

(1992) 07 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No's. 6481 to 6485 of 1988

Leena Fernandes

APPELLANT

Vs

Planning Authority

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 14, 76 K, 76 K (1)

Citation : (1992) ILR (Kar) 3068 : (1992) 3 KarLJ 355

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : K.R.D. Karanth, for the Appellant; B.P. Holla, for R-2, N. Santosh Hegde for B.V. Acharya for R-4, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—In these Petitions, the petitioners seek quashing of the building licence and the sanctioned plan issued to the fourth respondent by the first respondent - Planning Authority and the second respondent -City Corporation. There is also a prayer for a direction to enforce the Zonal Regulations issued under the Outline Development Plan (ODP) and Comprehensive Development Plan (CDP). The further prayer seeks the demolition of the offending structure put up by the fourth respondent. The petitioners also have filed I.As.II and III, I.A.II for the amendment of the Writ Petition and to treat I.A.III as additional statement. Petitioners are permitted to seek this additional prayer and these I.As.II and III are read part of these Writ Petitions. The result is that the petitioners seek the quashing of two Government Orders, one dated 8th November 1984 and another dated 17th October 1985. As per the earlier order dated 8.11.84 Government accorded approval for relaxation of the building line from 20 feet to 10 feet regarding the construction proposed to be put up by the fourth respondent. By the second order the building line required to be set apart was further reduced to eight and a half feet.

2. Petitioners assert that they are the Rate Payers and residents of the City of

Mangalore. In addition, petitioners 3 to 5 are the tenants carrying on their business in the building belonging to the fourth respondent which is likely to be demolished to enable the new construction under the sanctioned plan in question. Therefore these petitioners 3 to 5 assert that their livelihood would be affected by the proposed construction.

3. The localities wherein the building is proposed to be put up is described in the Writ Petition as follows:

"The Hampankatta area is the busiest commercial area in Mangalore with the heaviest traffic in the City. Hampankatta area comes within the Outline Development Plan and the Comprehensive Development Plan as an "intensely developed area", of Mangalore City. The Hampankatta area is a junction where 7 roads converge. In the portion of the road known as Balmatta Road where the 4th Respondent owns buildings, the width is only 39 feet (12,66 meters) whereas the said road elsewhere has a uniform width of 60 feet. The construction of a multi-storeyed building at such a point, in gross violation of the Zoning Regulations would cause serious hazards to the safety of the members of the public as well as impede the free movement of traffic on the road."

It is further averred that the fourth respondent who has been running its business under the name and style of M/s. Canara Jewellers demolished a building which is adjacent to Madhava building (wherein petitioners 3 to 5 are running their business), in the course of demolishing the adjacent building the building under the occupation of the petitioners was damaged. On discovering that the fourth respondent proceeded to put up a new building in gross violation of the sanctioned plan and Zonal Regulation they complained to the authorities, (n the year 1984 the fourth respondent obtained sanction for the construction of a multistoried building containing a basement, ground and three floors (thus in all five floors). Though the sanctioned plan require a building line of 20 feet from the edge of the fourth respondent's property to the road as per the Zonal Regulations and having obtained a Commencement Certificate accordingly the fourth respondent proceeded to put up a construction placing the R.C.C. columns within a distance of four feet as the building line. Respondents-1 and 2 having enquired into the alleged violation of the sanctioned plan issued notices to the fourth respondent to stop the construction and proceeded to revoke the licence. On 22.6.1984 the second respondent - Municipality informed a few petitioners that the licence issued for the construction has been revoked in view of the violation made and a notice has already been issued proposing to demolish the unauthorised construction by the fourth respondent. Recently, fresh activity in the locality regarding the construction work was noticed by the petitioners and the fourth respondent also initiated proceedings to evict petitioners 3 to 5 from the building wherein they were tenants. On further enquiry the petitioners found that the fourth respondent obtained a fresh licence on 30th July 1987 and this licence was found to be in gross violation of the provisions of the Act, the ODP, CDP and the Zoning Regulations. The CDP has come into effect on 21.11.1985.

According to the petitioners as per the Zonal Regulation of the year 1985 for a site measuring 250 - 500 square meters the maximum plot coverage permitted is 75 per cent and the Floor Area Ratio (F.A.R.) is one and the maximum number of floors permitted is three and the maximum height of the building could be fourteen meters only. The set back to be left is 20 feet. Consequently, the present Writ Petitions were filed.

4. The site in question is 429 square meters and therefore the F.A.R. is one. The alleged violations said in the Writ Petitions are the following; in the words of the petitioners:

"Under CDP the permitted FAR for an intensively developed area for a site measuring 429 Sq.Meters is 1.00. The 4th respondent can put up a building with a floor of 429 Sq.Meters irrespective of the number of floors excluding this area occupied for stair case, lift, and airduct. Under the sanctioned plan, the sanction has been accorded for a total floor area of 879.74 Sq.Meters. In the said plan 278.05 Sq.Meters is shown as being excluded for service area which is without any sanction of law. What can be excluded is only the stair case, the lift room and the area occupied by air conditioning ducts, which in all the floors normally may not exceed about 15% to 20%. The FAR as per the plan as Indicated in this plan for a site of 429 Sq.Mtrs. comes to 2.05 as against a permitted FAR of 1 under the CDP. If the service area is properly excluded then the total floor area would be nearly 2.50 or more. There is no power to permit a deviation of this magnitude by the 2nd respondent.

Even under the ODP which was in force until 21.11.1985 the FAR for a Road width of 30-40" is 1.00 and therefore, whether under the ODP or the CDP respondents 1 and 2 cannot allow the building to be put up by the 4th respondent without appropriate reduction in the floor area.

(b) Under the CDP the maximum number of floors permitted in the area is 3 and the maximum height is 14 mtrs. The plan has been sanctioned for 5 floors with a height of 16.80 mtrs. This is under the CDP.

(c) Under the ODP the maximum number of floors for a site abutting a road having a width between 30 and 40" is 5 floors and with a maximum height of 11 mtrs. The basement is required to be counted as a floor as a substantial portion of the same is used for commercial purpose by the 4th respondent. Therefore the plan that has been sanctioned is contrary to the ODP and the CDP.

(d) Under the CDP for the basement and the ground floor which are used for Commercial purpose (retail business) is 338.39 sq.mtrs. For 50 sq.mtrs. of floor area used for retail business provision has to be made for parking space for one car. For 333.39 sq.mtrs. parking space for 6 cars has to be provided. Further in the 1st, 2nd and 3rd floors, which would be used a boarding and lodging containing 21 rooms, one car parking space has to be provided for every 4 rooms. Therefore, for 21 rooms 5 car parking space had to be provided. But in the approved plan as against a total parking area for 11 ears (193 sq.mtrs)

provision has been made for only 3 cars.

(e) On the western side of the proposed building there is no road from which cars can enter the premises in question. As it is there is only an elevated foot path of about 6" width. The plan sanctioned has provided a passage into car park through the foot path which is totally objectionable.

(f) Under the CDP building lines of varying depths have been prescribed for roads with heavy traffic. For the Balmatta road which abuts the premises the building line is 20" in the property abutting the road. Where building line is prescribed a property owner cannot put up any building or structure upto a distance of 20 ft. from the Boundary of the property abutting the road. There is no provision in the CDP for exempting any property from maintaining the minimum building line. The term "building line" is a well understood term in Town Planning. The reservation of a building line by a Town Planning Authority when made constitutes an easement for the benefit of the public and also of the property owners abutting the street. Where a building line is prescribed no part of the building can project beyond the said line unlike in the case of prescription of a set back. The building line constitutes a guarantee to the users of the road of the benefit by the reservation of the building line and therefore is a right conferred on the users of the road by the Statute."

5. Petitioners assert that they came to know of the violations stated above only when they were served with notices of eviction petitions and that there has been a collusion between respondents-1, 2 and 4 regarding the permission granted to the fourth respondent to put up the proposed construction.

6. The fourth respondent questions the locus standi of the petitioners to invoke the Writ jurisdiction of this Court. It is further stated that the impugned licence was not a fresh licence but the continuation of the earliest licence obtained by the fourth respondent which is dated 10th May 1984. It is stated in the Statement of Objections that the petitioners are not exposing any public cause and the petitioners 3 to 5 being the tenants were affected by the proposed construction, are projecting their own self-interest, which is supported by petitioners 1 and 2.

7. However, we may note here itself that nowhere the status of the petitioners as Rate Payers and as residents of Mangalore City is denied.

8. The fourth respondent further states that the site measures 429.09 square meters and a part of the site contains the existing building wherein petitioners 3, 4 and 5 are the tenants. Since the initial licence was issued in the year 1984, the subject is regulated by the Zonal Regulations under the ODP and the subsequent CDP in no way would affect the earlier licence. It is asserted regarding the set back as follows;

"....Under the Zoning Regulations framed thereunder, for a plot of the area like the one in question facing a road of the width of 12 m. or 40 ft., the maximum

number of floors permitted are 7, the maximum plot coverage is 75% and the FAR. (Floor Area Ratio) is 1.50. The permissible height of the building in question is 16.8 mtrs. The Floor Area admissible for the plot in question is 643.63 sq.m. To this must be added the area covered by basement which is reserved for car parking, the area covered by staircases, lift, water tank etc. Taking all these into consideration, the total built up area permitted in the building licence is In accordance with the Outline Development Plan which was in force in 1985."

It is further stated that the Planning Authority as well as the State Government have permitted the said respondent to allow a set back of eight and a half feet after levying a compounding fine of Rs. 25,000/- and that the said fine was paid on 6.10.1986, The two impugned Government Orders dated 8.11.1984 and 17.10.1985 are referred for the first time in this Objection Statement and are filed as annexure to the Statement of Objection. The fourth respondent admits that earlier, the Planning Authority had revoked the permission in the year 1984, and therefore the fourth respondent filed Writ Petition No. 9352/84 in this Court on 8.6.1984 and there was an interim order of stay, staying the order passed by the Planning Authority; this Writ Petition was subsequently withdrawn on the ground that the fourth respondent had approached the State Government seeking permission to have the building line reduced to 10 feet. It is further asserted that the second respondent at no time had informed the fourth respondent that the licence had been revoked; the assertion is that the said licence was still in force and it was modified subsequently on 30th July 1987. The fourth respondent further asserts that FAR. permissible is 1.5 in this locality and therefore the floor area permissible to be put up on the land in question will be 643.63 square meters. Certain areas to be put up will have to be excluded while calculating the permissible area of construction.

9. In the additional statement filed by the fourth respondent it is asserted that the petitioners were aware of the construction that was going on and therefore the Writ Petitions should be dismissed on the ground of delay and laches. It is asserted that the width of the road is 52 feet in front of this plot and not 30 to 39 feet as asserted by the petitioners. There are a few other assertions regarding the built area which need not be referred in detail.

10. The fourth respondent further asserts that in the same locality abutting the same road, the Government has permitted a set back of only 10 feet in the cases of (i) B.V.Nagwekar, ii) Hotel Roopa and iii) Mrs. Khatija and therefore the fourth respondent is also entitled to a similar treatment. It is further contended that these petitioners never objected to those three persons putting up their constructions leaving a set back of only 10 feet and this highlights the malafides of the petitioners in attacking the permission granted to the fourth respondent.

11. In the Statement of Objection filed by the first respondent it is pointed out that originally licence was sanctioned in favour of the fourth respondent on 31.1.1984 leaving a building line of 20 feet and that the sanctioned plan in no way offended any of the Zonal Regulations. The requirement of 20 feet building

line has been relaxed by the Government and therefore as on today the fourth respondent has been permitted to leave a set back of only eight and a half feet. The Planning Authority is bound by the directions issued by the State Government.

12. The second respondent Municipal Corporation suggests that the petitioners 2 to 5 may as well face the eviction proceedings pending against them (the Municipal Corporation, obviously, mistakes the second respondent also to be a tenant under the fourth respondent). The Municipal Corporation states that it is bound by the Commencement Certificate issued by the Planning Authority and therefore it has not done anything illegal. The locus standi of the petitioners to approach this Court also is questioned. In para 8 of the Statement of Objections it is stated that the width of the road in front of the building in question is not less than 39 feet and at other places the width of the road may be more or less 50 feet. Further it is stated that:

"..... The fact that there are three parallel roads and one more road branching from Hampankatta road to the Railway Station has been purposely suppressed with a view to creating an impression that there is serious hazard to the safety of the public. In fact, no untoward incident had taken place all these years at this point. Moreover the building already constructed and objected to in this Writ Petition is in fact segregated from the other, adjoining existing buildings by 8 1/2 feet and the building now being occupied by the petitioners is one of the adjoining buildings, which is just on the side of the road. Therefore the allegation that the existence of the building in question would cause hazard to public safety, has no foundation of truth."

The second respondent further asserts that it is not correct to allege that construction had been put up placing the RCC columns within a distance of four feet; on the contrary it is eight and a half feet as permitted by the Government. It is further stated that in case the F.A.R. is not observed, it is for the Planning Authority to take action. It is not necessary to refer to other averments.

13. The history of this litigation starts in the year 1984. There is no dispute that the fourth respondent obtained the requisite permission, sanctioned plan and Commencement Certificate to put up the construction and proceeded to put up the construction. According to the Planning Authority the fourth respondent contravened the requirements stated in the sanctioned plan and the Commencement Certificate, The notice issued by the Planning Authority, according to the said Authority, was avoided by the fourth respondent. In the appropriate proceedings, on 25.5.1984 the Planning Authority cancelled the Commencement Certificate, on the same date, it rejected the appeal filed before it by the fourth respondent regarding the reduction of the building line. The proceedings of the Planning Authority indicate that there was a spot inspection by the authorities who found that the fourth respondent ignored the Commencement Certificate and the sanctioned plan while proceeding to put up the construction. The fourth respondent had dug up column pits without leaving

20 feet building line and in the appeal presented by the fourth respondent it sought its reduction to 10 feet. Since there has been a deliberate flagrant violation of the condition of the Commencement Certificate it was revoked and the appeal of the fourth respondent for a reconsideration to reduce the building line from 20 to 10 feet was rejected. It was further resolved to demolish the construction which was illegal. All the seven Members of the Planning Authority were present and participated in the proceedings. The fourth respondent challenged this, in Writ Petition No. 9352/84. The Rule was issued on 8.6.1984 and there was an interim order staying the operation of the aforesaid order of the Planning Authority. On 16th July 1984 the Court further ordered that, "stay to continue subject to condition that the petitioner-firm shall not do anything or proceed with construction in the guise of this stay order". On 3rd August 1984 this Writ Petition was dismissed as withdrawn as per Memo dated 3.8.1984 and Rule was discharged. It was stated before us that the fourth respondent withdrew the said Writ Petition on the ground that it was moving the State Government for appropriate relief. However, the fact remains that the fourth respondent was not permitted to proceed with the construction by this Court by any interim order earlier.

14. In the present Writ Petitions Rule was issued on 18.4.1988. There was an order staying further construction by the fourth respondent. On 11.10.1990 the learned Single Judge further stated that it was not appropriate to vacate the stay in these proceedings. Consequently Writ Appeals Nos. 280 to 284 of 1991 were filed by the fourth respondent. However, no interim order was made in favour of the fourth respondent in those Writ Appeals. In view of the order of the Division Bench which included the learned Chief Justice, these Writ Petitions were withdrawn to be heard along with Writ Appeals.

15. Mr K.R.D. Karanth, learned Counsel for the petitioners, advanced two propositions in support of the Writ Petitions: 1) When there is a Scheme/Zonal Regulations under the provisions of the Karnataka Town and Country Planning Act, 1961 ("the TCP Act" for short), it is not open to any authority to issue a licence in contravention of the said scheme or Zonal Regulations. 2) The State Government has absolutely no power to issue any exemption from the operation of the Zonal Regulations and therefore reduction of the building line from 20 to 8 1/2, is without competence.

16. Mr Santhosh Hegde, on the other hand, appearing for the fourth respondent contended: 1) The petitioners have no locus standi to challenge the Commencement Certificate, sanctioned plan and the Governmental Orders and that the Writ Petitions are vitiated by malafides on the part of the petitioners. 2) There has been enormous delay in moving this Court by filing the Writ Petitions and therefore the same shall not be entertained. 3) On merits it was pointed out that there has been no violation of the legal requirements and the Zonal Regulations and that the alleged deviations are of minor character. 4) Even assuming that the Government had no power to reduce the building line, the

Government has been doing so in several cases, on the assumption that it could do so u/s 76K of the TCP Act. If for any reason this is not permitted, this Court may declare the law but shall not set aside the permission granted already to the fourth respondent in the interest of Justice.

17. Before proceeding further, it is necessary for us to be clear about certain facts, at least. In W.P.9352/84 the Planning Authority had filed its Statement of Objections. The following facts could be gathered from the said Statement of Objections:

1) As per ODP and the Zonal Regulations for Mangalore, the setback for Hampankatta-Balmatta road is 20 feet that is to say, the space to the left between the edge of one's property and the plinth of the new construction must be 20 feet.

2) The Planning Authority has no power whatsoever to change or modify the setback.

3) The petitioner's firm (i.e. the present fourth respondent) have deliberately and consciously violated the conditions set down in the Commencement Certificate issued by the Planning Authority and also in the licence issued by the Mangalore Municipality.

4) The RCC columns stated to be put up by the fourth respondent were only at a distance of four feet from the edge of the property and in the said Writ Petition of the fourth respondent (as the petitioner), the petition did not disclose the distance between the columns so put up and the edge of its property and thus it has suppressed true facts from the Court.

5) The fourth respondent's plot is a corner plot, being very close to Hampankatta junction where several roads meet and the locality is "really the heart of Mangalore City": the bus-stand being very close-by; the main District Hospital also is just across the fourth respondent's building.

6) Though for about 1 K.M. distance (from Jyoti circle to Hampankatta junction) the Road is uniformly about 60 feet in width, the road just opposite to the plot in question is only just 39 feet wide for a distance of about 100 to 150 feet and the plan submitted by the fourth respondent also gave the width of the Road as 12.60 meters (about 39 feet).

7) The traffic flow etc. in this place as per the survey held on 4.2.1982 by the Public Works Department (between 6 a.m. to 10 p.m.) brought out the following:-

SI. No.

Nature and No. of Vehicles and pedestrians

Total No. of Vehicles or pedestrians (during 16 hrs)

Average for one hour

1.

Motor Cycles

1355

84

2.

Tempos & Motor cars

4308

269

3.

Buses

319

20

4.

Lorries

463

29

5,

Cycles

1156

72

6.

Pedestrians

10120

632

8) The City has developed vastly since the year 1982, and is the 2nd most important City in Karnataka; "even if for any reason it is not possible to widen the road elsewhere, widening of the road, opposite to petitioner's building will enable the authorities to have a diversion road at Hampankatta. As stated above, seven roads meet at Hampankatta junction. If the road is widened, it is possible to convert what is now shown as foot-path as a diversion road."

9) The only other place near about where a new building has come up is of Nagvekar; even in respect of Nagvekar's building the Planning Authority

sanctioned and issued a Commencement Certificate allowing a set-back of 20 feet only; it was the Government which reduced the set-back only to 10 feet. Despite the reduction, it is seen that the width of the road opposite to Nagvekar's building is 51 feet ignoring the foot-path which are on either side of the Road. In fact, considering the foot-paths, the open space in front of Nagvekar's building will be 68 feet wide; in addition there is a car park.

10) Khatija's building is far-away from this locality and its location is not comparable to that of the fourth respondent; even here reduction of set-back was ordered by the State Government and not by the Planning Authority.

11) If the fourth respondent puts up the building, it may lead to complications and it will do harm not to the authorities but to the entire public of Mangalore.

12) The slab put up over the first floor practically extends upto the edge of the fourth respondent's property.

18. There is also no doubt that the fourth respondent commenced the construction work ignoring the requirement of a building line of 20 feet and the fourth respondent thought of approaching the Planning Authority only after the Planning Authority initiated action against the fourth respondent which ultimately resulted in the Planning Authority's proceedings and the order dated 25.5.1984. Though the petitioners assert that the fourth respondent actually left only four and a half feet set-back initially, there has been no specific denial of this assertion anywhere in the Statement of Objection of the fourth respondent. A vague and evasive traversal of this assertion has been made by the fourth respondent. The stand taken by the fourth respondent as well as by the respondent-1 and 2 is, that, after the Governmental order the fourth respondent is permitted to leave a set-back of, only eight and a half feet. Any how for the purpose of these Writ Petitions we proceed on the assumption that the fourth respondent has proceeded to put up the construction leaving only a set-back of eight and a half feet even though the initial Commencement Certificate require it to be 20 feet. There has been no serious dispute that technically as per the Zonal Regulations the set-back to be left will be 20 feet, but 4th respondent contends that having regard to the width of the road opposite to the proposed construction the set-back need not be 20 feet. But this assertion of the fourth respondent has no factual support in the materials placed before us. The locality is one of the busiest commercial areas in Mangalore and is agreed upon that it could be termed as the "heart" of Mangalore city. It is also disclosed from the stand taken by the Planning Authority in the earlier Writ Petition that the road opposite to the construction put up by Mr V.V.Nagvekar was very wide and therefore the permitted set-back would not affect the traffic flow and the Zonal Regulations and that the building put up by Mrs.Khatija is quite far away from the locality and cannot be compared with the location of the property of the fourth respondent. Similarly it is clear from the very order made In favour of M/s.Hotel Roopa that it is quite far away from the property in question. The Government made the two orders reducing the set-back/building line purporting to act u/s 76K(1) of the

T.C.P. Act, which reads thus:

"76K. Control by the State Government. - (1) Every Planning Authority shall carry out such directions as may be issued from time to time by the State Government for the efficient administration of this Act."

19. On the face of it the above provision cannot be attracted at all to reduce the set-back prescribed under the Zonal Regulations. No where the Zonal Regulations enable the State Government to modify the requirement in any particular case. Similarly Section 76K(1) by itself does not authorise the State Government to make an order, effect of which will be to alter or modify the Zonal Regulations and its requirements. The purpose of Section 76K is to vest an administrative power in the State Government and is in the nature of a power of superintendence. Therefore there can be no doubt that the two orders of the Government are patently unauthorised and this aspect will have to be borne in the mind by us while construing the reliefs sought by the petitioners.

20. Having regard to the above aforesaid facts the first question to be decided pertains to the locus standi of the petitioners and whether the Writ Petitions are liable to be dismissed on the ground of malafides on the part of the petitioners.

21. At the threshold, the question of locus standi of the petitioners to challenge the impugned actions has to be resolved. The 4th respondent denies that the petitioners are espousing a public cause; the 1st petitioner's assertion that she is a "social worker" is not admitted, Petitioners 3 to 5 are the tenants under the 4th respondent in occupation of the building "which is adjacent to and situated in the same town survey number as the property which is the subject of the matter" of the Writ Petitions and the sanctioned plan covers the area on which the dilapidated building in the occupation of the petitioners 3, 4 and 5": these petitioners 3 to 5 are sought to be evicted from their occupation in a petition presented on 12-10-1987 under the provisions of the Karnataka Rent Control Act and the proceedings are registered as HRC.No. 296/1987, which is pending. (Here, it is necessary to note that, actually there are three eviction petitions, HRC.301/87; HRC 296/87 and HRC. 311/1987 against petitioners 3 to 5 respectively and it is not known why the fourth respondent disclosed the pendency of the eviction proceedings only against the 4th petitioner). The 4th respondent, further, contends that the purpose of the Writ Petition is to protract the eviction proceedings and to jeopardise the case of the 4th respondent in the said proceedings; and that, 4th respondent had initiated action to evict these petitioners to enable the demolition of the building under their occupation, in order to reconstruct a new building.

22. Petitioners have asserted that they are the Rate Payers, and residents of the City of Mangalore; in the Writ Petitions, they have also stated that petitioners 3 to 5 are the tenants, conducting their business in the "Madhava Building" which is proposed to be demolished as part of the construction of the new building as per the sanctioned plan and licence and that "The impugned construction directly

affects their livelihood and existence....." They also assert in the Writ Petition, "The reliefs claimed are as residents of Mangalore City". Thereafter, para-4 of the Writ Petition, reads as follows:-

"The Hampankatta area is the busiest commercial area in Mangalore with the heaviest traffic in the city. Plan and the comprehensive development plan as an "intensely developed area" of Mangalore city. The Hampankatta area is a junction where 7 roads converge, in the portion of the road known as Balmatta road where the 4th respondent owns buildings, the width is only 39 feet (12.66 meters) whereas the said road elsewhere has a uniform width of 60 feet. The construction of a multi-storeyed building at such a point, in gross violation of the Zoning Regulation would cause serious hazards to the safety of the members of the public as well as impede the free movement of traffic on the road."

23. Petitioners further assert that as early as in the year 1984, when 4th respondent caused damages to the building in the occupation of these petitioners, they had complained to the authorities and the officials of the City Corporation made an inspection of the premises, and "after noticing gross violation of the sanctioned plan and Zonal Regulations appears to have issued notices of demolition."

24. From the pleadings and other documents, following facts emerge:-

(1) Undisputedly all the petitioners are Rate Payers and residents of Mangalore City.

(2) Petitioners 3 to 5 are the tenants of 4th respondent, in occupation of a building which is likely to be demolished, to complete the proposed construction.

(3) No particular motive is attributed against petitioners 1 and 2 for joining the other petitioners in filing these Writ Petitions.

(4) Petitioners were responsible to bring to the notice of the authorities, of the gross violation of the sanctioned plan committed by the 4th respondent when the latter started to put up the construction in the year 1984.

(5) The locality is a busy area and could be safely called the "heart" of Mangalore city.

(6) In the year 1984, though the sanctioned plan and the law regulating the construction of the buildings (such as Outline Development Plan) required a set back of 20 ft. from the edge of the building to the foot-path, the 4th respondent proceeded to put up the construction by leaving only a four feet set-back.

(7) The 4th respondent filed W.P.No. 9352/1984 against the action of the respondents therein, directing the licensee (4th respondent herein to demolish the construction which contravened the requirements stated in the sanctioned plan. After the Planning Authority filed its Objection Statement to the said Writ Petition, the Writ Petition was withdrawn on the ground that the licensee would approach the State Government seeking relaxation from the requirement of

Outline Development Plan etc.

(8) The 4th respondent was able to persuade the State Government, initially, to accord approval for relaxation, of building line from 20 ft. to 10 ft. and that the 4th respondent be allowed to proceed with the construction; this was as per Government Order dated 8.11.1984. Thereafter, by an order dated 17.10.1985, the State Government further relaxed the requirement of building, reducing it to 8 1/2 ft.

(9) As would be presently seen, the State Government has absolutely no power to relax these requirements as to the building line; the exercise of the power by the State Government u/s 76K of the Karnataka Town and Country Planning Act, 1961 (for short referred hereinafter as "TCP Act"), is a perversion of the said provision and no other source is pointed out, to the making of these two Government Orders, which not only stultify the regulations governing the new constructions, but also results in usurpation of a power, not vested in the State Government and in such a situation, should this Court decline to exercise its Writ jurisdiction.

25. From the above, can it be said that the petitioners, as Rate Payers and residents, are not competent to invoke this Court's jurisdiction against the patently illegal action on the part of the State Government, only because, three of the five petitioners are directly affected by the proposed action. No mala fides or any other kind of motive has been established against the first two petitioners; in fact, there is not even a suggestion that petitioners 1 and 2 are close friends of petitioners 3 to 5. No independent ulterior motive is attributed to those two independent petitioners, who are in no way connected with petitioners 3 to 5. This apart, the motive attributed to petitioners 3 to 5 is that they are attempting to protract the eviction petitions filed against them by the fourth respondent. It is not the case of the 4th respondent that these petitioners will be permanently benefited and will be able to continue to as tenants for all the time. The 4th respondent, can, as well, get a proper plan sanctioned leaving a building line of 20 ft. and comply with other requirements of law, and get these petitioners evicted to enable the proposed construction; the motive attributed to petitioners 3, 4 and 5, is a motive which could germinate only because of the delays involved in legal proceedings. No anterior animosity between the petitioners 3 to 5 and 4th respondent has been alleged.

26. The learned Counsel on both sides referred to several Decisions on this question and it is most appropriate that we should consider them at this stage. Mr.Karanth strongly relied on the Decision of the Supreme Court in Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, to support his contention that every Rate Payer has the locus standi to question the building licence issued by the Municipality, irrespective of other factors. The Municipality permitted conversion of a Kalyanamantapa into a cinema theatre in a residential locality and this permission was challenged in the High Court by invoking the Writ jurisdiction. Supreme Court upheld the Writ

Petitioner's right to challenge the action of the Municipality as the impugned action was clearly opposed to the provisions of the Scheme made under the Town Planning Act. In this connection, it was observed, at Page 2181:

"The appellant can challenge at the threshold when the scheme which is framed for the benefit of the residents in that area is violated by the Municipality. The Municipality acts for the public benefit in enforcing the scheme. Where the Municipality acts in excess of the powers 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 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 the limits of the Municipal Committee. If under pretense of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the Courts. If sanction is given to build by contravening a bye-law 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 [see *Yabbicom v. King* (1899) 1 QB 444]"

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The scheme is for the benefit of the residents of the locality, The Municipality acts in aid of the scheme. The rights of the residents in the area are invaded by the illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the Courts will quash orders passed by Municipalities in such cases."

"The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights atone. The scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area injured by the illegal construction."

27. The Supreme Court has clearly laid down in the above Decision that, - (1) Rate Payers have a legal right to demand the local authority to comply with its duty to observe statutory rights; (ii) there is a special interest in the performance of the duty, referable to a Town Planning Scheme, which is for the benefit of the public and (iii) all the residents in the area have their personal interest in the performance of the above duty by the local authority and (iv) the

special and substantial interest of the residents in the area is injured by the illegal construction.

28. In the instant case, the petitioners are rate payers and residents of Mangalore City for whose benefit the Building Bye-laws, read with the ODP, require the new constructions to be put up, to have a particular building line set-back. These requirements are certainly in the interest of the public in order to minimise the congestion of traffic and pedestrians in the busy commercial locality, in addition to provide more scope for the circulation of air and light. Though petitioners 3 to 5 are directly affected by the proposed construction and are personally interested in preventing it, this selfish interest by itself cannot wipe out the special interest vested in them as the Rate Payers and the residents. No independent or anterior animosity between the petitioners 3 to 5 and 4th respondent has been alleged or proved; even the eviction petitions against them is of the year 1987, while, their, objections arose in the year 1984 itself, when 4th respondent started to put up a construction leaving a very thin building line/set back, of 4 ft. even though the sanctioned plan required it to be 20 feet.

In *B.K. Srinivasan and Others Vs. State of Karnataka and Others*, one of the contentions was that the Corporation had permitted several similar constructions and therefore, the impugned construction therein should not be ordered to be demolished. This plea was rejected. At Page 1070, Supreme Court held:

"Shri Cooper argued that neither the Municipal Corporation nor any other civic authority appeared to be aware of the Outline Development Plan and the Regulations as was evident from the circumstances that in the years that passed since the approval of the Plan by the Government and before the Writ Petitions were filed, as many as 57 building licences had admittedly been issued in contravention of the Regulations. It may be that notwithstanding the Regulations some building licences were granted in contravention of the regulations but that only exposes the deplorable laxity of the concerned authorities and emphasises the need for greater public vigilance."

If eternal vigilance is the price for liberty, equally it is so, to attain orderliness and planned developments. We are of the view that in the absence of a clear and manifestly vicious attitude on the part of the petitioners being established, as the motivation for filing the Writ Petitions, Court should not non-suit them, as otherwise, the much needed public action in this field of public litigation may get discouraged. A mere suspicion that the action initiated by the petitioners may be due to some ulterior motive is not sufficient to throw out their action. There is every need to prevent the public bodies from overstepping their limitations; there is also a need to see that the inaction on the part of the Governmental Authority and the local bodies does not contribute to the contraventions of the statutory schemes like ODP, which are evolved for the public good. The valuable right of the Tax Payers and the special interest of the residents should normally be accepted as sufficient to recognise their locus-standing to invoke the

jurisdiction, to safeguard this right or the special interest.

30. In B.K.Srinivasan's case the Supreme Court affirmed the Decision of this Court rendered in M.D Narayan and Ors. v. State of Karnataka and Ors. W.P.No. 3386/81 etc. in which B.K.Srinivasan was the sixth respondent. Rejecting the contention of the respondents as the locus standi of the petitioners, this Court after referring to RAMADAS SHENOY's case, held:

".... The petitioners who are residents of the localities declared as residential localities under the provisions of the Act, have questioned the legality of the licences given by the Corporation to the Builders, for the construction of the high-rise-multi-storied buildings on the ground that they were in contravention of the Zonal Regulations which is a part of the ODP promulgated under the Act, which is binding on the Corporation u/s 505 of the Corporation Act. In view of the non-obstinate provision incorporated in Section 505 of the Corporation Act, the Corporation had no authority to grant a licence in contravention of the Zonal Regulations. The preamble to the Act extracted earlier clearly indicates that the ODP required to be prepared and promulgated under the Act are meant for the benefit of the residents of the concerned planning area. The petitioners are not only residents in the Planning area, namely, the City of Bangalore, but they are residents in the neighboring or nearby buildings in the locality in which the Builders proposed to construct high-rise-multi-storied buildings under the impugned licences."

It was held that the City Corporation had no competence at all to grant a licence in contravention of the Zonal Regulations appended to the ODP. The fact that several other similar constructions have been permitted, was not relevant at all. At para 28(i), this Court observed:

"It was submitted that the Corporation had granted licence for construction of many such high-rise residential apartments in contravention of the ODP and in several other cases, as the application for grant of such licences were not disposed of within the maximum period fixed u/s 301 and 302 of the Corporation Act, licences were deemed to have been granted as provided in Section 302(2) of the Corporation Act and, therefore, there was no justification to interfere with the licence granted to the Builders. A long list of such cases have also been filed by the learned Counsel for the Builders. While we are deeply distressed by the facts disclosed, we are least impressed by the submission. If the facts disclosed by the Builders, are true - as indeed the material placed before us prima facie indicate- they betray a disturbing state of affairs in the matter of grant of building licence by the Corporation, in that the Corporation, which is entrusted with the duty of protecting the interests of the citizens of the City, has committed a serious breach of duty by its failure to conform to the ODP, the obedience to which by it is obligatory in view of Section 505 of the Corporation Act and calls for, an enquiry by the Administrator and the Government, and stern follow up action to prevent such blatant violation of the ODP by the licencing Authority, which brings the provisions of the Act to public ridicule and undermines the respect for law. It

would be another travesty of law, if we were to uphold the validity of the impugned licences on the ground that several such illegal licences have been or deemed to have been granted."

The respondents in M.D.Narayan's case tried to resist the Writ Petitions on the ground of delay, without success. At para 37, the said contention was brushed aside:

"We have held that the ODP including the Regulations had come into force on 22.5.1972. According to that and in view of Section 14 of the Act, respondents 6 and 7 could not undertake the construction of any residential building beyond five floors. They cannot plead ignorance of the law. Petitioners could not be expected to believe that licence in contravention of law had been granted until they came to know of it. They were not parties to the proceedings for grant of licence by the Corporation. Further, the order of this Court dated 2.2.1981 in W.P.No. 23876 of 1980 filed by respondents 6 and 7 indicates that the impugned licence had been revoked, though for different reasons, on 18.12.1980 and that order was quashed only on 2.2.1981. The petition was filed shortly thereafter on 25.2.1981. At that stage only ground floor had been put up. Respondents 6 and 7 have undertaken and completed the entire further construction only during the pendency of the petition at their own risk as is evident from the undertaking filed by them in W.P.No. 898 of 1981. In these circumstances we do not think that there is justification to hold that the petitioners have approached the Court with such delay as would justify the dismissal of the petition on that ground. If any prejudice or loss is caused to respondents 6 to 15 by the allowing of the Writ Petition, they have to blame none than themselves as they had proceeded to take a licence and construct a building and to have its advantage in contravention of law. The fact that the Corporation had granted the licence would constitute no excuse as the application of respondents 6 and 7 for grant of licence for an eight floor residential building as well as the licence granted were in violation of the ODP and Section 14 of the Act and the law was as much binding on the Corporation as on respondents 6 and 7."

31. This Decision highlights the importance given to the planned development of a City and absolute strictness with which Courts would scrutinise the contraventions of the ODP and Zonal Regulations; tempering Justice with mercy is not possible here, in this area of Writ jurisdiction.

32. In Ramadas Shenoy case, the Supreme Court had set the precedent in the same lines, at page 2182 Supreme Court held:

"The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because the third respondent is likely to spend money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seeks its aid to relieve

them against expressed statutory provision. Lord Selbourne in *Maddison v. Alderson* (1883) 8 App. Cas.467 said that Courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the surmise that money might have been spent. Illegality is incurable."

33. In *Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others*, a the Supreme Court reiterated this approach, thus:

"We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire Country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of multi-storeyed building."

Consequently order of the High Court directing the demolition of several floors, in Bombay City was upheld.

34. In *PEEKAY CONSTRUCTION v. CHANDRASEKHARA HEGDE* ILR 1989 KAR 249 this Court observed:

"The decision of the Queens Bench in *Yabbicom v. King* lays down the principle that approval of a plan contrary to the bye-laws of the Corporation does not entitle the builder to construct in violation bye-laws. The Corporation had no power legally to approve a plan which was not in accordance with the bye-law, the approval given by it was not an "approval" at all."

At page 275, the principles were stated thus:

- (1) The City Corporation is bound by the reservation of the sites for particular purposes under the Statutory Schemes;
- (2) Sanction of the building plan by the Corporation, by itself, will not legalise the construction, if the construction is otherwise opposed to the scheme governing the area;
- (3) The residents of the area have a valid interest in the preservation of the area in the manner contemplated by the scheme or the plan governing the area;
- (4) The restriction as to the use of the particular land (or the site) is a beneficial covenant attached to other proximate sites and hence latter site owners can prevent the change of the land use by any one putting up constructions which are not contemplated by the scheme or plan governing the area; and
- (5) A site meant for a single dwelling house cannot be used to put up multiple dwelling houses in the guise of constructing a single building containing different flats or housing units."

35. Earlier, in *K.K. Govindaraju and Vinayaka Investments Vs. Commissioner, Corporation of City of Bangalore*, a Bench of this Court pointed out that any

licence or permission accorded in contravention of the ODP or the CDP, and the Zoning Regulation, would be void and it will not be a permission in the eye of law; from this it follows that if a licence had been issued in contravention of the ODP or the CDP it confers no right on the person who had secured the licence and consequently the authorities have not only the power but also are under a duty to rectify it or issue a fresh licence so as to bring it in conformity with, the ODP and the Zoning Regulation.

36. If so, position of a licensee who ignores the licence and starts to construct in violation of the Zonal Regulations could, in no way be better.

37. In *Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another*, the Bench upheld the locus standi of the neighbours to challenge the building licence granted contrary to the Zonal regulations. At page 1043, the Court held:

"It must be emphasised that the Development Plan prepared under the Planning Act, 1961 would be for the benefit of the public. The Corporation authorities who are the trustees of the public interest must strictly observe the norms and conditions of the Development Plan. The authorities owe a duty to Rate Payers to protect the interest of the public, while administering the Planning law. They cannot afford to ignore the social responsibilities underlining the Planning law. They shall not favour an individual at the cost of the general public, and to the detriment of their interest. They shall never issue licence to construct building contrary to the Zoning Regulations. If they give licence to construct a building contrary to the permitted land use or contrary to the prevailing zoning regulations, they should be held responsible for their lapses. Indeed, they are accountable to the public when they act against the interest of the public. In such cases, when the Rate Payers approaches the Court complaining about the misuse or abuse of powers, by public authorities, the court cannot drive them away on technical grounds. It would be the duty of the courts to enforce the rule of law, enacted for the benefit of the public. It would be the duty of the courts to protect the rate payers' interest preserved under the Planning law."

38. Thus, apart from the right of the tax payers to seek relief from this Court, this Court has a duty to enforce the Rule of Law and protect the interests preserved under the Planning law. While rejecting the plea of delay, it was observed that, "...there is no question of acquiescence in a matter like this where the Corporation authorities have acted in excess of the powers conferred by the Statute or statutory regulations."

Since, during the pendency of the proceedings CDP superseded the ODP Court directed the Commissioner of the Corporation to consider whether the building constructed was in accordance with the CDP and the Building Bye-taws.

39. In *Bangalore Medical Trust Vs. B.S. Muddappa and others*, the Supreme Court pointed out that, under the power vested in the Government, to give directions to the BDA, the State Government may issue such directions as are

necessary or expedient for carrying out the purposes of the Act. The object of the directions must be to carry out the object of the Act and not contrary to it. Therefore, any direction which is contrary to the term of the scheme envisaged by the Act will be illegal; exercise of power which is ultra vires the provision in the Statute cannot be attempted to be resuscitated on general powers reserved in a statute for its proper and effective implementation and what is not permitted by the Act to be done by the authority cannot be assumed to be done by the State Government to render it legal. "In a democracy, what prevails is law and not the height of the person exercising the power." "Residents of the locality are the persons intimately, vitally and adversely affected by the action of the BDA and the Government which is destructive of the environment and which deprives them of facilities reserved for enjoyment and protection of the health of the public, at large." "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 city."

As to locus standi, one of the learned Judges observed, at para-36:

"Locus standi to approach by way of Writ Petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with the same result. One relates to the maintainability of the petition and the other to exercise of discretion. Law on the former has marched much ahead. Many mile stones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in the wake of public interest litigation. Even in private challenge to executive of 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 and 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 part 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 freer movement both in nature of litigation and approach of the Courts. 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 of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to 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 considerations."

40. Mr.Santhosh Hegde, the learned Counsel for the fourth respondent, contended that there is a greater need to examine the motives of the petitioners and some self imposed restriction as to the scope of "public interest litigation" has to be maintained. The learned Counsel referred to Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and relied on the following observations of Khalid, J in the concurring Judgment, at page 1134:

".... This case goes by the name "Public Interest Litigation". I wish to delineate the parameters of public interest litigation concisely, against the background of the facts of this case, so that this salutary type of litigation does not lose its credibility. To day public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts and among the public. They must be above suspicions."

On facts, the Court found the impugned action of the State Government justified, because, the learned Judge said;

"This public interest litigation takes its birth, perhaps from the righteous indignation of the petitioners, against the State Government at their bartering away of four acres of land belonging to the Zoo to the Taj Group of Hotels. The Writ Petition is mainly based on the ground that the decision of the Government is arbitrary. The question to be answered is whether this accusation can be justified. On a perusal of the records I find that the State Government had made available to the Court all the relevant documents so as to satisfy the Court about the propriety of its action."

A part of an extensive zoological garden in Calcutta was given to a Hotelier to put up a Five Star Hotel; challenge was that the procedure followed to pass on a public property to a third party, was not fair and that tenders should have been invited from all those who were willing to take the land and the lease of land to the Hotelier by private negotiation was bad. The Decision of the Supreme Court, rested ultimately, on the fairness and propriety of the deal and the said Decision has nothing to do with the rights of the Rate Payers and of the residents to challenge any action which contravenes the Zonal Regulations. Subject was not concerned with the rights of the Rate Payers and the "special interests" of the residents of the locality,

41. In a "Public Interest Litigation" in its general sense, the person approaching the Court need not have any interest in the subject matter of the litigation, except the interest as a member of general public; the interest sought to be protected need not be of any class or group of persons. In the case of an action by a Rate payers and a resident of a locality to protect and enforce the Zonal Regulations, the petitioner has a special interest recognised by the Courts in him, which is quite distinct from the interest of any other person trying to project the

cause of general public. Rate-payers/residents of a local area are an identifiable class of persons to which class all members of the general public cannot belong,

42. This distinction is implied in the following observations of Bhagawati, J. (as he then was), in *S.P. Gupta Vs. President of India and Others*, it was observed, after referring to the rule of ancient vintage:

"... It will be seen that, according to this rule, it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule in regard to locus standi thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years.

In the first place a rate payer of a local authority is accorded standing to challenge an illegal action of the local authority. Thus, a rate payer can question the action of the municipality in granting a cinema licence to a person, vide: *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, Similarly, the right of a rate payer to challenge misuse of funds by a municipality has also been recognised by the Courts vide; *R. Varadarajan Vs. Salem Municipal Council and Another*, The reason for this liberalisation of the rule in the case of a tax payer of a Municipality is that his interest in the application of the money of the municipality is direct and immediate and he has a close relationship with the municipality. The Courts in India have, in taking that view, followed the decisions of the English Courts."

Stricter scrutiny of the motives of the petitioner is called for when the petitioner asserts that his action is to vindicate the public interest as such.

At page 189, it is stated:

"..... Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining Writ Petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as Writ Petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented

approach. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular Writ Petition filed in Court."

Thus the kind of cases in which the motives of the individual moving the Court for redress to be scrutinised with greater care is indicated in the above observation. We may also add that petitioner's conduct and motives are relevant considerations before deciding the propriety of granting the relief to such a petitioner, when the forum invoked is the Writ jurisdiction, because, it is a discretionary jurisdiction.

43. However, to non-suit a Writ Petitioner, in a situation like the one with which we are dealing, a clear and unimpeachable proof as to the ulterior motive has to be made out. When a petitioner has a right, as a rate payer and a special interest as a resident, to approach this Court, such a right and interest cannot be ignored only because, there is a possibility of the action initiated by the petitioner being a motivated action. Protection of self-interest, here, to a large extent, is the protection of that special right and the special interest.

44. At any rate, in the instant case, absolutely no motive or self-interest, has been alleged or proved against petitioners 1 and 2 and solely because they have joined hands with other petitioners, the formers' action would not get vitiated. The observations of Supreme Court in *Rajatha Enterprises Vs. S.K. Sharma and Others*, were relied. The Supreme Court held on facts,

"..... In the circumstances, in the light of what the Commissioner says about the practice of the Corporation in regard to the commencement certificate and in the absence of any evidence of public safety being in any manner endangered or the public or a section of the public being in any manner inconvenienced by reason of the construction of the building, whatever may be the personal grievance of the 1st respondent, the High Court was not justified, at the instance of the 1st respondent claiming himself to be a champion of the public cause, in ordering the demolition of any part of the building, particularly when there is no evidence whatsoever of dishonesty or fraud or negligence on the part of the builder."

That was a case, on facts, it was found that there was no dishonesty or fraud on the part of the builder.

45. In the instant case before us, the builder started with ignoring the sanctioned plan from the very beginning and proceeded to leave a meagre four feet building line as against 20 feet and his subsequent conduct has only focused his lack of rectitude; it is shown that even after the Government Order permitting the set back of 10 feet, the builder left a set back of only eight and a half feet and then

persuaded the Government again to permit such a construction. The history of this litigation clearly brings out that the builder (4th respondent) cannot plead ignorance of the Zonal Regulations. A deliberate attempt to get away with the illegality is exhibited in the conduct of the fourth respondent.

Ramsharan Autyanuprasi and another Vs. Union of India and others, is not a case of Zonal Regulations. It was a case of an alleged pure "Public Interest Litigation" in its larger sense and on facts it was found that the action was motivated. Again, the Decision in Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others, was based on its facts, wherein it was found that the mills had complied with the statutory requirements of Air (Prevention and Control of Pollution) Act and that the petitioners were motivated by extraneous factors. The history of enmity and animosity between the parties was telling. That was not an action by any Rate Payer or a person having any special interest in the subject matter.

47. To complete the citations; S.K. Sharma Vs. Corporaion of the City of Bangalore, has to be referred. It was pointed out that every resident of the City has sufficient interest to question the unlawful construction of vast magnitude in the locality, which would contribute to the greater congestion and traffic in a particular area.

48. In view of the glaring violation of the Zonal Regulations, the manifestly illegal orders of the State Government and having regard to the strategic location of the place of construction, we are of the view that the right of the petitioners 3 to 5 as Rate Payers and their special interest as the residents of the City of Mangalore require to be protected and this is not a case to non-suit them by suspecting their bona fides. Even otherwise, the petitions of the first two petitioners cannot be thrown out on any such ground of ulterior motive, because such a motive on their part is not at all alleged and proved.

Regarding the two propositions advanced by Mr.Karanth there can be no two opinions. In the absence of any power vested in any authority to alter the requirements to be obeyed by a builder under the Zonal Regulations, the fourth respondent could not have been permitted to put up the construction with a reduced set-back of eight and a half feet only. Only because a few others have been permitted such a reduced set-back is no ground that the illegality should be perpetuated. The very purpose of the Zonal Regulations will be defeated if every builder is to be permitted to reduce the set-back. Even on facts, it is clear that the three other builders who have been permitted earlier may stand on a different footing having regard to the location of their respective lands if the Zonal Regulations are to be thus permitted to be ignored, Rule of Law will have to give place to Rule of Lawlessness. Supreme Court has repeatedly pointed out the need to maintain neat and orderly development of Cities and in the instant case it is all the more necessary having regard to the traffic flow at the place in question. It is also clear that the Government has no power to grant any exemption and Section 76K of the T.C.P. Act nowhere empowers the Government

to modify the requirements of the Zonal Regulations.

50 Mr. Santhosh Hegde, learned Counsel, contended that we may declare the law as such regarding the power of the Government but should not quash the Governmental orders in the instant case by the application of the doctrine of prospective overruling. We have our grave doubts about the permissibility of applying the doctrine of prospective overruling in a situation as the one before us in the instant case. This is not a matter wherein Constitutional issues are involved. There is absolutely no doubt about the scope of Section 76K of the TCP Act, relied upon by the Government as its source of power. The doctrine of prospective overruling is invoked by Mr. Santhosh Hegde here to project an equity in favour of the fourth respondent. In Ramdas Shenoy's case the Supreme Court has clearly laid down that a builder who has violated the Zonal Regulations cannot plead any equity on the ground that he has expended considerable sum of money on the illegal construction. There is no equity against a statute which in turn envisages that no equitable considerations could prevail in favour of a person who obviously has deliberately contravened the sanctioned plan and the provisions of the Zonal Regulations. We may also point out here that the fourth respondent cannot plead ignorance of Zonal Regulations in this case, at least from the date it approached the Planning Authority by filing an appeal seeking a reduction of the building line from 20 feet to 10 feet. Thereafter, in the year 1984 fourth respondent approached the Government for reduction of the building line to 10 feet and the Government made an order on 8.11.1984. The fourth respondent once again approached the Government to modify the said order on the ground that the contractor of the fourth respondent committed the mistake of leaving a building line of eight and a half feet only. The fourth respondent should have taken care to see that the contractor acted in accordance with the sanctioned plan. The fourth respondent cannot take shelter in the error committed by its contractor who could be described as the agent of the fourth respondent. There seems to be a deliberate attempt throughout to proceed with the construction and then seek an equitable consideration which is not at all warranted by law.

51. We have not expressed our view regarding other alleged violations such as the contravention of F.A.R., the number of floors that could be put up, etc., etc. These are disputed questions which could be more appropriately considered by the respondents 1 and 2. It is sufficient to note that the illegality regarding the building line is too patent in the instant case.

52. We may also note that, according to Mr. Karanth the building line is not only for the benefit of the owner of the building, but the members of a public have a right in it. The learned Counsel referred to Words and Phrases Permanent Edition Volume - 5A at page 502:

"The term "building line" is not of doubtful or obscure meaning but is a well understood term when used upon town or city flats. The reservation is an easement for the benefit of the public and especially of the property abutting on

that street in the sub-division. The space between the building and the street belongs absolutely to the owner of the lot subject to this easement, and the owners of this and the other lots in the subdivision are guaranteed whatever benefit may result from an unobstructed view across the entire reservation. Eckhart v. Irons, 20 N.E.687, 689, 690, 128 III. 568; Simpson v. Nikkelsen, 63 N.E.1036, 1037, 196 III.575."

53. RE: Alleged delay in filing the Writ Petitions:

It has not been shown that the two Government orders obtained by the fourth respondent were to the knowledge of the petitioners and therefore they could have challenged them at any time earlier to the date of filing these Writ Petitions. The equity developed in favour of the fourth respondent by the alleged delay is not proved. The impugned licence is dated 30.7.1987 and the Writ Petitions were filed in April 1988. We have already referred to the Decision of this Court in Shantha v. Commissioner of The Corporation, wherein it was held that in cases of this type, Court cannot drive away the Rate-payers on technical grounds and question of acquiescence does not arise at all.

54. Another contention on behalf of the fourth respondent is that the alleged deviations are of minor character and could be condoned. Here the requirements regarding the building line from 20 feet which is reduced to eight and a half feet cannot be considered as a trivial deviation. As to other alleged deviations we have not expressed our opinion. On this aspect there is also another question on which we are not expressing any definite opinion. In the case of deviations it is said that penalty or fine can be imposed and the deviations can be condoned. This is possible provided there is a specific power. No such power vested in any authority is brought to our notice. Further, if the Zonal Regulations prescribe certain things to be done in a particular manner, can it be said deviations thereon can be condoned on the ground of triviality; will it not be indirectly modifying the Zonal Regulations. If the deviations are of such a minor character, this Court in the exercise of its Writ jurisdiction may ignore the same. That is a different aspect of the question altogether. On this aspect another view is that the condonable deviations are the deviations from the sanctioned plan only, provided the deviated construction satisfied the particular Zonal Regulations. For example, if the set-back prescribed by the Zonal Regulation is 20 feet but in the sanctioned plan set-back to be left is 30 feet and the builder actually leaves a set-back of 20 feet, it may be a case for condonation because the condonation would not contravene the Zonal Regulations.

55. Consequently there is no escape from setting aside the two Government Orders dated 8th November 1984 and 17th October 1985. In respect of other alleged deviations it is for the respondents 1 and 2 to consider and take appropriate action, ignoring the aforesaid two Government orders.

56. In the result the Writ Petitions are allowed, and we make the following Order:

(1) Order No. HUD 265 TTP 84 Bangalore, dated 8.11.84 and Order No. HUD 605

TTP 85 Bangalore, dated 17.10.1985 are quashed.

(2) Respondents-1 and 2 shall consider the allegations of the petitioners, regarding the deviations in the construction and the illegalities therein allegedly committed by the fourth respondent, in accordance with law and take appropriate action accordingly.

(3) Each party shall bear his or its own costs. Rule made absolute.