violation of FSI, around open space and also deviations to the sanctioned plan. Regarding making provision for septic tank, the Committee observed that as against the required volume of 30.0 the builder provided a septic tank with a capacity of 16.31 (3 No's 8"x4"x6"). Thus the same is inadequate. Regarding arrangements for collection of garbage, the Committee observed that dust bins were not provided by the Cantonment Board apartmentwise.

24. Subsequent to the filing of the Expert Committee Report, the Executive Officer of the Cantonment Board filed an affidavit as already stated, stating that

the 2nd respondent took permission for construction of flats only, but he raised 24 flats. Thus the said construction is in violation of the sanctioned plan. A notice was issued u/s 185(1) of the Cantonment Act calling upon the 2nd respondent to show-cause why the unauthorised constructions should not be demolished. It is further stated that the revised plan obtained by the 2nd respondent is not a genuine one. There is no provision for compounding the offence. It is also stated that necessary steps have been taken to provide septic tank and other amenities. The Board assured that whatever direction the Court may give they would comply with the same.

25. Sections 184 and 185(1) of the Cantonment Act, 1924 which deal about illegal erection and re-erection and power to stop erection or re-erection or to demolish respectively are extracted herein :

"Section 184 illegal erection and re-erection--Whoever, continues or completes the erection or re-erection of a building --

(a) without having given a valid notice as required by Sections 179 and 180, or before the building has been sanctioned or is deemed to have been sanctioned, or

(b) without complying with any direction made under sub-section (1) of Section 181, or

(c) when sanction has been refused, or has ceased to be available, or has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of Section 52, shall be punishable with fine which may be extended to five thousand rupees.

Section 185(1). Power to stop erection or re-erection or to demolish :--(1) A Board may, at any time, by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Board considers that such erection or re-erection is an offence u/s 184, and may in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence u/s 184, within twelve months of the completion of such erection or re-erection in like manner direct the alteration or demolition, as it thinks necessary, of the building or any part thereof, so erected or re-erected.

Provided that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such as it thinks reasonable;

Provided further that the Board shall not, without the previous concurrence of the Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any

case in which the order u/s 181(5) sanctioning the erection or re-erection has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of subsection (1) of Section 52, and shall in any such case in like manner direct the demolition or alteration, as the case may be, of the building or any part thereof so erected or re-erected where the Officer Commanding-in-Chief, the Command, thereafter directs that the order of the Board sanctioning the erection or re-erection of the building shall not be carried into effect or shall be carried into effect with modifications specified by him :

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date on which the order of the Officer Commanding-in-Chief, the Command, has been communicated to him."

26. Sections 187, 188 and 189 of the Cantonment Act deal about projections and obstructions, unauthorised buildings over drains, etc; and drainage and sewer connections which are extracted herein :

Section 187. Projection and obstructions :--(1) No owner or occupier of any building in a Cantonment shall, without the permission in writing of the Board add to or place against or in front of the building any projection or structure overhanging, projecting into, or encroaching on, any street or any drain, waver or aqueduct therein.

(2) The Board may, by notice in writing, require the owner or occupier of any such building to alter or remove any such projection or encroachment as aforesaid;

Provided that in the case of any projection or encroachment lawfully in existence at the commencement of this Act, the Board shall make compensation for any damages caused by the removal or alteration.

(3) The Board may, by order in writing, give permission to the owners or occupiers of buildings in any particular street to put up open verandahs, balconies or rooms projecting from any upper storey thereof to an extent beyond the line of the plinth or basement wall at such height from the level ground or street as may be specified in the order."

Section 188 Unauthorised buildings over drains, etc., --

A Board may, by notice in writing, require any person who has, without its permission in writing, newly erected or re-erected any structure over any public sewer, drain, culvert, water-course or water-pipe in the cantonment to pull down or otherwise deal with same as it thinks fit.

Section 189. Drainage and sewer connections :--(1) A Board may, by notice in writing, require the owner or lessee of any building or land in any street, at his own expense and in such manner as the Board thinks fit, to put up and keep in

good condition proper troughs and pipes for receiving and carrying rain water from the building or land and for discharging the same or to establish and maintain any other connection or communication between such building or land and any drain or sewer.

(2) For the purpose of efficiently draining any building or land in the cantonment the Board may, by notice in writing, require the owner or lessee of the building or land --

(a) to pave, with such materials and in such manner as it thinks fit, any courtyard, alley or passage between two or more buildings, or

(b) to keep any such paving in proper repair.

27. It is contended by the petitioners that though the irregularities committed by the builder in constructing the apartments in question and the nuisance being caused by the builder creating health hazards as stated supra, were brought to the notice of the Cantonment Board, it failed to take action against the builder. As such, the petitioners being the residents of that area are aggrieved by the conduct of the Cantonment Board. Therefore, they can maintain this writ petition.

28. The Cantonment Board which is a local authority within the meaning of Article 12 of the Constitution of India, has certain obligations towards its citizens - among them are providing amenities to its citizens; keeping the area clean taking such other steps that are necessary to prevent health hazards, air and water pollution etc. It is the duty of the Cantonment Board to take action against those who are responsible for causing nuisance to the public.

29. When an authority who is entrusted with certain duties and obligations has failed in discharging the same and such failures affects the interests of the public at large, the public spirited persons whether an individual or an organisation can challenge the action of such authority either by instituting a suit or by filing a writ petition under Article 226 of the Constitution of India. Who is the person aggrieved, what are the duties of the authorities, what action be initiated against those who have violated the law has been made clear by number of judicial pronouncements by various High Courts and the Apex Court, some of which are referred herein :--

30. In the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , the Supreme Court held as follows :

"The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper effective administrative guidance is forcing citizens to espouse challenges with public

interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movement both in nature of litigation and approach of the Courts."

31. In the case of Yogendra Singh Tomar Vs. State of Madhya Pradesh and Others, , the High Court of Madhya Pradesh dealing with the scope of Section 279 of the M.P. Municipalities Act reminding about the importance of maintaining ecological balance and the duty of the Municipality in honouring its obligations and cautioning what will be the result if a building is constructed violating sanctioned plan, referring to several decisions of the Apex Court and other High Court held as follows :

"We are of the opinion that open space in this case should not be converted into shopping complex. In this regard it would be apt to remind the Municipal Council of its obligations to the citizens.

In Agins v. City of Tiburon (1980) 447 (US) 255, the Supreme Court of United States upheld a zoning ordinance which prohibited conversion of open space land thereby protecting against the result impacts such as pollution, destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood and other demonstrated consequences or urban sprawl. Upholding the ordinance the Court said :

The State of California has determined that the development of local open space plans will discourage the premature and unnecessary conversion of open space land to urban uses. The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanisation. Such Governmental purposes long have been recognised as legitimate. The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for open space areas." (Para 4)

32. It appears that this concept and necessity to keep ecological balance was very much apparent when the U.S. Supreme Court in Samuel Berman v, Andrew Parker, (1954) 99 Law 27 Ed. = 348 US 26, expressed a view that any attempt to disturb this balance may suffocate the spirit by reducing the people who live there to the status of cattle. It was observed :

"They may indeed may living almost insufferable burden. They may also be an ugly sore a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

..... The concept of the public welfare is broad and inclusive... The value it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislative to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. In the present case, the congress and its authorised agencies have been determinations that take into account a wide variety of values. (Para 5)

As to what are the obligations of the Municipal Authorities in the matter of providing basic civil amenities to the citizens may also be noticed.... (Para 6)

In Attorney General v. Corporation of Sunder Land 1875 (2) Ch.D 634, the position of the Municipal Authorities with regard to public parks, gardens, squares and streets was put at par with a trustee, and it was held that the Municipal Authorities would be guilty of breach of trust in employing any part thereof for purposes other than those contemplated by those relevant statute. Still later in Maddison v. Aider-son (1883) 8 IND.Ap 467 : 52 LJ QB 737, it was observed that an excess of statutory powers cannot be validated by acquiescence in or by the operation of estoppel. The Court would decline to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. It was further observed that the Court of equity would not permit the statute to be made an instrument of fraud. (Para 7)

33. What was said by the Chancery Court in the year 1875 was reiterated by the Supreme Court one hundred years later in Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, . In the above case the Municipality of Udipi had granted permission for construction of cinema hall in a place which was preserved for residential purposes. This action of the Municipality was struck down by observing that the Municipal Authorities are supposed to enforce a scheme and not to act in breach thereof. It would be apt to quote what was said by the Supreme Court at page 2181 :

"27. Where the Municipality acts in excess of the power conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping power then in those case it is not exercising its jurisdiction irregularly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within its limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the like of its authority and infringes or violates the rights of others, it becomes like all other of the Courts. If sanction is given to build by contravening bye-laws the jurisdiction of the Courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative." (Para 8)

34. The statutes in force in India and abroad reserving open spaces for parks and

play grounds are the legislative attempt to eliminate the misery of disreputably housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. Reservation of one space for parks and play ground is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation. Thus when in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, , an attempt made to convert a park into a Nursing Home it was nullified and it was specifically stated that protection of the environment or open spaces for recreation and fresh air, play grounds for children pomenade for the residents and other convenience or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. As a matter of fact, it would be proper to quote the observations made by the Supreme Court in para 28. These read as under :

"28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the Court. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest breathe fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quite and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid."..... (Para 8A)

The US Supreme Court in Village Belle Terrc v. Bruce Borass (1974) LabIC 797 : 416 US 1 opined that police power is not confined to eliminate filth, stencil and unhealthy places. It equally comes into play when lay out zones are proposed which are essential for family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.... (Para 9)

From the decisions referred to above, it becomes apparent that :

(i) the Municipal Authorities are supposed to act as trustees and should see to it that the property which vests in its is used for the benefit of the residents of the city it governs; and

(ii) if open spaces are sought to be used in a way which would result in pollution, destruction of scenic beauty or disturbance of the ecology, then the Court would step in and would remind the Municipal Authorities of their obligations.

From the aforementioned judicial precedents it becomes apparent that the Municipal Authorities are supposed to act as trustees and should see to it that open spaces should not be converted into shopping complexes. In fact, open spaces are lungs of the city. If these lungs are not there, then the citizens of the city can have no better life. Something may be said regarding locus standi also. In this regard, there can be no dispute with the proposition that this is a public interest litigation. This aspect be examined in detail.... (Para 11)

In *Sidebotham, Re. ex parte Sidebotham*, (1880) 14 Ch.D 458. Lord Justice James, was of the view that a man was not a person aggrieved unless he himself had, suffered particular loss in that he had been injuriously affected in his money or property rights. He was not "aggrieved" simply because he had a grievance. This concept underwent a change when in *R. v. Thames Magistrates' Court* (1957) 5 LGR 129, a matter came before Lord Denning, and Lord Justice Parker. This was a case about a pitch in a street market in Bermondsey. The Magistrates had awarded the pitch to a seller of jellied eels. But a newspaper seller thought that he ought to have had the pitch. He had no legal right to the pitch. In the above case, the view expressed was that he had a locus standi and the order passed by the Magistrate was set aside. The old tendency to limit litigation vis-a-vis right of persons who had a particular grievance of their own has undergone a remarkable change in the recent times. This question was considered in *R. v. Commissioner of Police of the Metropolis, ex parte Blackburn* (1968) 2 QB 118, following observations were made by the Queen Bench:

"A question may be raised as to the machinery by which he could be compelled to do his duty exists, there should be means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney-General or by the prerogative writ of mandamus (Para 12)

Lord Denning in his book "The Discipline of Law" has expressed an opinion as under :

"Now here I must ask all of you to note that those were all cases where an ordinary citizen sought one of the prerogative remedies of certiorari, or prohibition. These are available against Government departments or any person or body set up by statutory authority affecting the rights of individuals. And I have shown, I hope, that any responsible citizen has a sufficient interest - such as to entitle him to be heard - if he complains that the law is not being enforced as it should."..... (Para 13)

35. The position of law in this country is no different. The Supreme Court of India in number of decisions has expressed an opinion that locus standi to approach a Court does exist when injury is likely to be caused to be public at large. These decisions of the Supreme Court of India are mentioned in the decisions reported as AIR 1991 420 (SC) . These are as under:

- (i) *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ;
- (ii) *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, ;
- (iii) *Ranisharan Autyanuprasi v. Union of India* (1989) Supp. 117 SCC 251 (sic);
- (iv) *Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others*, .

Ultimately the view expressed by the Supreme Court of India in *Subhas Kumar's* case (supra) was that if anything endangers or impairs the quality of life in

derogation of laws, a litigation under the label of public interest litigation would be maintainable. The only note of caution that was struck by the Supreme Court of India was that the Court should see to it that whatsoever is sought to be enforced in writ jurisdiction is not vindication of some personal grudge or enmity. Apart from this, there is a direct authority dealing with this aspect of the matter reported as Bangalore Medical Trust Vs. B.S. Muddappa and others, , in para 36 observed at page 1915 of AIR :

"Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects may be with same result. One relates to maintainability of the petitioner and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue or accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such consideration."

36. In the above decision, the High Court of Madhya Pradesh referred to other decision of the Supreme Court rendered in the case of Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, , (supra), wherein the Supreme Court held that where constructions have been raised unauthorisedly there shall be an order to demolish the same.

37. The Supreme Court in the case of AIR 1991 420 (SC) , held that public interest litigation can be instituted for ensuring enjoyment of pollution free water and air which are safeguards under Article 21 of the Constitution of India to the citizens of India to have a right to live.

38. The Supreme Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, , while dealing with the scope of public interest litigation held as follows :

"In common law the Municipal Corporation can be restrained by an injunction in an action brought by a riparian owner who has suffered on account of the pollution of the water in a river caused by the Corporation by discharging into the river insufficiently treated sewage from discharging such sewage into the river, 1953 Chancery 149 Rel. on."

39. In the case of V. Lakshmipathy and Others Vs. State of Karnataka and Others, , the High Court of Karnataka held that whenever problems exist the Government shall be more responsive to avert such problems and cater to the needs of the individuals whom it governs. In this decision the learned Judge found favour from the following authoritative pronouncements, expert views and

mandate of the Constitution, particularly the scope of Directive Principles on the question of locus standi, right of the public spirited person, State and Local Authorities obligations to maintain ecological balance, environmental cleanliness and quality, and need to judicial activism. The view of the authorities and experts on these allied questions are as follows :

"The remarks of Justice Felix Frankfurter addressed to the problems of the thirties are relevant to 20th Century India which is still in a developing stage.

It is idle to feel either blind resentment against "Government of Commission" or sterile longing for the golden past that never was profound new forces call for new social inventions or fresh adaptations of old experience. The "great society" with its permeating influence of technology, large scale industry and progressive urbanisation, presses its problems the history of political and social liberty admonishes us of its lessons. Nothing less is our task than fashioning instruments and processes at once adequate for social needs and the protection of individual freedom."

(see "The Task of Administrative Law" -Frankfurter)

The explosion of grave concern for environment at any private and Government level is the great political phenomenon of recent times. The sporadic and unorganised struggle of environment stragglers, the wildlife and bird lovers, wilderness wanderers have identified the conservation movement of the environment and are focussing their attention denuded forests, balding hills, disappearing prairie, extinct species of rare fish, thinning wild life, and vanishing birds. The movement has become the crusade of any one almost everywhere for a "livable environment". There is an increasing awareness that in cleansing up our environment, if not in wilderness, lies the preservation of the world.

At the moment we are looking into a decade in which most of the people are living in metropolitan or urban areas choked by traffic, poisoned by water, suffocated by smog, deafened by noise and terrorised by crime.

Restoring nature to the natural state is a cause beyond party and beyond factions. It has become a common cause of particular concern to young Indians because, they, more than us, will reap the grim consequences of our failure to act on the programmes which are needed now if we are to prevent disaster later. An onerous obligation which we owe to posterity is clean air, clean water, greenery and open space. These ought to be elevated to the status of birth rights of every citizen.

Commenting on Business Corporations and environment protection, Robert Reinow a Professor of Political Science at the State University of New York, Albany observed :

"But worse than Corporation finding is the subversion of Government Agencies to the role of environmental exploiter. The public interest which should be championed by the agencies with their regulations is ignored or perverted, as the

"iron triangle" of special interests, bureaucrats and committee chairperson form their unholy alliance. This means that the public conscience is entrusted to volunteers in public interest groups, a sacrificial burden of weighty dimensions.....

The outstanding features of modern political life is the shifting of the burden of defence of public interest to civic volunteers. Organised, they must dig into their pockets to hold their groups together, they must respond to calls for protests, launch petition drives, simulate letter writing campaigns, conduct rallies, attend hearing and in general, mortgage the time of their personal lives to an unprecedented extent. Keepers of the social conscience, they express themselves openly and aggressively. When the record of the environmental movement is finally registered, the emphasis will be on the new breed of citizenship it fostered. And it will contrast mightily with the sordid strategy of the Corporate Board rooms where they scoff at do-gooders and belittle nobility of purpose."

He added :

"What is becoming clear is that the restructuring of the democratic process has altered the pattern of citizenship where once the public official as in the days of Washington or Jefferson had a deep and honest sense of public sacrifice, we are today witnessing the close collaboration of special interests with Governmental agencies and elected officials. In the environmental field, Government too often emerges as the advocate of exploitation. This is in large part due to the subtle private and usually corporate pressures. Pressure has become a science that destroys the Governmental shield the citizens have erected to protect themselves. It is necessary for the Government to guard against such pitfalls. The choice is between technological progress which proceeds without adequate regard of its consequences and technological change that is influenced by a deeper concern for the interaction between man's tools and the human environment in which they do their work.

Inserted by the Constitution 42nd Amendment Act, 1976, Article 48A lays down that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Article 51-A(g) exhorts the citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Part IV-A on Fundamental duties has been added by the Constitution (42nd Amendment) Act, 1976 in accordance with the recommendations of the SwaranSingh Committee bringing the Constitution in line with Article 29(1) of the Universal Declaration of Human Rights and the Constitution of China, Japan and USSR.

The mandate of our Constitution is to build a welfare society and Legislations made in this behalf to give effect to Directive Principles of State Policy have to be respected. If the constitutional obligations are not discharged by due enforcement by the administrative agencies, the Court cannot turn a Nelson's

eye. The fundamental duties are intended to promote peoples participation in restructuring and building a welfare society and the Directive Principles under Part IV are intended to build the edifice of welfare state. Environment and its preservation is a subject matter of both, thus emphasising the importance given to it by our Constitution. Protection of environment is a matter of constitutional priority. Neglect of it is an invitation to disaster. The problem is the concern of every citizen and action brought cannot be dismissed on the ground of locus standi. The right to sue in this regard is inherent in the petitioners. When administrators do not mend their ways, the Courts become the battle ground of social upheaval. The paradigm of bureaucracy conducive to public welfare features standard operating procedures, humane outlook, hierarchical authority, prompt law enforcement besides job specialisation and personnel rules among others. If the administrators show indifference to the principle of accountability, law will become a dead-letter on the statute book, and public interest will be the casualty. Entitlement to a clean environment is one of the recognised basic human rights and human rights jurisprudence cannot be permitted to be thwarted by status quoism on the basis of unfounded apprehensions.

Article 226 of the Constitution enables the citizens to move the High Court to enforce the performance of statutory obligations of any authority coming within the sweep of Article 21 of the Constitution in particular, or for eg., under the anti-pollution laws of the land like the Pollution Control Act etc. Hence, it has to be regarded as a constitutional right of the petitioners responded by constitutional remedies of a wide repertoire under Article 226.

In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court posited (at P. 1126, Para 16 of AIR):

"He (petitioner) is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed."

In another decision in *M.C. Mehta Vs. Union of India (UOI) and Others*, , delivered subsequent to the earlier ruling referred to above, the Court observed:

"Life, public health and ecology have priority over unemployment and loss of revenue problem."

In another landmark judgment, a Bench of five Judges of the Supreme Court held in *M.C. Mehta and another Vs. Union of India and others*, , familiarly known as *Sriram Mills* case of oleum gas leakage from the Fertiliser and Chemical factory run by a private enterprise, that a creative and innovative interpretation in consonance with our constitutional jurisprudence is commended. The Court observed at P. 1097, Para 29 of AIR:

"However, the principle behind the doctrine of state aid, control, and regulation so impregnating a private activity as to give it the colour of state action can be applied to the limited extent to which it can be Indianised and harmoniously

blended with our constitutional jurisprudence."

Even assuming that one of the petitioners is actuated by an oblique motive, the grievance of other petitioners cannot be discarded.

The facts of the case bring to focus the need for a change of administrative culture to put an end to the tendency towards regression in social order and institutionalisation of administrative deviance.

James B. While in "When words lose their meaning" observed:

"Behind all the theoretical talk of Government and legitimacy, behind the systems and projects, behind even the forms of Government itself there is a culture, a living organisation of mankind upon which all the talk of system and mechanism depends, both for its intelligibility and for its effects..... In all its complexity and interconnectedness, it is our substantive and actual constitution."

(see "Constitutional cultures" - The Mentality and Consequences of Judicial Review - Robed F. Nagel)

Even otherwise, the Court would not be unjustified in exercising its power of equity in the realm of epistolary jurisdiction under three critical principles of equity which are:

- (1) Where there is a right, there is a remedy;
- (2) Equity Court is a Court of conscience;
- (3) Judges in equity rule act according to conscience.

Professor Abraham Chayes of Harvard Law School has this to say:

"The characteristic features of the public law model are very different from those of the traditional models. The party structure is sprawling and amorphous and subject to change over the course of litigation. The traditional adversary relationship is suffused and intermixed with negotiating and mediating process at every point. The Judge is the dominant figure in organising and guiding the case and he draws for support not only on the parties and their Counsel but on a wide range of outsiders masters, experts and oversight personnel. Most important, the trial Judge has increasingly become the creator and manager of complex forms of ongoing relief which have wide spread effects on persons not before the Court and require the Judge's continuing involvement in administration and implementation."

(see "The Role of the Judge in Public Law Litigation" 87 Har Law Rev 1281, 1976,Chayes)

Equity jurisprudence is based on hardship accident trust and fraud.

The onus is on the authorities concerned to establish by demonstrable evidence

and not by undisclosed measures that action has been taken to control and hold pollution within reasonable limits. The pollution alleged by the petitioners consists of both air pollution and noise pollution. Desecration of the quality of environment is impermissible as is evident from a series of Legislations enacted by the Parliament from time to time in the interest of clean air and clean environment in general. As already pointed out, none of the authorities concerned who have been impleaded as respondents in this writ petition have either denied the existence of pollution or have come forward with any explanation as to what measures have been taken in order to curtail the pollution. In these circumstances, there is sufficient basis to hold that the grievance of the petitioners as to the existence of air pollution and noise pollution affecting the environment to the detriment of the members of the public is substantiated. I am, therefore, of the opinion that, on that score also, the writ petition is to be allowed.

Often cited decisions of the British Courts which are of persuasive value call for consideration.

In *R. v. Thames Magistrate's Court ex.p. Greenbaum*, (1957) 55 LGR 129:

"Any body can apply for it - a member of the public who has been inconvenienced or a particular party to person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito justitiae*" - Parker L.J.

In *R v. Paddington Valuation Officer Ex.p. Peachey Property Corporation Limited* (1966) 1 QB 380 (400):

"Every citizen has standing to invite the Court to prevent some abuse of power and in doing so, he may claim to be regarded not as a meddlesome busy body but as a public benefactor.

A rate-payer, likewise, has a particular grievance if the rating list is invalidly made, even though the defects will make no difference to him financially."

Lord Denning M.R observed:

"if he has not sufficient interest, no other citizen has.

Unless any citizen has standing, therefore, there is often no means of keeping public authorities within the law unless the Attorney-General will act..... which frequently he will not. That private persons should be able to obtain some remedy was therefore a matter of high constitutional principle.

The Court will not listen, of course, to a mere busy body who was interfering in things which did not concern him. But it will listen to any one whose interests are effected by what has been done."

Lord Diplock affirmed the principle when he said:

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the federation, or even a single public spirited taxpayer were prevented by out-dated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct "" stopped."

As enunciated by Lord Diplock:

"The Court has not only the power but also the duty to weigh the public interest of justice to litigants against the public interest asserted by the public authority contrary to its actual conduct. Considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest immunity could be attached to such bodies,"

Lord Denning M.R. reiterated:

"I regard to it as matter of high constitutional principle that if there is a good ground for supposing that a Government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the Court of law and seek to have the law enforced, and the Courts in their discretion can grant whatever remedy is appropriate."

By judicial inactivism, the dice will be loaded heavily against the citizen who challenges state action or inaction of the public authorities and there is a fear that Courts may in the process become cheer-leaders for the Government in the dock, rather than guardians of public interest and individual's rights. The real thrust stems from a jurisprudence of public and the faith that the rule of law is used as a formula for expressing the fact that the laws of the Constitution are not the source but the consequences of the rights of the individuals as defined and expressed by Courts.

According to Dr. Vern O. Khudsen, a Physicist and former founder of the Acoustical Society of America and also a former Chancellor of the University of California:

"Noise is a slow agent of death."

Another expert in the field Dr. Fabian Rouke of U.S. reporting to the Newyork Committee for a Quiet City said:

"One of the insidious aspect of excessive noise is the fact that an individual may be unconsciously building up nervous tension due to noise exposures. This may cause a person thus exposed to noise suddenly to be catapulted into an act of violence of mental collapse by some seemingly minor sounds which drive him beyond the point of the durance. Many persons who are using tranquilisers may be treating the symptoms rather than the disease."

The continuing deterioration of man's habitual demands a revaluation of the present approach to eco-management. Dr. Wagner who is an authority on the subject of air pollution while referring to the adverse effects of air pollution said:

"We are experiencing diseases today from hazards we did not control yesterday. What we don't take care of today will be therefore our children to handle tomorrow."

It would not be inappropriate in the context of Human Rights to reproduce an illustration given by Shue 1979: 72-5 in regard to the consequences of inaction:

"A man is stranded on an out-of-the-way desert island with neither food nor water. A sailor from a passing ship comes ashore, but leaves the man to die (an act of omission). This is as serious a violation of his rights as strangling him (an act of commission). It is killing him, plain and simple - indirectly through "inaction", but just as surely, perhaps even more cruelly."

We are on a larger issue of community interest which concerns the preservation of environment against pollution hazards posed by deleterious sources of nuisance. The broad question of containment of pollution cannot be oversimplified and dismissed as routine nuisance of which no person of ordinary sense and temper would complain or because rightly or wrongly industries have been permitted to be set up. In the case on hand, the public authorities most closely associated with the issue have chosen to maintain silence and mysterious aloofness failing to meet the allegations made by the petitioners, for reasons not known to them. The state of these authorities who are the concerned respondents in the case, presents a baffling enigma. They do not respond to the grievances of the petitioners and do not lay bare before the Court information either denying or admitting the existence of pollution and the extent of pollution such as emission of noxious gases, toxic wastes, assault on the sense by noise pollution and the like which are imputed by the petitioners in the way they could express. Terminological inexactitude cannot bar legal redress.

What is alleged in substance is persistent pollution which is offensive and detrimental to public health. These allegations have gone without repudiation by the public authorities.

Environment protection is not a preoccupation of the educated and the affluent. It has socio-political dimensions. The disposal and control of toxic waste and Governmental regulation of polluting industries is public interest oriented. The effective implementation of environmental Legislation is a social learning process which could fundamentally change the character of public administration in the country. From a Global perspective, the struggle to preserve a "livable environment" is a part of a broader struggle to create a more just Global society both within and between nations. The impact of the human dimensions on the economically and educationally disadvantaged who inhabit the developing areas cannot be underscored.

Examples are not wanting of valiant efforts made by public spirited individuals and groups around the world, to repair and restore the damaged natural resources that are crucial to the present and future well being of the nationals relating to essentials such as water, land, wild-life and environment in general, as well as quality of life in particular in cities and towns. In the United States of America, mentioned by Berger, John, J in his book "Restoring the Earth", are illuminating instances:

- (a) A house-wife who led a crusade to clean up a river in Massachusetts;
- (b) A Pennsylvania Mine-Inspector who repaired a strip-mined land;
- (c) A plumber from Cape Cod who transformed a brush-choked ditch into a Trout stream.

He observes that their yeoman services have made human settlements more econological sound as well as more enjoyable place to live in and that environmentalism is a truly popular movement. I am of the view that it would be incongruous to stifle the present public interest action by applying truncated standards.

The right to life inherent in Article 21 of the Constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest specific guarantees in Article 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance. In the circumstantial context and factual back-drop, judicial intervention is warranted especially since the Supreme Court of India has already laid the foundation of juristic activism in unmistakable language of certainty and deep concern."

40. The Division Bench of Allahabad High Court in the case of Sanjay Mishra Vs. Nagar Palika, Etawah, , while explaining the scope of Sections 34, 2(18) and 2(1a) of U.P. Municipalities Act which deals with encroachment of public streets held that wherever such encroachments are there or shops put up on public drains, the Municipality is bound to remove such encroachments or construction.

41. In the case of 3 ACES, Hyderabad Vs. Municipal Corporation of Hyderabad, , the Full Bench of this High Court while dealing with several questions including what shall be the order passed in administrative character and in case buildings are constructed within the municipal limits violating the zonal regulations or sanctioned plan, held that such unauthorised and unlawful constructions shall deserve to be demolished making a reference to the earlier decision of the Supreme Court in the case of Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others, , wherein it was held as follows:

"Before parting with the case we would like to observe that this case should be a

pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large."

42. In the case on hand, from the report" of the Expert Committee it is clear that flats; have been constructed by the 2nd respondent-builder in violation of the sanctioned plan. I Also the 2nd respondent-builder did not provide adequate septic tanks and drainage, was not properly maintained by him. Apart from this, there are other violations of sanctioned plan as pointed by the Expert Committee. A person who is permitted to put up construction is bound to obey the sanctioned plan and proceed with the construction in accordance with the sanctioned plan only. Any deviation in this regard is an offence. When a resident of the locality or tax-payer bring to the notice of the authorities concerned about the irregularities or violations particularly the violations of sanctioned plan in putting up construction and not taking steps to stop nuisance being caused in the locality, the authorities are duty bound to take action forthwith. In the case on hand the Cantonment Board has deliberately refused to act inspite of being informed about the violations of the statutory requirements and buildings regulations. It did not care to direct the concerned to take steps to prevent nuisance that is causing to the inhabitants in the locality due to lack of providing adequate civic amenities.

43. The complaint made in the writ petition is not personal in nature, but public in nature. Respondent No.1's inaction is not appreciable. Therefore, it is a fit case where the relief sought by the petitioners has to be accepted and ordered.

44. Hence this writ petition is allowed and the Executive Officer of the Cantonment Board is directed (i) to get the septic tank built and commissioned and repair drainage immediately to the satisfaction of the health authorities forthwith at the cost of the 2nd respondent-builder; (ii) to instruct the builder to provide adequate garbage collection dumps and its disposal properly and (iii) to take steps to notify the 2nd respondent-builder to demolish or remove such of the flats, or portions or projections constructed unauthorisedly and contrary to the plan sanctioned by the Cantonment Board-1st respondent after informing the flat owners, within a reasonable time. It is further ordered that the flat owners whose flats will be subjected for demolition by this order are entitled to make a claim against the 2nd respondent-builder to make good the loss incurred by them which comprises of sale consideration, interest on such sale consideration from the date of purchase of their respective flats till the date of payment, and damages per flat to be demolished. The respondents 1 and 2 shall pay costs of Rs.5000/- each within two months from this date to the learned Counsel for the petitioners who took such pains and put hard work for public interest by valiantly taking up cause for public good.