

(1991) 04 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Appeals No's. 811 and 1338 of 1989

M/s. Ajay Constructions

APPELLANT

Vs

Kakateeya Nagar Co-operative Housing Society Ltd. and
others

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 147, 148, 149, 150
Andhra Pradesh Urban Areas (Development) Act, 1975 — Section 13, 14, 15
Constitution of India, 1950 — Article 19, 21, 32, 38

Citation : AIR 1991 AP 294

Hon'ble Judges : Sardar Ali Khan, J;M.N. Rao, J

Bench : Division Bench

Advocate : M/s. B. Subhashan Reddy, R. Subhash Reddy and H.S. Gururaja Rao, s, for Osmania University, for the Appellant; K. Ranga Rao, G.P., for H. and M.A., K.R.K. Varaprasad, B. Siva Reddy and Standing Counsels, for Municipalities, K. Janardhana Rao, Standing Counsel, for HUDA, E.V. Bhagiratha Rao, S. Venkata Reddy and K. Raja Reddy, for the Respondent

Judgement

Sardar Ali Khan, J.—These two Writ Appeals, viz., W. A. No. 811 of 1989 and W.A. No. 1338 of 1989, are directed against an order of a learned single Judge dated 25-4-1989, made in W.P. No. 1070 of 1989.

2. Since common questions of law and fact are involved in both the Writ Appeals, they are being disposed of by a common judgment.

3. The array of the parties is given as mentioned in the Writ Petition so that there may not be any confusion while referring to any of the parties.

4. The first petitioner is Kakateeya Nagar Co-operative Housing Society Limited, Habshiguda; the second petitioner is one Sri R. Sadasiva Sarma, who is a Professor living in the same area; petitioners 3 and 4, Dr. Ramesh V. Bhat and Sri B. S. Narasinga Rao, are Scientists; the fifth petitioner Sri B.N. Mohan is an Engineer and the sixth petitioner, Sri T.V. Malleswara Rao, is an Industrial

Consultant, On the other side, the first respondent is the Government of Andhra Pradesh represented by its Secretary, Municipal Administration; the second respondent is Uppal Kalan Municipality the third respondent is the Osmania University represented by its Registrar; the fourth respondent is Hyderabad Urban Development Authority represented by its Secretary; the fifth respondent is the Andhra Pradesh Pollution Control Board represented by its Secretary and the sixth respondent is M/s. Ajay Constructions, Kakateeya Nagar represented by its partner, Smt. N. Nirmala Devi, The seventh respondent the Director of Public Health, Government of Andhra Pradesh was impleaded on a court direction. The flat owners of M/s. Ajay Constructions, Kakateeya Nagar were also impleaded as respondent No. 8. The members of the Harijana-wada got impleaded as respondents Nos. 9 to 14.

5. The prayer in the writ petition is for the issue of a writ of mandamus declaring the order of the Commissioner of Uppal Kalan Municipality in ROC No. 4026/88. Dated 28-12-1988 permitting M/s. Ajay Constructions, Kakateeya Nagar, Habshiguda to connect and drain out the water flowing from the soakage pit of the building to the existing drain at Habshiguda as being void and illegal.

6. When the matter came up for admission before the learned single Judge, the writ petition was disposed of by a detailed judgment after hearing all the parties at the admission stage itself.

7. The essential facts of the case, as stated in the affidavit filed in support of the writ petition, are as follows :--

The Kakateeya Nagar Co-operative Housing Society Limited, Kakateeya Nagar, was formed in 1966 and has built houses in an area of 62 acres in Habshiguda. The society spent huge amounts for development of the roads, laying of pipe lines, supply of drinking water etc. Up to 1987 the society was within the jurisdiction of Habshiguda Gram Panchayat. In 1987 the Uppal Kalan Municipality came into existence. It is an undisputed fact that there is no underground drainage system in Habshiguda including the area covered by the Society uptil now. The society, therefore, made it compulsory for every member to provide a septic tank and soakage pit thereby not allowing any part of the polluted water to come out of the house on to the roads of the Society. The members of the Society have carried out the directions given by the Society and have given no scope for complaint anywhere. The Society decided to lay an underground pipe line from the Harijan Basthi of Habshiguda to the natural open drain of the Osmania University with a view to ensure that rain water and cattle wash of the Harijan Basthi did not flow into the land of the society. For this purpose the Society contributed Rs. One Lakh for laying the underground pipe line and the Zilla Parishad agreed to undertake the work. The pipe line was laid in 1983 with the specific purpose of draining the rain water and the cattle wash of the Harijan Basthi through the underground pipe line and joining the natural open drain of the Osmania University. Since the water, which was flowing through the underground pipe line was rain water and cattle wash of the Harijan Bastki, the

University authorities never raised any objection to the said procedure. When some of the members of the Society wanted to construct multistoried buildings, the Society resisted the move on the ground that there was no proper drainage facility in Habshiguda area.

8. M/s. Ajay Construction, Kakateeya Nagar, who has been impleaded as respondent No. 6 in the writ petition, embarked upon the project to construct multistoried buildings, consisting of 32 flats, in an area of 1000 Square Yards. The Gram Panchayat, which was in existence at that time, approved the plans submitted by M/s. Ajay Constructions. The Society, by its letter dated 14-4-1988 addressed to the Hyderabad Urban Development Authority, urged not to ratify or approve the plan submitted by M/s. Ajay Constructions for construction of multistoried building. However, the fourth respondent informed the 2nd respondent Uppal Kalan Municipality of the approval given by it for the construction of the multistoried buildings. The said approval dated 17-10-1988 was given through a resolution passed on 27-9-1988 which is in the following terms :

"The plans will be released to Municipality who must fully satisfy regarding adequate septic tank and sewerage disposal before sanctioning and also afterwards so that the residents of the locality have no objection."

The construction of the flats Was completed by M/s. Ajay Constructions but they did not construct the septic tanks and soakage pits according to the plans approved by the 4th respondent. The septic tanks and soakage pits were smaller than what were approved to meet the requirements of the 32 flats. Since the septic tanks and soakage pits were insufficient to drain the sewerage of the flats, M / s. Ajay Constructions thought of connecting the sewerage of its building to the underground drainage pipe line which had been laid by the society for draining rain water and the cattle wash of the Harijan Basthi. The Society raised a serious objection through its letter dated 6-6-1988 to the Uppal Municipality, which had come into existence by then, permitting such a course. It seems that the Society also sent letters to the Hyderabad Urban Development Authority and the A.P. Pollution Control Board (Respondents Nos. 4 and 5 respectively). The Society has also sent a letter to the 6th respondent, M/s. Ajay Constructions on 8-7-1988 asking them not to connect the sewerage to the pipe line which will create a tremendous problem leading to unhygienic conditions. When steps were being taken by the 6th respondent to connect the sewerage to the pipe line, the Society objected to it vide its letter dated 19-7-1988 addressed to the Municipality requesting it to prevent such a move on the part of the Ajay Constructions. The petitioner also wrote letters again to the 2nd respondent on 27-7-1988 and to the HUDA on 27-7-1988 and 3-10-1988 protesting against the contemplated move of the Ajay Constructions to connect their sewerage from the septic tanks and soakage pits to the underground pipe lines of Habshiguda.

9. The 2nd respondent-Municipality convened a meeting on 19-12-1988 at 10-00 A.M. and sent a notice to the President of the Society at 11-00 A.M., who was not

available at that time. The Municipality eventually granted permission, without adequate notice to anyone, to connect the sewerage of the flats to the underground pipe line. This resulted in the sewerage water flowing from the multistoried building to the Osmania University pipe line which resulted in tremendous air-pollution near the University Students' Hostel in "M" Block and the N.C.C. Camp. The inmates of this Hostel resisted with protest to the University authorities against the foul smell and the insanitary conditions prevailing in the area. The University blocked the outlet of the drainage pipe line of Habshiguda into the University drain by constructing a wall. The result of this blockage is that the sewerage from the 32 flats of the Ajay Constructions is getting accumulated at a point just outside the University wall and is formed into a big cess pool within the area of the University. Due to the deposits of the night-soil and other sediments, there has been tremendous air and water pollution which has made the life difficult for those who are living in the said area. The 4th petitioner in the writ petition wrote a letter dated 6-1-1989 to the Municipal Authorities protesting about the insanitary conditions prevailing in the area to which the Commissioner of the Municipality, in his letter dated 10-1-1989, replied that they are trying to persuade Osmania University not to block the pipe line outside its compound wall. The A.P. Pollution Control Board was also informed by the 4th petitioner about the insanitary conditions prevailing in the area. Petitioner No. 5 also wrote to the Commissioner on 15-1-1989 describing the health hazard created by the sewerage which was in existence in the home of cell pool near the houses of the residents. The present Writ Petition is, therefore, filed assailing the orders of the Municipality in granting permission to the 6th respondent, Ajay Constructions for connecting their sewerage lines to the existing underground Habshiguda pipe lines.

10. M/s. Ajay Constructions, Respondent No. 6 has filed a counter-affidavit justifying the action of the Commissioner in allowing the sewerage connections from the flats to the underground pipe line of Habshiguda. They further questioned the action of Osmania University in disconnecting the pipe line which has resulted in vast accumulation of sewerage and polluted water in the form of a stagnated pool creating grave insanitary conditions.

11. In the counter-affidavit filed by Osmania University, the University justifies the action taken by it stating that the University land cannot be used for storage of effluent and sewerage which is creating a serious problem for the students and other staff of the University. A memo has been filed by respondents Nos. 1 and 7 with a copy of the inspection report of Dr. B. Sarojini Amba, Deputy Director of Industrial Hygiene, indicating the unhygienic conditions existing at the spot and justifying the method which can be applied for the removal of the effluent from the septic tanks and soakage pits of the flat owners. The A.P. Pollution Control Board had filed its inspection report consequent upon the inspection conducted by its Principal Secretary, Sri Y.S. Murthy.

12. The main counter-affidavit, the therefore, has been filed on behalf of the. 6th

respondent M/s. Ajay Constructions giving the necessary facts of the case. The contention raised in the said counter is that under S. 147 of the A.P. Municipalities Act, 1965 the Municipality is bound to maintain sufficient system of public drain and, therefore, the Municipality has performed its duty by allowing the connections of the sewerage line of the flat owners to the underground pipe line maintained by the Municipality. It is also contended in the said counter-affidavit that condition No. 6, which will be adverted to later, imposed by HUDA while granting permission on 17-10-1988, is beyond its powers.

13. When the matter came up for hearing before the learned single Judge, he formulated three points for consideration and then proceeded to answer them. The first proposition laid down by the learned single Judge is that HUDA has got powers to give directions which override the powers of the Commissioner of the Municipality and, therefore, the connections of the sewerage line with that of the underground pipe line maintained by the Municipality is clearly illegal. The second proposition laid down by the learned single Judge appears to be that suitable directions can be given to the residents to abate the pollution and the court has power to indicate certain precautions which should be taken by the authorities to prevent the pollution in the area. The third proposition laid by the learned single Judge is that certain directions having financial and administrative implications, can be given under A.P. Municipalities Act, 1965 and the A. P. Urban Areas (Development) Act, 1975 and the Water (Prevention and Control of Pollution) Act, 1974 to the authorities for taking suitable action to abate the nuisance created in the locality. In this regard, the learned Judge quashed the orders of the 2nd respondent-Municipality dated 28-12-1988 and directed that the pipe line should not be disconnected immediately but only after a period of eight weeks from the date of receipt of the order by the Municipality. He also directed that within the said eight weeks lime the Director of Public Health shall take action in the light of the two reports submitted by the Pollution Control Board and the Deputy Director, Industrial Hygiene to prescribe temporary measures for removing the effluent from the flats instead of allowing it into the park or anywhere near the residential area. Further more, the learned single Judge directed the Municipality and the HUDA to direct the 6th respondent to deposit the necessary funds for removing the effluent from the flats without allowing the same to be accumulated in an open area. The learned Judge also suggested that there should be an oxidation plant as suggested in the enquiry report and appropriate action should be taken in that regard. The other directions given by the learned single Judge are with regard to adopting permanent measures to meet the situation. It was also made clear by the learned Judge that any failure on the part of the flat owners to comply with the directions given by the A.P. Pollution Control Board will lead to civil and criminal liability indicated under the various provisions.

14. Against the above said order of the learned single Judge, two Writ Appeals have been filed. W.A. No. 811/89 has been filed by the 6th respondent in the writ petition, M/s. Ajay Constructions. W.A. No. 1338/89 has been filed by the

Osmania University challenging the order of the learned single Judge in so far as it directs the University to permit rain water-drain pipe of the petitioner-society to connect with the pipe of the University as were the position hither to. The Osmania University also denies the existence of any pipe line in the University campus and, therefore, refuses to permit the Society to connect its pipe line with the University pipe line so that the rain water and the cattle wash of the Harijan Basthi may have a flow through the University land.

15. These two Writ Appeals obviously raise common question of law and fact and when the matter was heard by a Division Bench, an order dated 31-3-1990 was passed stating, inter alia, that after hearing the matter for a considerable length of time, it was felt that certain facts of a technical nature are to be ascertained before passing any final order in the matter. In that view of the matter, the Division Bench appointed a Committee of two persons consisting of (1) Sri I. Govardhana Rao, Superintending Engineer (Public Health), West Circle, Hyderabad and (2) Sri E. Pulla Reddy, Superintending Engineer (Drainage Circle), Hyderabad Metro-Water Works & S.E., to go into certain aspects of the matter as laid down by the Division Bench. The Committee was asked to consider whether Condition No. 6, attached to the permit proceedings dated 17-10-1988 issued by HUDA under Ss, 13 and 15 of 1975 Act, has been complied with by the 6th respondent-Ajay Constructions. The Division Bench particularly mentioned that the fact in this regard to be verified is whether the septic tanks and the soakage pits, constructed for the 32 flats of M/s. Ajay Constructions, complies with the above condition imposed by HUDA, The second point on which the Committee was asked to submit its report is whether the existing pipe line in the said Society area is meant for carrying sewage or is it meant only for carrying rain water and cattle wash from the locality. The Committee was also asked to submit its report whether sewage of the houses in Harijan Locality is flowing into the said pipe line. The Committee was also directed to draw a plan or a sketch showing the said pipe line and also indicating how the water or sewage is flowing into the said pipe line. The Committee has been asked to suggest short-term and long-term measures to eradicate the nuisance and to ensure health, hygiene and environment in the said area. The Committee has also been empowered to indicate certain other measures to eradicate the nuisance and to ensure health, hygiene and environment in the said area. The Committee has also been empowered to indicate certain other measures which the Committee may consider it necessary to be adopted by the authorities.

16. We have given in detail, the meticulous aspects of the case having regard to the factual situation existing on the land so that the matter arising in this case may be considered in depth from all angles. The Committee formed in pursuance of the order of the Division Bench, referred to above, submitted its report dated 2-8-1990. It is stated in the said report that the Committee conducted detailed inspection of the area in the presence of the interested parties and final inspection was conducted on 16-6-1990. Regarding the first point formulated by the Board the Committee has submitted that condition No. 6 attached to the

permit proceedings dated 17-10-1988 issued by HUDA under Ss. 13 and 15 of 1975 Act was not fulfilled by the builder-promoter. The Committee has further stated that the adjustment of the filter point of the soak pit will have to be made in order to prevent the outflow of effluent from the septic tanks. Regarding the second point about the existing drain of the society as to whether it is meant for carrying sewage or for carrying rain water and cattle wash from the locality, the Committee has submitted that it is evident from the contour plan of the Kakateeya Nagar that Harijan locality is at higher level than the Kakateeya Nagar Colony. It appears that the existing drain was constructed to Carry the water, i.e., sullage, cattle wash and rain water, from the Harijan locality and discharge into the Osmania University campus area so that the stagnation of waste water from the above locality in the Kakateeya Nagar area is avoided. This drain is not meant to carry the waste water from the entire area of Kakateeya Nagar as it is not constructed along Valley line. The sewage of the houses can also flow into the said pipe line as it is buried in the ground and serving as an underground drainage system to the extent of the above said locality concerned. Moreover, higher-diameter pipe line can be run through the Osmania University campus and connect to the Uppal Municipal drain and finally leave it to Ramanthapur tank or the regular drainage system, as the case may be. The Committee also drew up a plan showing the pipe line indicating flow of water of sewage from the locality. It is observed that the pipe line is discharging water/sewage into the open drain flowing through the Osmania University Campus. The Committee has suggested certain short term and long term measures to eradicate the nuisance and to ensure health, hygiene and environment of the said area. It pointed out, inter alia, that as a short term measure the sullage and rain water of the locality may be allowed into the open Nala already existing from time immemorial in the Osmania University Campus. As a long term measure, the Committee suggested to lay sewerage system properly designed for the entire Kakateeyanagar and allow the main sewer right across the Osmania University campus following the alignment of the natural Nala already existing and will discharge ultimately into the proposed sewerage system of the Hyderabad city at a stable point near Ramanthapur tank. By this alignment of the sewer line, neither the existing structures nor the proposed future structures in the Osmania University Campus are likely to be interfered. Since the Municipality as well as the residents of the locality are coming forward to bear the cost of sewerage system, the Committee has opined that the only solution is to lay the sewer line right across the Osmania University Campus provided the Osmania University authorities accord permission. The Committee also observed that the University authorities have constructed a compound wall on the boundary of the University and Kakateeya Nagar thereby blocking the storm water passing through the natural Nala through the University Campus. The University authorities have left some openings in the masonry of the compound wall at certain level constructed at the boundary where the storm water and sullage water of the Kakateeya Nagar area used to enter. It is finally suggested by the Committee that it is inevitable for the University authorities to allow the sewage as well as sullage of the said

locality also along the natural course across the University Campus.

17. The Osmania University and the other respondents in the Writ Petition have raised serious objections to the report of the Committee, referred to above, stating that the report of the Committee is one sided and has been given without issuing proper notices to all the concerned parties. It is also urged that the recommendations of the Committee are vague and indefinite, apart from being impracticable, and, therefore, cannot be implemented.

18. It may be stated that the A.P. Pollution Control Board has submitted its report dated 3-2-1989 taking serious objection to the flow of effluent from one's property to another's property. It is also stated that the University authorities are justified in blocking the entry of the waste from the flats of Ajay Constructions. The effluents so discharged are not being treated properly according to specified standards and are, therefore, likely to create serious problems of environmental pollution. Similarly, the inspection report given by Dr. B. Sarojinamba, Deputy Director of Industrial Hygiene, Office of the Director of Health also runs counter to the recommendations made by the Two-Men Committee formed in pursuance of the orders of the Division Bench of this court. After the inspection of the area concerned, Dr. B. Sarojinamba has opined that there is no underground drainage system in this area and the existing underground pipe line from Harijan basthi of Habshiguda to the natural open drain of the Osmania University is not enough to satisfy the needs of the residents of the area. The pipe line was meant only for rain water and cattle wash of Harijan Basti of Habshiguda. Since it was being used only for the rain water and cattle wash, the University authorities had not raised any objection so far. Later when Ajay Constructions connected their sewage into this underground pipe line, serious problems of environmental pollution have arisen. The entire sewage water at present is stagnated in a proposed park of Kakateeya Nagar Society where a new automatic milk booth is constructed with a bore-well. This stagnation of the sewage water is bound to affect the neighbouring wells and pollute the drinking water. She also opined that the septic tanks constructed for the 32 flats of Ajay Constructions are not at all sufficient and there is overflow of sewage water from the septic tanks which have been connected to the underground pipe line which have been blocked by the Osmania University. Dr. Sarojinamba gave her final opinion that the connection of the sewage water from the multistoried building should not be permitted to the underground existing pipe line as there is no underground drainage system provided in this area. As a remedial measure the sewage should be collected through special tankers and transported to treatment place at the cost of flat owners till a permanent underground drainage system is provided.

19. The technical opinion on the report of the Committee of Engineers appointed by the Division Bench of this court has been given by one Mr. Y.S. Murty, who is supposed to be a highly qualified person in the field of environmental pollution. In this technical opinion also the report of the Committee has come under heavy

fire. It is stated that the recommendations of the Committee are misconceived and are incapable of being put into practice. Certain short term and long term measures have been suggested in this technical opinion by Mr. Y.S. Murty. The sum and substance of this opinion seems to be that the pollution water of the above colony cannot be permitted to pass through the University campus either through a Nala or pipe line for solving the pollution problem of Kakateeya Nagar Colony both on short term and long term basis.

20. It is thus evident that apart from the legal objections raised to the formation of the Committee by the Division Bench of this court, the proposals put forward by the Committee have been severely criticised by expert bodies enjoying unequal status in the field of environmental sciences.

21. Sri H.S. Gururaja Rao, learned Standing Counsel appearing on behalf of the Osmania University, has submitted that in a matter of this nature the High Court ought not to have constituted a Committee to give its technical opinion. It is not the function of the court to invite expert opinion on subjects which are likely to be seriously contested by the parties concerned. He has also submitted that the Committee has functioned in an irresponsible manner by not giving adequate notice to the authorities of the Osmania University and to other persons concerned. The role played by the local M.L.A. Smt. Uma Venkat Ram Reddy in the formulation of the recommendations of the Committee have also been criticised by the learned Standing Counsel for the Osmania University. It is stated that the deliberations of the Committee have been unduly interfered with and influenced to a very large extent by political considerations injected due to the unauthorised presence of the local M.L.A., Smt. the Venkat Ram Reddy, at the time of the inspection of the area by the Committee.

22. Sri H.S. Gururaja Rao, learned counsel appearing on behalf of the Osmania University, has attacked the decision of the Division Bench in forming a Committee to go into the technical aspects of the matter and to submit a report to the Court. His contention is that there was no need for the court to constitute a Committee and invite a technical opinion to be relied upon by the Division Bench when the legalities of the matter are such that the case can be decided on appreciation of the fundamental legal principles involved in the matter in granting permission to connect the sewerage line of M/s. Ajay Constructions' flats to the underground pipe line of Habshiguda. In this connection our attention has been drawn to a judgment of the Supreme Court, reported in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court observed that where the decision of the Government in a particular matter is based on the recommendations of the expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the court, uninformed of the relevant data and unaided by the technical insights necessary for the purpose of determining equivalence would not lightly disturb the decision of the Government. It further held that it is only where the decision of the Government is shown to be based on extraneous or irrelevant

considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the court would reach out its lethal arm and strike down the decision of the Government. The principle involved in the above quoted judicial dictum of the Supreme Court seems to be that matters of a technical nature should at best be left to the decision of the expert bodies and further expert opinions cannot be pressed into service in order to enable the court to substitute its own approach to the one which has already taken by an expert panel. In this view of the matter, the formation of a Committee by the Court is attacked as being unnecessary and unwarranted in the circumstances of the case.

23. The other decision on which the learned counsel Sri H.S. Gururaja Rao has placed reliance is State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others, . In this decision the Supreme Court was dealing with the question of the limits within which affirmative action in the form of some remedial measure in public interest in the background of the constitutional aspirations as enshrined in Article 38 read with Arts. 19 and 21 of the Constitution by means of judicial directions in cases of executive inaction or slow action is permissible. It was held that if the High Court activates or energises executive action, it should do so cautiously and that remedial action in public interest must be with caution and within limits. The obvious conclusion to be drawn from the above decision is that the courts are empowered to give directions with definite parameters and those directions are in the general interest of the public they must be carried out by the executive authorities. But an approach to the problem has to be made judiciously and even cautiously so that the directions may not transgress the propriety of judicial exercise of powers vested in the courts to alleviate the sufferance of the public due to the wrong action or inaction of the authorities. It may not be necessary to go meticulously into the question whether the Division Bench of the High Court was well within its judicial limits to constitute a Committee inviting an expert opinion on the problems of drainage existing in the concerned area. We are inclined to deal with the question from the point of the stark legalities involved in the matter, viz., as to whether M / s. Ajay Constructions, the owner of the 32 flats had a right to connect their sewerage pipe lines to the underground pipe line of Habshiguda in violation of the permit conditions imposed on them by HUDA while granting them permission for the construction of the said flats. Nevertheless, before dealing with this question in detail, it would be in the fitness of things to deal with the rival argument advanced by Sri B. Subhashan Reddy, learned counsel appearing on behalf of the 6th respondent, M/s. Ajay Constructions dealing with certain provisions of the Municipalities Act governing the matter on hand. What is contended by Sri Subhashan Reddy is that under S. 147 of the A.P. Municipalities Act, 1965 it is the duty of the Council so far as the funds at its disposal may permit to provide and maintain a sufficient system of public drains. Under S. 148 the owners of buildings are to pay for clearance of sullage from their building by connecting their house drains with public drains and the same shall be recoverable in the same manner as property tax. Section 149 provides that all house drains, privies

and cess pools within the Municipality shall be under the control of the Council and shall be altered, repaired, cleaned and kept in proper order at the expense of the owner of the premises to which the same belong. Under S. 150 the Commissioner shall, on an application by the owner or occupier of any premises or the owner of private street, arrange in accordance with the bye-laws, for the connection of the applicant's drain with any public drain and where there is underground sewer, any private latrine with any underground sewer, at a distance not exceeding one hundred metres therefrom at the applicant's expense. The other provisions of Section 150 dealing with the details with regard to the distance and the manner in which these connections are to be given, need not be considered in this matter. The sum and substance of the submission made by Sri Subhashan Reddy is that the provisions of Ss. 147 to 150, read together, clearly reveals the point that the Municipality is under an obligation to ensure underground flow of the sewerage and sullage from the latrines or the cess pools to be formed in the private residences of the areas concerned. Therefore, it is submitted that the action of the Municipality in granting permission to connect the sewerage from the flats of Ajay Constructions to the underground pipe line of Habshiguda was well within the rights of the municipal authorities and cannot be assailed as being illegal or ultra vires the authority of the Municipality in doing so. The legal proposition thus emerging for consideration in view of these, two rival contentions is clear and precise. While the contention raised on behalf of the Osmania University and other respondents making common cause with them is that the action of the Municipality is thoroughly illegal and has led to the serious environmental pollution by permitting the connection of the sewerage line of the Ajay Constructions to the underground pipe line of Habshiguda contrary to the permit conditions imposed by HUDA before granting permission for construction of the flats. The argument on behalf of the Ajay Constructions is to the effect that the Municipality is under an obligation to prevent unhygienic conditions prevailing in any area and since the sewerage coming out of the septic tanks and soakage pits maintained by the Ajay Constructions constitutes a hazard to public health making the living conditions unbearable for the residents of the area, the Municipality had no choice but to permit Ajay Constructions flat owners to connect their sewerage line to the underground pipe line of Habshiguda which was initially constructed for carrying out the rain Water and cattle wash from the Harijan Basthi into the open channel through the Osmania University land. If this fundamental question is decided in these two writ appeals, then the question of the technical or expert opinions given by the various committees, which are at logger heads with each other, pale into insignificance because if it is held that the very action of the Municipality is to be struck-down as being arbitrary and illegal being in violation of the permit conditions, then the further question of inviting an expert opinion as to how the problem could best be solved does not arise. In fact, the indepth examination of the procedure adopted by the learned single Judge and subsequently by the Division Bench while passing the interim order constituting a committee reveals the fact that the formation of a Committee for inviting an expert opinion amounts to an implied recognition of the fact that the

Municipality had a right to grant permission to connect the sewerage line with the underground pipe line of Habshiguda in the absence of an adequate underground drainage system in the area concerned because the relevancy of such an opinion would only arise when there is a concession granted to the effect that the problem has to be solved in the existing scheme of things which are now actually obtaining on the land in the locality. If the very action of letting out the effluent and the sullage from the septic tanks and soakage pits is illegal and is contrary to the permit conditions imposed for the construction of the flats, then we fail to see what could be the purpose of inviting an expert opinion in the matter for implementation to alleviate the sufferings of the public at large.

24. For the above purpose, it would be necessary to examine in detail the conditions which have been imposed on M/s. Ajay Constructions when permission was granted for the construction of the flats. The Uppal Kalan Municipality was constituted on 19-2-1987 by merging three Gram Panchayats, viz., Habshiguda, Uppal and Ramanthapur. Harijan Basthi is located in Habshiguda, adjacent to the land of the Osmania University. After formation of Kakateeya Nagar Colony adjacent to Harijan Basthi, under-ground drainage pipe line was laid in 1983 by the Zilla Parishad with the help of the contributions given by the Kakateeya Nagar Housing Society so as to enable the main water and storm water to flow from the said drain which is passing through the open land of the Osmania University. It seems, the flow of the drain water through the pipe line, as stated above, was not objected to by the University authorities, since it was not carrying any offensive material like effluents of the sullage from the Harijan Basthi. M/s. Ajay Constructions was given permission for construction of the flats by the Gram Panchayat, Habshiguda. The Gram Panchayat was not competent to give permission for more than ground floor and first floor but it exceeded its powers by according permission for the construction of ground + first floor. The Municipality had raised an objection and issued notice under the provisions of the A.P. Municipalities Act of 1965 but Ajay Constructions had almost completed construction of the 32 flats prior to the constitution of the Municipality. The Hyderabad Urban Development Authority regularised the construction by approving the proposals submitted by M/s. Ajay Constructions through letter No. 126/88 dated 17-10-1988 by imposing certain conditions, the said permission has been granted by HUDA imposing, among other conditions, condition No. 6 which is in the following terms :

"6. The permission is issued subject to condition that no polluted water or wastage shall be sent outside the premises and the same effluent things can be adjusted into their premises."

It is under this proceeding of the HUDA that the flats have been constructed by M/s. Ajay Constructions. The sanction for construction has been accorded under Ss. 13 and 14 of the A.P. Urban Areas (Development) Act, 1975 and conditions have been imposed under S. 15 of the said Act. Under S. 13 declaration of development areas and development of land in those and other areas is

provided. Under S. 14 of the said Act application for permission is to be made by every person or body including a Department of the Government desiring to obtain the permission referred to in S. 13 and every such application shall be accompanied by such fee as may be prescribed. Section 15 provides that after the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building otherwise than in conformity with such plan provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf any land or building for the purpose for which and to the extent to which it is being used on the date on which such plan comes into force. A reading of these sections clearly reveals the fact that HUDA is the authority empowered to grant permission for the construction of the buildings by M/s. Ajay Constructions. It may be noted that the permission has been granted by HUDA subject to condition No. 6, extracted above. It is on record that before granting of permission for the construction of the flats by Ajay Constructions, several objections have been filed by the Municipality as well as other residents of the area for not granting permission to construct a multistoried building in the area which was likely to create public nuisance due to the absence of adequate underground drainage facilities. It was in order to overcome this difficulty that the HUDA had imposed Condition No. 6 making it incumbent upon Ajay Constructions to ensure that no polluted water or wastage shall be sent outside the premises and that the effluent shall be adjusted into their own premises.

We have also examined the specifications with regard to the septic tanks and soakage pits prescribed by HUDA along with the building plans sanctioned by them. It is quite clear that the specifications with regard to the capacity of the septic tanks and the soakage pits fall far short of the required measurements which itself shows that M/s. Ajay Constructions has committed a serious violation by not adhering to the specifications laid down by HUDA. When these flats have been constructed with the onerous condition of ensuring that all the sullage and sewerage would be stored only in the septic tanks and the soakage pits without allowing any of these elements to go outside, then the question is whether the Municipality could really bale them out by allowing them to connect their sewerage lines to the underground pipe lines of Habshiguda on the pretext that it was otherwise creating a health problem for the people of the area concerned. The Municipality is not the authority to grant permission for the construction of the flats beyond 1 + 1 in accordance with the zoning regulations. The proper authority for construction of flats of more than 1 + 1 is the HUDA and not the Municipality. This multistoried building which has come into existence has therefore been sanctioned by HUDA subject to condition No. 6 about the sewerage to be stored in the septic tanks and soakage pits to be provided by the builders of the said flats. All these points have to be viewed in overall background of the fact that admittedly there is no underground drainage system existing in the Habshiguda even to this day. The University authorities, having vexed with the problem of flow of effluent into their land had constructed a

compound wall and blocked the passage of the flow of the offensive material outside their premises which has resulted in a stagnated pool giving offensive smell and creating a tremendous pollution problem for the residents of the area.

25. Mr. H. S. Gururaja Rao, learned counsel appearing on behalf of the Osmania University, has invited our attention to a decision reported in *Pride of Derby v. British Celanese*, (1952) 1 All ER 1326. In this case the question that arose for consideration was with regard to the pollution of river arising from acts of several persons. In fact, what had happened was, that untreated sewage matters were let into the waters of the rivers, Derwent and Trent. This had given rise to serious damage to the environmental conditions existing in the area. Chancery Division held that it was an actionable wrong committed by the defendants and the plaintiffs were entitled to sue in respect of the injury done to their riparian rights in the river as their waters had been polluted by the combined effect of the activities of the defendants. The matter was taken up in appeal to the Court of Appeal in *Pride of Derby v. British Celanese*, (1953) 1 All ER 179. The decision of Harman, J. rendered in Chancery Division, was confirmed by the Court of Appeal on the ground that the Derby Corporation Act, 1901 authorised the Corporation to construct and maintain their sewage works. Since an actionable nuisance had been created in infringement of the provisions of the Derby Corporation Act, 1901 and the Rivers Pollution Prevention Act, 1876 the court restrained the wrong doer from persisting in his activities and would leave the injured party to his remedy in damages. These two cases are good authority for the proposition that no person has got a right to create pollution in any area which constitutes a health hazard. It would, therefore, have to be put down with an effective hand and the law will not tolerate the pollution of the atmosphere by a wrongful act of any person as such. In *Peabody Donation Fund v. Sir Lindsay Parkinson & Co.*, (1984) 3 All ER 529, the matter which came up for consideration was with regard to the building operations carried out by the owners in infringement of the approved plans for drainage system. Of course, in that case the House of Lords were primarily concerned with the question of the duty of care owed by the local authority to the residents of building for not enforcing the requirements of having an effective drainage system as per the approved plans. It was held that the local authority owed no such duty of care to the persons in charge of the building operations. But the fundamental point emerging from the decision seems to be that it is incumbent upon the builders and those who are engaged in the construction work to comply strictly with the approved plans for drainage system. If there is any infringement of the approved plans, then the liability of the person concerned who is in charge of the building operations is of an absolute nature. The House of Lords held as follows:--

"The purpose for which the powers contained in para 15 of Part III of Schedule 9 to the 1963 Act had been conferred on the local authority was not to safeguard building developers against economic loss resulting from their failure to comply with approved plans but was instead to safeguard the occupiers of houses built in the local authority's area and also members of the public generally against

dangers to their health which might arise from defective drainage installations."

26. The principles involved in the above said cases, therefore, clearly point to the fact that there is an absolute liability on the part of those who are engaged in construction work, particularly of multistoried structures, not to commit nuisance by letting out effluent from their drainage system.

27. Sri K. Ranga Rao, J. learned counsel appearing for the Kakateeya Nagar Cooperative Housing Society has also pointed out that the Municipality had no manner of right to grant permission for connecting the sewage pipe line of the Ajay Constructions to the underground pipe line maintained by Habshiguda. He has also brought to our notice the correspondence ensuing between the Kakateeya Nagar Co-operative Housing Society and the Municipality in this regard wherein the Municipality has protested vigorously against the permission given by it which has resulted in the environmental pollution. He has also referred to the resolution of HUDA and the condition imposed under which Ajay Constructions are under a legal obligation to provide adequate septic tank and soakage pit facilities to ensure that the sullage and other offensive material does not escape beyond their premises.

28. Sri B. Siva Reddy, learned counsel appearing for the 2nd respondent Municipality has stated that it was HUDA who regularised the construction by virtue of their letter dated 17-10-1988 to which a reference has already been made earlier. He also contended that it is not impossible for the Ajay Constructions to fulfil the conditions which have been imposed by the HUDA. The learned counsel also insisted that the Municipality permitted the flat owners to connect their sewage pipe lines to the underground pipe line of Habshiguda in order to prevent further pollution of the atmosphere. Sri Siva Reddy, learned counsel has also submitted that there is no underground drainage system available for the Habshiguda area and that steps are being taken to provide drainage facilities in accordance with the rules and regulations for the convenience of the residents of the area concerned. It seems to this effect some preparatory work has been done and efforts are being made to step up this activity so that an efficient underground drainage system may be functional in the area concerned. Mr. Siva Reddy, learned counsel for the Municipality has also submitted that the Division Bench was well within its rights to constitute a Committee for the purpose of going into the feasibility of a practicable solution of the technical problem of providing drainage facility to the inmates of the Ajay Constructions consisting of 32 flats. He relied upon a decision of the Supreme Court, reported in *Gaurav Jain Vs. Union of India (UOI) and Others*, wherein dealing with the question arising in a social action litigation about the establishment of separate schools and hostels for children of prostitutes, the Supreme Court constituted a Committee to examine the problem and report to the court. This was done with a view to initiate reformative action for the children of the fallen women in the Society and to save them from the undesirable surroundings in which they were being brought up. In *B.R. Kapoor and Another*

Vs. Union of India (UOI) and Others, , the question again was one involving fundamental rights on an application filed under Art. 32 of the Constitution. The Supreme Court held that the mismanagement of hospital for mental diseases had assumed serious proportions and had to be set right in this regard. It makes certain recommendations for the efficient and sound running of the mental hospital and directed the Union of India in the appropriate Ministry to look into the matter with due care and concern and indicate a positive response when the matter was to be called again before the Supreme Court. To the same effect is the decision in The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., . The Supreme Court in this case directed to pay salary to such workmen at the rates equivalent to the minimum pay in the pay-scales of regular employees and permitted the State Government to frame a more rational scheme. It further gave certain directions to give final shape to the scheme to be promulgated in this regard. The above said case law no doubt establishes the point that in matters of technical nature which require expert opinion, the Court is empowered to constitute a Committee and invite its recommendations for the solution of the problem on hand. But this could be done only when the action where has been taken by the respondents in a particular case, is legal and within the circumscribed limits of its jurisdiction. In this case the construction of multistoried flats has been permitted by HUDA subject to the condition that no effluent should be allowed to be discharged outside the septic tanks and the soakage pits to be put up for this purpose. It is evident that M/s. Ajay Constructions could not be allowed to regularise a patent illegality committed by them by connecting their sewerage pipe line to the underground municipal pipe line of Habshiguda for discharging the offensive material. This means that the permit condition for construction of the flats has been violated and if the opinion of the Committee of Experts consisting of technical personnel is to be accepted, it would amount to legalising a patently illegal act which cannot be permitted under the terms of the permit granted by HUDA to M/s. Ajay Constructions for raising the multistoried structure. In such an event, the question to be considered is not whether the court is empowered to invite the opinion of a technical Committee but to see whether the action of the respondents in connecting the sewerage pipe lines is legal in the light of the conditions imposed on them.

29. Sri K. Janardhana Rao, learned Standing Counsel for HUDA has contended that in view of the fact that HUDA has granted permission for the flats in question on condition that they should have adequate septic tank and soakage pit facilities, the action of the Municipality in allowing them to utilise the underground pipe line of Habshiguda is patently illegal. He has also contended that the sole authority for granting permission for multistoried structure of this nature is the HUDA alone and that the Municipality cannot commit a breach of the conditions under which the permit has been granted to Ajay Constructions to build up the said flats.

30. All the learned counsel appearing for the respondents in the matter have stressed the point that the environmental pollution has reached intolerable proportion and the residents of the area are facing health hazard due to the polluted atmosphere created by the afflux of that sewage from the premises of Ajay Constructions.

31. The decided case law on the subject clearly points to the fact that no one can be permitted to pollute the atmosphere of an area by letting out offensive material from his premises. We have reached the conclusion that the permission granted by the Municipality, vide its order dated 28-12-1988, impugned in the writ petition, is thoroughly unjust and illegal and is, therefore, quashed as such. However, considering the fact that some delay would be involved in providing alternative facilities through septic tanks and soakage pits in accordance with the measurements specified in the sanctioned plan by HUDA, we deem it fit and proper to direct the Municipality not to disconnect the sewage pipe lines from the underground municipal pipe line of Habshiguda for a period of one month from to-day. In the meantime, M/s. Ajay Constructions shall ensure that the septic tanks and soakage pits become operational and no discharge is let out from their premises into the outside area. After the expiry of the one month period, the sewage pipe line shall be severed by the Municipality and if any violation is committed after that by the inmates of the 32 flats of Ajay Constructions by letting out the sewerage outside their premises, they would be liable for such action, civil or criminal, as the case may be, which may be taken against them. It is, however, made clear that the Municipality seems to be engaged in the exercise of providing efficient underground drainage system and steps have been taken for the achievement of this purpose by the technical staff of the Municipality. We direct that prompt and efficacious efforts may be taken to implement a sound underground drainage system for the entire area after obtaining the necessary technical expert assistance in the matter. Once such underground drainage system is completed, it would be open for M/s. Ajay Constructions to make an application to the concerned authorities for the discharge of the effluent flowing from their flats into the centralised underground drainage system in accordance with law. The authorities would be duty bound to consider such a request at the appropriate time and to grant permission to M/s. Ajay Constructions to facilitate the flow of offensive material from their premises. The planning and the manner in which such underground system is to be laid is for the authorities to consider taking into consideration the slope of the land and various other factors which may be relevant for this purpose in accordance with law. It shall be the responsibility of the residents of the 32 flats to have the sewerage/sullage removed from their septic tanks/soakage pits by employing tankers and other facilities that may be available for this purpose. Till such time as the septic tanks and soakage pits are completed by Ajay Constructions or within one month from to-day, the Municipal authorities shall take such steps as may be necessary to remove the sewerage/sullage stagnating in the area in the form of a cesspool through tankers or otherwise to alleviate the sufferings of the

people living in that area at least to some extent.

32. Subject to the above directions, Writ Appeal No. 811/89 filed by M/s. Ajay Constructions is dismissed and Writ Appeal No. 1338/89 filed by the Osmania University is allowed. In the circumstances of the case there will be no order as to costs. Advocate's fee Rs. 350/-in each.

33. Order accordingly.