

(2014) 04 AHC CK 0237

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 24765 and 31222 of 2001, 49220 and 49937 of 2004 and 13384 of 2005

Nagar Mahapalika

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 243, 243 (a), 243 (d), 243 (W)
Uttar Pradesh Municipal Corporation Act, 1959 — Section 112 a, 112-A, 114, 115, 3 (2) (b)
Uttar Pradesh Municipalities Act, 1916 — Section 69B
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 17, 20, 21, 3, 4

Citation : (2014) 9 ADJ 568 : (2014) 107 ALR 565 : (2015) 126 RD 415 : (2015) 2 UPLBEC 940 : (2014) 2 UPLBEC 1356

Hon'ble Judges : Sunil Ambwani, J; Dilip Gupta, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, R.K. Awasthi and Deepa Siddiqui, Advocate for the Appellant; C.B. Yadav, Addl. Advocate General and Shashank Shekhar Singh, Addl. Chief Standing Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani and Dilip Gupta, JJ.—In all these connected writ petitions filed by the then Chairpersons and the Presidents of Municipal Corporations and Nagar Palika Parishads of Allahabad, Rampur and Saharanpur, with the intervention of the present Chairperson, Allahabad Municipal Corporation, Allahabad, they have prayed for writ of mandamus to strike down the U.P. Urban Planning and Development Act, 1973 (in short the U.P. Act of 1973); to dissolve various Development Authorities in the State of U.P. established under the Act; commanding the State Government to place material before the Court to show cause as to whether any Development Authority has substantially achieved the objects of the Act; to declare the provisions of Section 112-A of the U.P. Municipal Corporation Act, 1959 (the U.P. Act of 1959); Section 69B of the U.P.

Municipal Act, 1916 (the U.P. Act of 1916) and U.P. Palika (Centralised) Service Rules, 1966 to be ultra vires the Constitution of India; to declare Section 3 (2) (b) of the U.P. Municipalities Act to be ultra vires the Constitution of India as being violative of Article 243Q of the Constitution of India and for other consequential reliefs. The writ petitions were argued by Shri Ravi Kiran Jain assisted by Shri R.K. Awasthi and Shri Deeba Siddiqui at length. Shri C.B. Yadav, Addl. Advocate General (AAG), U.P. assisted by Shri Shashank Shekhar Singh, Addl. Chief Standing Counsel, High Court appeared for the State of U.P.

2. The intervention of Mrs. Abhilasha Gupta, the present Mayor of Nagar Nigam, Allahabad represented by Shri Ravi Kiran Jain was allowed.

3. The constitutional validity of the Act had been challenged mainly on the ground that the U.P. Act of 1973 and the provisions of the U.P. Act of 1959 are violative of provisions of Part IX and Part IX A of the Constitution of India. The U.P. Act of 1973 was enacted as a temporary Act of which purpose has been substantially achieved much before the enforcement of the 73rd and 74th Constitutional Amendment Act. The U.P. Act of 1973 gives powers to the State Government to declare an area to be development area, constituting large number of Development Authorities indiscriminately. The drastic powers conceded by the Act to the State Government to acquire land for such authorities u/s 17 of the Act of 1973 has resulted into unsustainable development of these notified development areas. The Development Authorities established under the temporary enactment, have not achieved the purpose for which they were established and in any case a temporary Act should not have been allowed to continue for such a long period of time and should have been repealed some time in early 1980s and in any case in early 1990s of the last century.

4. Shri Jain submits that the Development Authorities are constituted without any democratic structure with representation and participation of the people in its governing bodies. They have lost its purpose after enactment of the 73rd and 74th Constitutional Amendment Acts. The twenty seven Development Authorities so far constituted in the State of U.P. under the U.P. Act of 1973 have not allowed the Panchayats, municipalities and district planning committees to function effectively. They have not allowed the development with the participation of the people. The State sponsored development of the local areas without local representation has stopped the growth and prosperity perceived by the local self government of the areas in which such Development Authorities have been constituted including Allahabad, Rampur and Saharanpur for which the writ petitions have been filed. They have not allowed the development by way of an alternative model of development adopting different technology suited for different regions.

5. It is submitted that due to the composition of the Development Authorities, provided u/s 4(3) of the Act read with Section 17, 20 and 21 of the Act, the vested interest in the society has monopolized and induced a lopsided model of growth, indulging in large scale corruption. The vested interest of a political class

of society, which has emerged with a nexus of bureaucracy with land mafias has virtually taken over the governance and development in such areas. Large funds have been diverted towards the so called developmental activities, which has also not allowed the State Finance Corporation to take roots in the soil of decentralized planning.

6. It is submitted that the Development Authorities constituted temporarily under a temporary Act have established a permanent arrangement for development, which has weakened the institutions under Part IX and Part IX A of the Constitution of India. Article 39 (b) of the Constitution of India provides that the ownership and control of the material resources of the community to be so distributed as best to subserve the common good. The constitutional goal set out in Article 39 (b) has been completely put aside acquiring large tracts of agricultural land at low prices to be handed over to the private societies and builders on high prices thereby violating the spirit of Constitution of India embodied in Article 39 (c), which prohibits the operation of the economic system to allow the concentration of wealth and means of production to the common detriment.

7. Shri Jain submits that the Panchayats and the Municipalities cannot be constituted in accordance with the provisions of Part DC and IX A of the Constitution unless the territorial areas of the panchayat at the district level are not constituted in accordance with Article 243 C and then making the Committees for District Planning to function in accordance with Article 243ZD. In the absence of duly constituted panchayats, municipalities and the District Planning Committees, the State Finance Commission is also not allowed to function. There is a coordinating mechanism in the Constitution, which is evident by reading Article 243ZD with Article 243I and 243Y for development, which must be maintained to achieve sustainable development suited to local needs by institution of the Panchayati Raj.

8. Shri Jain submits that the National Population Policy, 2000 has identified 12 strategy themes, which must be pursued in "stand alone" or intersectoral programme, in order to achieve the demographic goals, which are mainly decentralized planning and programme implementation making health and family welfare a responsibility of village panchayats. The National Population Policy, 2000 is to be largely implemented at the Panchayat and Nagar Palika levels. The States have to provide for multisectoral coordination of planning and implementation between health and family welfare along with the scheme for education, nutrition, women and child development, safe drinking water, sanitation, transportation, housing, forestry development, environmental protection and urban development.

9. It is submitted by Shri Jain that the principal goal of development policy is to create sustainable development promoting quality of life for all the people, which is also a key to social order based on equality, prosperity and security. This process of development has to be sustained for many generations for improving

the quality of both human life and natural surrounding, aiming to harmonize and maintain the carrying capacity of the life supporting ecosystem, which meets the needs of the present without compromising with the ability of future generations to meet their own needs commonly known as "intergenerational equity".

10. Shri Jain appearing for the petitioner has relied on the observations of the Supreme Court in para 10 of Vellore Citizens Welfare Forum Vs. Union of India and others, in which it was observed:-

The traditional concept that development and ecology are opposed to each other, is no longer acceptable. "Sustainable Development" is the answer. In the International sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway Ms. G.H. Brundtland and as such the report is popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and World Wide Fund for Nature, Jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June, 1992 at Rio which saw the largest gathering of world leaders ever in the history-deliberating and chalking out a blue print for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the Customary International law though its salient features have yet to be finalised by the International law Jurists.

11. Shri Jain has also placed reliance on the observations of the Supreme Court in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled],

Right to means of livelihood and the right to dignity, right to health right to potable water, right to pollution free environment and right to education have been held to be part of right to life. Social justice has been held to be fundamental right in Consumer Education and Research center and others Vs.

Union of India and others, The Directive Principles in our Constitution are fore-runners of the U.N.O. Convention on Right to Development as inalienable human right and every person and all people are entitled to participate in contribute to and enjoy economic, social cultural and political development in which all human rights, fundamental freedoms would be fully realised. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need fuller responsibility for the human rights fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, is to create just social order, remove the inequalities in social and economic life and socio-economic disabilities with which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilised democratic set up so that every individual would strive constantly to rise to higher levels.

12. Shri Jain submits that right to development included under Article 21 of the Constitution of India includes within its aspect and encompasses within its ambit all human rights and fundamental freedoms including right of self determination. This right is multi dimensional in character incorporating all civil, political, economic, social and cultural rights necessary for the full development of individual and protection of dignity to be achieved by sustainable development. The human development and sustainable development, in substance have common objective and are to an extent same concepts, which seek to serve human rights. The human right to development is the central theme of the 73rd and 74th constitutional amendment providing for local self government for both rural as well as urban planning in a decentralized manner and in which the model of development has to be decided by the people themselves at their local area.

13. Shri Jain has relied on a recent report of the Planning Commission of India titled "Development Challenges in Extremist Affected Areas" in which it has been observed as follows:-

The development paradigm pursued since independence has aggravated the prevailing discontent among the marginalized Sections of the society... The development paradigm as conceived by policy makers has always imposed on these communities.... causing irreparable damage to these Sections. The benefits of this paradigm have been disproportionately cornered by the dominant 3 Ajay

K. Mehra "Maoism in a globalizing India" in "The Dark Side of Globalization" eds. Jorge Heine and Ramesh Thakur (United Nations University Press, 2011) 4 Report of an Expert Group to Planning Commission, Government of India (New Delhi, April, 2008) Sections at the expense of the poor, who have borne most of the costs. Development which is insensitive to the needs of these communities has inevitably caused displacement and reduced them to a sub-human existence. In the case of tribes in particular it has ended up in destroying their social organization, cultural identity and resource base... which cumulatively makes them increasingly vulnerable to exploitation....The pattern of development and its implementation has increased corrupt practices of a rent seeking bureaucracy and rapacious exploitation by the contractors, middlemen, traders and the greedy Sections of the larger society intent on grabbing their resources and violating their dignity, [paras 1.18.1 and 1.18.2, emphasis supplied.

14. Shri Jain has relied on Nandini Sundar and Others Vs. State of Chhattisgarh, in which the Supreme Court observed in the opening paragraph of the judgment as follows:-

This case represents a yawning gap between the promise of principle exercise of power in a constitutional democracy, and the reality of the situation in Chhattisgarh, where the respondent, the State of Chhattisgarh, claims that it has a constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights in a manner, and by adopting the same modes, as done by Maoist/ Naxalite extremists." "Through the course of these proceedings, as a hazy picture of events and circumstances in some districts of Chhattisgarh emerged, we could not but arrive at the conclusion that the respondents were seeking to put us on a course of constitutional actions whereby we would also have to exclaim, at the end of its all: "The horror, The horror.

15. It is submitted by learned Counsel for the petitioners that in Mahanadi Coal Fields Ltd. and Another Vs. Mathias Oram and Others, the Supreme Court observed:-

Since independence India has indeed covered a long way on the path of development and economic growth. It continues to take long strides on that path. But how far have we been able to live down the fears expressed by Dr. Ambedkar about our democratic Constitution? How far have we been able to get rid of the contradictions in our life?" It observes, "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens.

16. Shri Jain has questioned the constitution of Planning Commission of India. He submits that within seven weeks of the adoption of the Constitution, the Central Government set up by its resolution dated 15.3.1950 a Planning Commission of India without any statutory support. With the first Prime Minister as its Chairman

and its hand picked members to formulate a plan for the most effective and balanced utilization of the country's resources, material, capital and human including technical personnel, determination of priorities, defining the stages in which the plan should be carried out and the resources allocated, to indicate factors, which are retarding economic development and to determine the conditions, which in view for the current social and political situation should be established for the successful execution of the plan, determining the nature of the machinery, which will be necessary for securing the successful implementation of each stage of the plan in all its aspects and to appraise from time to time the progress achieved, recommend adjustment of policy and measures necessary for its effective implementation to make interim or ancillary recommendation, the Planning Commission of India became a body of national planning dehors the regional and sector aspirations. It is submitted that the Planning Commission has monopolised the planning contrary to the Gandhian model of growth, which provides for the planning to be made at the grass root level and the model of economy, which preferred the growth from bottom moving upwards. The National Development Council, the Apex Body for decision making and deliberations on development matters set up on 6.8.1952 to strengthen and mobilize the effort and resources of nation in support of the plan, promotion of common economic policies in all vital sphere and to ensure the rapid development of all parts of the country, comprising the Prime Minister, the Union Cabinet Ministers, Chief Ministers of all States, and representatives of the Union Territories and the members of the commissions did not owe their existence to Constitution of India. These were set up as extra constitutional and non-statutory bodies dictating growth from the top. Shri Jain submits that these bodies have virtually become political policy making bodies suited to thinking of few persons and have virtually made the Planning Commission a "no debate club" playing the dictatorial role in planning without involving the participatory and democratic process, visualized as constitutional goal for human development.

17. Shri Jain submits that there is a major disconnect in the planning and the aspirations of the local people, which was visualized to be remedied by the 73rd and 74th Amendment Act to the Constitution of India. One of the major deficiency in planned formulation and procedures is that there is little communication between the planners in the Centre and the planners in the State with no participation of those, who are to be governed, in the evaluation of their thinking of programmes and policies. The plans are formulated in a few days meeting of the National Development Council without any effective and meaningful debate. Almost 70% of the tax allocation is made by the Planning Commission without collection of the views of the people for whom the planning is made. He has also raised issues about the transparency in the working of the Planning Commission.

18. It is submitted that the Parliament Local Area Development Scheme gives choice of development work to each member of parliament leading to haphazard and unsustainable development. The political activity from top to bottom ignores

the insertion of Part IX and Part IX A of the Constitution of India. There is no debate on the core issue of development and governance. The issues of corruption and criminalization of politics has taken the center stage. The constitution of municipalities and panchayats envisages the people's participation in the democratic process at the grassroot level. Despite the amendment in the Constitution the plans at local level are not being formulated. The District Planning Committees are not carrying out its functions in accordance with the objective set out for human development. The preparation of schemes and allocation of funds does not serve the public purpose gradually leading to villages and semi urban areas into sickness, where development is far cry. The human development for attaining human rights have not been translated into reality. The Human Development Report since 1990 has analysed and focused on the new vistas of human rights while integrating human rights with human development as a true measure of progress. The economic growth with people's participation, people's access to equal opportunities, access to opportunities for future generations, and the lack of empowerment due to absence of opportunity and development capacities of the people has not been achieved despite the constitutional amendments. The statutory responsibility of permitting and protecting the human rights has given way to political aspirations and concentration of wealth and common resources into a few people and corporations. The National Human Rights Commission has reiterated the integral relationship between the proper promotion and growth of civil and political rights and the furtherance of economic, social and cultural rights.

19. Shri Ravi Kiran Jain submits that the mindless planning at the central level, does not result into percolating the benefits for development at the local level. The people in need of funds and resources are never heard and constitutionally the allocations do not benefit despite central planning and allocations of funds, resources for health and education under various schemes, benefits have not percolated down to the people. Women and child development has not been made possible for want of appropriate planning and its implementation at grass root level despite coming out of economic desperation. The centralized planning has not been able to provide clean drinking water, basic sanitation and minimal standards of health care, education, food and nutrition. The pillars of good governance with commitment to policy of equality and justice needs to be strengthened.

20. Quoting Amartya Sen from his book "Development as Freedom" Shri Jain questions as to why in a world of unprecedented opulence millions of people living in rich and poor countries are still unfree. Even if they are not technically slaves, they are denied elementary freedom and remain imprisoned in one way or another by economic poverty, social deprivation, political tyranny or cultural authoritarianism. The development can be seen as a process of expanding in the real freedoms that people enjoy. Poverty as well as tyranny, poor economic opportunities as well as systematic social development neglect of public facilities as well as intolerance or over activity of repressive states are major source of

unfreedom.

21. Shri Jain submits that "districts" are now a constitutional entity defined in both Part IX and Part IX A of the Constitution of India separately though in the same and identical manner. The panchayats at village, intermediate and district level are provided under Article 243C on the criteria laid down in Article 243-B. These definitions clearly show that the district level does not mean revenue district of a State. The revenue district has to be a subordinate unit of the State Government. It is created by an executive action for its administrative or similar government activities. The districts are being reorganized and bifurcated arbitrarily at the whims of the Chief Minister. The creation of district does not take into account the provision of Zila Panchayats for every district. In substance Shri Jain submits that the amendments in the Constitution of India by insertion of Part DC and IX A would show that development planning has now been entrusted to the community at local level. The ownership and control of material resources of the community have to be distributed at the hands of community. The Act of 1973 is contrary to the policies and the constitutional provisions of Part IX and IXA of the Constitution of India and does not subserve and fall under the constitutional scheme. The District Planning Committee is now required to consolidate the plans prepared by Panchayats into a draft development plan for the district keeping in view the matters and common interest between panchayats and municipalities. The Act of 1973 takes away the initiative and planning at local level and eclipses the provisions of planning by the village and district panchayats in rural areas and the municipal corporations in urban areas. It is submitted that Section 7 and 8 of the U.P. Municipalities Act; Sections 114 and 115 of the U.P. Municipal Corporations Act and Section 31, 32 and 63 of U.P. Kshetra Panchayat Adhiniyam provide for powers and function of the municipalities. The State legislature has not constituted panchayats and municipalities so as to enable them to exercise their constitutional powers to provide the rights of human development. The District Planning Committees and Metropolitan Planning Committees have not been constituted as envisaged u/s 243ZD and 243ZE to perform their functions in their respective work areas.

22. It is submitted that centralization of services for the development bodies including Nagar Palika Parishads and Municipal Corporations do not permit the local bodies to prepare plans and its implementation in accordance with the aspirations of the local people. The officers of the centralized services virtually monopolize the entire functioning of these local bodies reducing elected representatives to be dummies. The officers of the centralized services carry out the policies of the State Government ignoring the local aspirations. The Chairpersons of the Nagar Palika Parishads and Municipal Corporations are not allowed to function freely both in planning and the execution of the plans. They are not even allowed to implement the applications of the existing schemes and to make necessary amends as discipline and conduct of the employees of the centralized service is not under their control.

23. In his long arguments Shri Ravi Kiran Jain, which spread out into several hours on Friday afternoons/when the matter was fixed, he has relied on the observations in the several judgments of the Supreme Court beginning from Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, ; Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., S.R. Bommai and others Vs. Union of India and others etc. etc., Meharban and others etc. etc. Vs. State of U.P. and others, Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, Charan Singh, etc. Vs. State of Punjab and others, etc., Samatha Vs. State of A.P. and Others, Saij Gram Panchayat Vs. The State of Gujarat and Others, Union of India (UOI) Vs. Association for Democratic Reforms and Another, M.C. Mehta v. Union of India, AIR 2004 SC 4618 (Paras 38 to 41 and 43) to Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others,

24. In the counter affidavit of Shri Rama Shankar Sahu, Special Secretary, Nagar Vikas Vibhag, Uttar Pradesh Shasan it is stated that the petitioner has no locus standi to maintain the writ petition challenging the vires of the provisions of U.P. Act of 1973; U.P. Act of 1959, U.P. Municipalities Act, 1916 and U.P. Palika (Centralised) Service Rules, 1966 as ultra vires Part IX and Part IXA of the Constitution of India. The writ petition has not been filed either in public interest or as an individual adversary litigation. Assuming it to be public interest litigation, the petitioner should have some semblance of interest in the subject matter. As an elected Mayor the petitioner having its existence under the Act is not competent to challenge the vires of the Act. Further he has no interest much less any semblance of interest in the matter.

25. Replying to the challenge of the vires it is stated that so far as Section 112 a is concerned, it does not offend Article 243Q of the Constitution. It only provides for constitution of centralized services in different municipalities and municipal corporations of the State. The maximum allocation for centralized services comes from the State. The State Government is free to articulate rules and provide modalities. The provisions of centralized services does not dilute the control of Municipal Corporation. The mayor is the head of the Corporation. The heads of the department, however, continue to be the members of the centralized service. As of necessity the control of the department has to vest in the head of the department and not in the head of the government. Section 5 of the Act of 1959 declares the authorities to include the authorities of the Nagar Nigam i.e. Corporation Ward Committee, Executive Committee, Nagar Pramukh, Development Committee and Mukhya Nagar Adhikari as well as Upper Mukhya Nagar Adhikari. After the 74th Constitutional Amendment Act of 1992, the State Government has brought out a comprehensive legislation through U.P. Act No. 12 of 1993, which has come into force w.e.f. 30.5.1994 streamlining various statutes. Further the U.P. Urban Local Self Government Laws (Amendment) Act, 1995 as well as the Act No. 3 of 1996 the State Government has given effect to the objects of the 74th Constitutional Amendment Act, 1992. Some of these amendments have been referred to in paragraphs 10 to 28 of the counter affidavit, which are quoted as below:-

10. That Section 112-a of the Act was enacted with a view to provide for a well constituted cadre of professionals to effectively administer the provisions of the Act. There was serious heart burning and bickering amongst the officers of various Local Self Government Bodies, inasmuch as there were different pay scales and conditions of service for holder of same posts in public employment's. It also enabled the officers at the apex level to create their own hegemony. Therefore, it was thought prudent on the own admission of officers to create centralised service. Under the centralised service, there is common pay scales and conditions of service. It also ensures regular payment of salary since funds come from the coffer of the State. It is State Government which is employer of these servants. They are deputed or assigned to various Municipal Corporations.

11. That so long as they are under Municipal Corporations or other Local Self-Government bodies, they are under the administrative control of the respective local bodies. Thus, the control is not whittled in any manner since Mukhya Nagar Adhikari of the Municipal Corporation or the Executive Officer of the Nagar Palika Parishad is the heads of the department. He retains control over these employees to Nagar Pramukh merely oversees and supervises the functioning of these officers as well as Mukhya Nagar Adhikari itself.

12. That u/s 117(5) of the Act, exercise of power by the Mukhya Nagar Adhikari is subject to the general control and direction of the Nagar Pramukh and wherever it is expressly so directed to the sanction of the Corporation or of the Executive Committee, as the case may be, and subject to all other restrictions, limitations and conditions imposed by or under the Act, the Executive power for the purposes of carrying out the provisions of the Act shall be vested in the Mukhya Nagar Adhikari who shall also perform all the duties and exercise all the powers specifically imposed or conferred on him.

13. That likewise under various provisions of the Act, it is various Committee and ward committed constituted by the Nagar Nigam, which discharges various functions. It is difficult to perceive any congruity or dilution of control of the Nagar Pramukh or elected representatives.

14. That furthermore u/s 117(6)(b), Mukhya Nagar Adhikari is restrained from exercising powers if the expenditure is likely to exceed the budgetary grant. He has to seek concurrence of Nagar Pramukh in case it exceeds Rs. 10,000/-.

15. That apart, there are several checks and balance under the Act. Power conferred on the Mukhya Nagar Adhikari is not unbridled. u/s 107 of the Act, the appointing authority designated is Nagar Pramukh.

16. That even u/s 120, which authorises Mukhya Nagar Adhikari to exercise powers conferred under any other law, restrictions, limitations and conditions as the cooperation may impose. Here to, Corporation retains ultimate control over the Mukhya Nagar Adhikari.

17. That likewise, u/s 122 of the Act, the Corporation or the Executive

Committee empowered to required Mukhya Nagar Adhikari to produce any record, correspondence, plan or other documents which is in his possession or under his control as Mukhya Nagar Adhikari or which is recorded on files in his office or in the office of any Corporation officer or servant subordinate to him. He may also be required to furnish any return, loan, estimate, statement, account or statistic concerning or connected with any matter appertaining to the administration of the Act or the Municipal administration of the city. Thus, the ultimate control vests on the Corporation which also includes Nagar Pramukh and elected representatives.

18. That, it is, indeed striking to state that u/s 117(1) of the Act, Municipal administration of the city vests in the Corporation.

19. That so far as property and contract are concerned, power vests exclusively in Corporation as manifested by Section 125(1)(2)(3) and 126 of the Act.

20. That u/s 127 of the Act, all acquisitions of property would be made by the Mukhya Nagar Adhikari but is has to be on behalf of the Corporation/But in doing so, he would be bound by any resolution passed by the Executive Committee as provided by Section 127(2) of the Act.

21. There u/s 127(2)(c) of the Act, the sanction of the Corporation is required for the acceptance or acquisition of any immovable property, if the value of the property which is proposed to accept acquire or give in exchange exceeds five thousand rupees, for taking of any property on lease for a term of exceeding three years, or for the acceptance of any gift or bequest or property burdened by an obligation if the value of such property exceeds five thousands rupees.

22. That the right to dispose the property specifically vests in the Corporations under Sections 128 and 129 of the Act. Power which has been conferred on the Mukhya Nagar Adhikari u/s 129 of the Act is subject to control of the Corporation or Executive Committee.

23. That, u/s 132 of the Act, all contracts referred in Section 131 of the Act, including contracts, relating to the acquisition and disposal of immovable property or any interest therein made in connection with the affairs of the Corporation under the Act, shall be expressed to be made, for and on behalf of the Corporation and all such contracts and all assurances of property made in exercise of the power shall be executed for and on behalf of the Corporation by the Mukhya Nagar Adhikari or by such other officers of the Corporation a may be authorised. in writing by the Mukhya Nagar Adhikari either generally or for any particular case or class of cases. It also imposes other conventionalities and restrictions which are incorporated in Section 132 (2) to 132 (6) of the Act.

24. That, u/s 134 of the Act, it is Corporation which determine either generally for any class of cases or specially for any particular case whether the Mukhya Nagar Adhikari shall execute the work by a contract or otherwise Section 135 also ensures prior approval of Nagar Pramukh in case the estimate prepared

exceeds Rs. 50,000/-.

25. That u/s 136 of the Act the Mukhya Nagar Adhikari shall cause a detailed report to be prepared including such estimates and drawing as may be requisite and forward the same to the Executive Committee who shall submit the same before the Corporation with its suggestion, if any. It is the Corporation which puts its final seal of approval. The same provisions appear in Section 136A and 137 of the Act.

26. That, it is the Corporation again, which retains supreme control over the funds as evidenced by Section 139 to 154 of the Act. Power again vests in the Corporation in regard to borrowing of monies. Regards may be had, in this behalf, to Section 154 to 171 of the Act.

27. That, undeniably, so far as corporate taxes are concerned, it is Corporation and the Committees constituted by it, which alone have powers.

28. That, thus, it is crystal clear on a conspectus of aforesaid provisions of the Act that so far as discharge or performance of substantive duties is concerned, it is being discharged by the Corporation. It is only Executive part, which is being looked after or discharged by the Mukhya Nagar Adhikari or its subordinates. Thus, even on anvil of control, it can not be said that the impugned provisions militate against the provisions of Article 243-Q of the Constitution or part IX. The challenge is clearly misdirected.

26. Shri C.B. Yadav appearing for the State of U.P. has relied upon the counter affidavit of Shri Rama Shankar Sahu and the counter affidavit of Shri Amitabh Tripathi, Under Secretary to the Government of U.P. Avasth Vibhag, U.P., Lucknow. In this counter affidavit after referring to the 73rd and 74th Amendment Act, 1992 introducing Part IX and IXA in the Constitution of India w.e.f. 20.4.1993, it is stated as follows:-

14. That the 12th Schedule as mentioned in Clause (iv) of Article 243 gives power to the State Government that the State Government may by law endow municipalities with such powers and authorities and also purpose of functions and implementation of Schemes as may be entrusted to them including those matters included in the 12th Schedule. The first item of 12th Schedule is in respect of the Urban Planning including the Town Planning to provide facilities like park garden and play grounds. Since this amendment was brought about in the Constitution in the year 1992, whereas the U.P. Urban Planning and Development Act, 1973 was already in existence since 1973 and that too is exhaustive of covering the entire urban development schemes whereas the amended provision is limited provision which is to be carried on by the municipalities after enactment made by the State Government as per provisions of 72nd Amendment brought about in the Constitution and as such the object of the urban Planning and Development Act, 1973 for the purpose of which the said enactment was brought and further the Article 243 (W) empowered the State Government to bring any enactment empowering the municipalities giving

powers in respect of the Urban Planning and facilities like Park, gardening and play grounds and as such the charge of the petitioner is baseless and contrary to the provisions of amendments and also against the U.P. Urban Planning and Development Act, 1973 and as such the writ petition is wholly vague and against the letter and spirit of the provisions the constitution and the U.P. Urban Planning and Development Act, 1973 as well and is liable to be dismissed.

15. That, Article 243W, of the Constitution of India is only an enabling provision which empowers the legislature of a State that it may provide for Constitution of Municipalities for the performance of functions and implementations of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. It is submitted that Article 243W of the Constitution only provides for power/authority to the State that in may create Municipalities with powers to carry out responsibilities including these in relation to matters listed in the Twelfth Schedule, and it does not forbid/prevent State from creating or continuing with other authorities like "Development Authorities" created under U.P. Urban Planning & Development Act, 1975 or exercising functions and implementation of schemes entrusted to them, including those in relation to matters listed in the Twelfth Schedule.

The State Government has already constituted municipalities/Municipal Corporation in the entire State and various statutory functions have been assigned to it. The State, therefore, has already acted in terms of part.....-A of the Constitution of India in so far as it directs creation of Municipalities in the State of U.P.

16. That, the scheme of things as provided in Article 243W, does not enjoin upon the state legislature to compulsorily entrust all the functions listed in the Twelfth schedule. The State legislature has been given the freedom to chose what functions, including these mentioned in the twelfth schedule, be entrusted to the municipalities. Rather than being mandatory in nature, schedule twelfth is only enabling in nature. Accordingly it is up to the state legislature to consider what functions can best be performed by municipalities, and which other bodies can be entrusted with other functions. Therefore, there is no conflict between the constitutional mandate and the scheme of thing provided by the said enactments of the state legislature.

17. That, the matter with regard to taking of further action by the State consequent upon 74th Constitutional amendment was given due consideration by the State of U.?. The matter was referred to the Council of ministers by the Chief Secretary, State of U.P. vide confidential note/letter dated 31.12.1993. A Cabinet Committee was formed pursuance to order dated 10.1.1994 which examined all aspects of the matter and suggested steps to be taken by the State of U.P. in light of newly enacted part IX-A of the Constitution of India. The matter was placed before the council of Ministers of the State of U.P. and required decisions were taken in the matter. Subsequently, after obtaining approval of the Governor of the State of U.P. a Govt. order dated 7.3.1996 has been issued stating there in

that the work being under taken by the 22 Development Authorities as per the U.P. Urban Planning & Development Act shall continue to be so dealt by it, in resunning 659 Panchayat work shall be performed by local bodies like Nagar Panchayat etc. that the order of State Govt. dated 7.3.1996 is enclosed and is marked as Annexure-1 to the counter affidavit.

18. That it is further submitted that no repugnancy or inconsistency is created in the act on account of introduction of Article 243ZFA of the Constitution of India.

19. That Development Authority created u/s 4 of the Act consists of expert persons as is clear from sub Section 3 thereof. The Mukhya Nagar Adhikari who happens to be the Chief Executive Officer of the Municipalities/Nagar Nigam happens to be an ex-officio member of the Development Authority. Similarly four Sabha Sad/Corporation i.e. elected members of Nagar Nigam are also members of the Development Authorities by virtue there being Sabha Sad of Nagar Nigam that the Municipalities is also represented in the Development Authorities.

20. That the Development Authority under the Act were constituted by the State as it was of the view that creation of an expert body like the Development Authority was required to cope-up with the problems of town planning and Urban Development and the existing local body and other authorities have failed to cope-up with this problem to the desired extent. Thus, the creation of the Development Authorities under the "Act" is better equipped and competent to deal with the problem of Urban Planning and planned Development as it has necessary experience and skills in this regard.

21. That the Act therefore, is a valid piece of legislation which is not inconsistent with any provision of the Constitution of India and as such the challenge made to it in the instant writ petition is liable to fail.

22. That Municipalities as well as the Development Authority have been created by the State of U.P. throughout the State of U.P. The petitioner Municipality situated at Allahabad, has filed the instant writ petition through its Mayor, whereas the Chief Executive Officer of the Municipality is the Mukhya Nagar Adhikari. The instant petition itself is therefore, a writ petition by the instrumentality of the State challenging the action of the State itself, which is not maintainable. Moreover, the dispute between two State agencies is liable to be referred to an expert body and the writ petition is liable to be dismissed in light of the decision of Hon'ble Supreme Court reported in 1992 Vol. (1) Supreme Court Cases Page the matter of Oil and Natural Gas Commission.

27. Shri C.B. Yadav, Addl. Advocate General submits that all Development Authorities in U.P. are constituted under the provisions of U.P. Urban Planning and Development Act, 1973. The provisions of the Act are not inconsistent to any of the provisions of the Constitution, either Part III or amendment inserted by the 73rd and 74th amendment. In view of the provisions of Entry 5 List-II of the Seventh Schedule, the State Legislature is competent to enact the provisions of Act No. 30 of 1974. There is no allegation in the writ petition that the State

legislature is not competent to enact the law with regard to items referred to in Entry 5 of List-II. Section 58 of the Act talks about dissolution of all the authorities as soon as in the opinion of the State Government, it achieves its object. It is subjective satisfaction of the State Government to decide whether the authorities have achieved their object. There is no repugnancy or inconsistency between the Act of 1974 and the 74th Amendment inserted in the Constitution of India. There is no failure of the State Government in preservation of the Constitutional scheme. The State is acting in consonance with and preserving all the constitutional provisions in its entirety. Article 243W is not an absolute provision. It is an enabling provision as it has been held in a series of judgment. The State did not deviate from democratic socialism in enacting U.P. Act No. 30 of 1974, The development authorities, Nagar Nigam or Nagar Panchayats are no different than the Union of the State. They are all instrumentality of the State and have been constituted for specific purpose as referred to in the object and reasons of these Acts. There is no foundation in the petition as to how they are claiming for dissolution of the authorities without asserting that all the authorities have already achieved their objects for which they have been constituted.

28. Shri C.B. Yadav submits that the provisions of the Act can be declared ultra vires only on two grounds namely whether the Legislature is not competent to enact the provisions or they are contrary to Part-III of the Constitution of India. The Counsel appearing for the petitioner has not made his argument either on the legislative competence of the State to enact these legislations or its provisions being violative of Part-III of the Constitution of India. With regard to Entry No. 1 and 2 of the 11th Schedule as well as 12th Schedule inserted in the Constitution of India after 73rd and 74th Amendment there are sources of power but enabling provisions subject to the limitation of the State laws. The Article begins "subject to the provisions of the Constitution, legislature of a State may by law ensure-".

29. Shri C.B. Yadav submits that Section 117 read with Section 125 to 128 of the Municipalities Act clearly provides the provisions of compulsory acquisition of land for development by municipalities. A power of acquisition is not within the domain of the authority of the Act. This power is vested in the State under the Land Acquisition Act. The arguments raised do not arise from the pleadings and thus most of the arguments of Shri Jain are liable to be rejected. Shri C.B. Yadav submits that u/s 58 of the U.P. Act No. 30 of 1974 the State Government has to record its satisfaction to the extent and the purpose for which the authorities were established. The objects were achieved and thus the State Government is satisfied with the existence and the functions discharged by the development authorities. After recording satisfaction an opinion is required to be formed for their continuation is not necessary.

30. Shri C.B. Yadav has relied on the judgments of the Supreme Court in M/s. Nauratan Enterprises Pvt. Ltd., New Delhi & Anr. v. State of U.P., Lucknow & Ors.,

(1984) UPLBEC 575; Sri Surendra Kumar Gupta Vs. State of U.P. and another, ; Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, ; Anil Kumar Gulati and Others etc. Vs. State of M.P. and Others etc., Shanti G. Patel and Others Vs. State of Maharashtra and Others, Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, and Vidya Devi Vs. State of U.P. and Others, to support his submissions regarding validity of the provisions of the Act, which are under challenge and the object and reasons of the Act to be achieved for the purposes set out in the Constitution of India.

31. Shri C.B. Yadav has laid great emphasis on the reasons provided by the Supreme Court in Bondu Ramaswamy Vs. Bangalore Development Authority and Others, , in which the Supreme Court considering a challenge to the acquisition of land for town planning for Bangalore Development Authority under the Bangalore Development Authority Act, 1976, repelled the challenge to the constitutional validity of the Act being violative to Article 243-ZF; and being inconsistent with Part IX-A held as follows:-

39. The contentions urged by learned Counsel for appellants based on Parts IX and IX-A of the Constitution can be summarised thus:

(i) BDA Act is a legislation relatable to Article 243W and some of the matters listed in the Twelfth Schedule, Therefore BDA Act is deemed to be a law relating to Municipalities. Having regard to Article 243-ZF, any provision inconsistent with the provisions of Part IXA of the Constitution, law relating to municipalities ceased to be in force on the expiry of one year from 1.6.1993 - the date of commencement of the Constitution 74th Amendment Act, 1992.

(ii) After the insertion of Part IXA of the Constitution, there cannot be any "metropolitan area" other than what is declared by the Governor as a metropolitan area, as provided under Article 243P(c). Only an area having a population of 10 lakhs or more in one or more districts and consisting of two or more municipalities or Panchayats or other contiguous areas and specified by the Governor by a public notification to be a Metropolitan Area can be a "Metropolitan Area". Consequently, the "Bangalore Metropolitan Area" as defined u/s 2(c) of the 37 BDA Act had ceased to exist and therefore BDA could not draw up any development scheme for Bangalore Metropolitan Area.

(iii) A development scheme or an additional development scheme for Bangalore Metropolitan area which the BDA is required to draw up u/s 15 of the BDA Act are conceptually and in effect same as the development plan with reference to a municipality referred to in Article 243W and a development plan for a metropolitan area referred to in Article 243ZE. After the insertion of Part IXA in the Constitution, a development plan for a metropolitan area can only be drawn up by a democratically elected representative body that is the Metropolitan Planning Committee by taking into account the factors mentioned in Clause (3) of Article 243ZE. Therefore on the expiry of one year from 1.6.1993 (the date on which Part IXA of the Constitution was inserted), BDA has no authority to draw

up any development scheme.

40. Any statute or provision thereof which is inconsistent with any constitutional provision will be struck down by Courts. Consequently, if BDA Act or any provision of the BDA Act is found to be inconsistent with any provision of Part IXA of the Constitution, it will be struck down by Courts as violative of the constitution. In regard to any provision of any law relating to municipalities, Article 243ZF suspends such invalidity or postpones the invalidity for a period of one year from 1.6.1993 to enable the competent Legislature to remove the inconsistency by amending or repealing such law relating to municipalities to bring it in consonance with the provisions of Part IXA of the Constitution.

41. Article 243ZF is a provision enabling continuance of any provision of a law relating to municipalities in spite of such provision being inconsistent with the provisions of Part IXA of the Constitution for a specified period of one year. It does not extend the benefit of continuance to any law other than laws relating to municipalities; it also does not provide for continuance of a law for one year, if the violation is in respect of any constitutional provision other than Part IXA; and it does not declare any provision of a statute to be inconsistent with it nor declare any statute to be invalid. The invalidity of a statute is declared by a Court when it finds that a statute or its provision to be inconsistent with a constitutional provision.

42. The benefit of Article 243ZF is available only in regard to laws relating to "municipalities". The term "municipality" has a specific meaning assigned to it under Part IX-A. Article 243P(c) defines the word as meaning an institution of self-government constituted under Article 243Q. Article 243Q refers specifically to three types of municipalities, that is, a Nagar Panchayat for a transitional area, a municipal council for a smaller urban area and a municipal corporation for a larger urban area. Thus, neither any city improvement trust nor any development authority is a municipality, referred to in Article 243ZF. Thus Article 243ZF has no relevance to test the validity of the BDA Act or any provision thereof. If BDA Act or any provision thereof is found to be inconsistent with the provisions of Part IXA, such inconsistent provision will be invalid even from 1.6.1993, and the benefit of continuance for a period of one year permitted under Article 243ZF will not be available to such a provision of law, as BDA Act is not a law relating to Municipalities.

43. The Constitution (Seventy-Fourth Amendment) Act, 1992 inserting Part IX-A in the Constitution, seeks to strengthen the system of municipalities in urban areas, by placing these local self-governments on sound and effective footing and provide measures for regular and fair conduct of elections. Even before the insertion of the said Part IX-A, Municipalities existed all over the country but there were no uniform or strong foundations for these local self-governments to function effectively.

44. Provisions relating to composition of Municipalities, constitution and

composition of Ward Committees, reservation of seats for weaker Sections, duration of Municipalities, powers, authority, responsibilities of Municipalities, power to impose taxes, proper superintendence and centralised control of elections to Municipalities, constitution of Committees for District Planning and Metropolitan Planning, were either not in existence or were found to be inadequate or defective in the state laws relating to municipalities.

45. Part IX-A seeks to strengthen the democratic political governance at grass root level in urban areas by providing constitutional status to Municipalities, and by laying down minimum uniform norms and by ensuring regular and fair conduct of elections. When Part IX-A came into force, the provisions of the existing laws relating to municipalities which were inconsistent with or contrary to the provisions of Part IX-A would have ceased to apply. To provide continuity for some time and an opportunity to the concerned State Governments to bring the respective enactments relating to municipalities in consonance with the provisions of Part IX-A in the meanwhile, Article 243ZF was inserted. The object was not to invalidate any law relating to city improvement trusts or development authorities which operate with reference to specific and specialised field of planned development of cities by forming layouts and making available plots/houses/apartments to the members of the public. 41

46. To enable the municipalities (that is municipal corporations, municipal councils and Nagar Panchayats) to function as institutions of self-government, Article 243W authorises the legislature of a state to endow to the municipalities, such powers and authority as may be necessary, by law. Such law made by the state legislature may contain provision for the devolution of powers and responsibilities upon municipalities, with respect to the following:

- (i) The preparation of plans for economic development and social justice; and
- (ii) The performance of functions and implementation of schemes as may be entrusted to them including those in relation to the following matters (earmarked in the twelfth schedule):
 - 1. Urban planning including town planning.
 - 2. Regulation of land-use and construction of buildings.
 - 3. Planning for economic and social development.
 - 4. Roads and bridges.
 - 5. Water supply for domestic, industrial and commercial purposes.
 - 6. Public health, sanitation conservancy and solid waste management.
 - 7. Fire services.
 - 8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker Sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries. The aforesaid powers and authority (enumerated in the twelfth Schedule) may also be endowed to the Ward Committees which are required to be constituted, by Article 243S.

47. On the other hand, the purpose and object of the BDA is to act as a development authority for the development of the city of Bangalore and areas adjacent thereto. The Preamble of BDA Act describes it as "an Act to provide for the establishment of a Development Authority for the development of the city of Bangalore and areas adjacent thereto and for matters connected therewith. The development contemplated by the BDA Act is carrying out of building, engineering or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment; (vide Section 2(j) of BDA Act. Therefore, the purpose is to make lay outs, construct buildings or carry out other operations in regard to land.

48. Municipalities are not concerned with nor entrusted with functions similar to those entrusted to BDA under the BDA Act, that is building, engineering or other operations by forming layout of plots with all amenities, construction of houses and apartments, as a part of any scheme to develop a city. Municipalities are concerned with the overall economic development providing social justice (urban poverty alleviation and slum improvement) regulating land use and constructions, providing amenities (roads, bridges, water supply, fire services, street lighting, parking, bus stops, public conveniences), promoting education and culture etc. Neither urban town planning nor regulation of land use and construction, is similar to the "development" as contemplated in BDA Act, that is carrying out building, engineering operations in or over or under land. It would thus be seen that the object and functions of a Municipal Corporations are completely different from the object and purpose of a development authority like

BDA. BDA is not a municipality. Therefore, it cannot be said that mere existence of Municipal Corporations Act, duly amended to bring it in conformity with Part IX-A of the Constitution, will nullify or render redundant, the BDA Act.

49. Article 243ZE no doubt provides that there shall be constituted in every metropolitan area, a Metropolitan Planning Committee to prepare a draft development plan for the metropolitan area as a whole. The metropolitan area is defined in clause (c) of Article 243P as an area having a population of 10 lakhs or more comprised in one or more districts and consisting of two or more municipalities or panchayats or other contiguous areas specified by the Governor by a public notification to be a metropolitan area for the purpose of Part IXA. The Bangalore Development Authority is constituted inter alia to draw up a detailed scheme for the Bangalore Metropolitan Area. The Bangalore Metropolitan Area is defined in Section 2(c) of the BDA Act and the said definition need not necessarily be the same as or equivalent to any metropolitan area declared with reference to Bangalore under Article 243P(c) of the Constitution.

50. It was submitted before the High Court that the Governor had not issued any public notification specifying any area as metropolitan area, with reference to Bangalore city. Further the declaration of metropolitan area by the Governor, as provided in clause (c) of Article 243P is specifically with reference to the law relating to municipalities.

51. The Bangalore Metropolitan Area as defined in the Bangalore Development Authority Act is only for the purpose of development i.e. development by way of building or engineering operations in or over or under land. Therefore neither the provision defining "metropolitan area" in Article 243P(c) nor the provision for constitution of a Metropolitan planning committee for preparing a draft development plan for such metropolitan area under Article 243ZE has any relevance or bearing to the Bangalore Metropolitan Area with reference to which BDA has been constituted.

52. Next contention urged by the appellant is that in pursuance of Article 243ZE, KMC Act has been amended inserting Section 503-B providing for constitution of a Metropolitan Planning Committee for preparing a draft development plan for the Bangalore Metropolitan Area and therefore the Bangalore Development Authority can no longer function as an authority for development of metropolitan area, nor can it draw development schemes therefor. Development scheme to be drawn up by the BDA for development of Bangalore Metropolitan Area is specific i.e. acquisition of land, laying out or re-laying plots, formation of roads, construction of buildings, providing drainage, water supply and electricity and allot them to members of the public.

53. On the other hand, the development plan for the metropolitan area as a whole, to be prepared by Metropolitan Planning Committee constituted under the KMC Act involves making a plan for overall development with reference to the various functions enumerated in the twelfth Schedule, that is, plans for economic

and social justice, planning for economic and social development, slum improvement and upgradation, urban poverty alleviation, and providing several urban amenities and facilities referred to in the twelfth Schedule. It would thus be seen that the "development scheme" formulated for Bangalore Metropolitan Area by BDA has nothing to do with a "development plan" that has to be drawn by a municipality or by Metropolitan Planning Committee.

54. The development plan to be drawn for a metropolitan area, by a Metropolitan Planning Committee should not be confused with a development scheme to be drawn by a development authority like BDA for a metropolitan area.

55. It should also be noticed that insofar as Bangalore is concerned, the Bangalore Metropolitan Area as defined in Section 2(c) of the BDA Act is the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949, the area where the city of Bangalore Improvement Act, 1945 was immediately before the commencement of the BDA Act in force, and such other areas adjacent to the aforesaid, as the Government may from time to time by notification specify. On the other hand, the Bangalore Metropolitan Area, referred to in Section 503-B of KMC Act is an area to be specified by the Governor by public notification under Article 243P(c) of the Constitution of India. In fact the Governor had not even specified the Bangalore Metropolitan Area for the purpose of KMC Act. Neither the Bangalore Metropolitan Area nor a Metropolitan Planning Committee is in existence under the KMC Act. In these circumstances, the contentions that the BDA Act, is no longer in force and that BDA has no jurisdiction or authority to draw up a development scheme to form layouts and acquire land to form lay outs in pursuance of any development scheme for Bangalore Metropolitan Area, is wholly untenable.

56. The appellants submitted that the powers, authority and responsibilities, to be endowed by the State Legislature upon the Municipalities are enumerated in Article 243W read with Twelfth Schedule; that Articles 234ZD and 243ZE require the state government to constitute a District Planning Committee at District Level and a Metropolitan Planning Committee for every Metropolitan Area; that such Metropolitan Planning Committee is required to prepare a draft development plan for the Metropolitan Area as a whole.

57. It was contended that the BDA Act was a Legislation which related to some of the responsibilities and functions of Municipalities, enumerated in the Twelfth Schedule to the Constitution read with Article 243W and that its provisions, in particular, Sections 15 to 19 were inconsistent with the provisions of Part IXA of the Constitution; that no law can entrust powers and responsibilities referred to in Article 243W including those relating to matters listed in Twelfth Schedule to an authority other than an authority having popular mandate; and that therefore the BDA Act entrusting such powers and responsibilities to a non-elected authority ceases to be in force.

58. While it is true that BDA is not an elected body like the municipality, it has

several elected representatives as members. Section 3 relates to the Constitution of the Authority and provides that the Authority shall consist of 22 members and made up as follows:-

-Six officers of the BDA viz., The Chairman, The Finance Member, The Engineering Member, The Town Planning Member, The Commissioner and Secretary of the Authority. (All of them are full-time employees, three of them are specialists in finance, engineering and town planning.

-Four elected representatives, that is, two members of state legislature assembly and two Counselors of Bangalore Municipal Corporation.

-One representative of the state government and four representatives of statutory corporations, that is, the Commissioner of Bangalore Municipal Corporation and representatives of Bangalore Water Supply Sewerage Board, Karnataka Electricity Board, and Karnataka State Road Transport Corporation.

-Six members of the public (with minimum of one woman, one person belonging to SC/ST, and one representing labour) - One Architect.

It would thus be seen that members of the BDA represent different interests and groups, technical persons and elected representatives. Further, no development scheme can be finalised or put into effect without the sanction of the State Government which in turn has to take note of any representation by the Bangalore Municipal Corporation in regard to the development scheme. Therefore, the mere fact that BDA is not wholly elected body as in the case of a municipal corporation will make no difference. The membership pattern is more suited to fulfil the requirements of a specialist agency executing development schemes. We therefore find no merit in the contention that provisions of BDA Act become inoperative, on Parts IX and IX-A of the Constitution coming into force.

59. The BDA Act empowers the Bangalore Development Authority to formulate schemes for the development of Bangalore Metropolitan Area. The word "development" refers to building, engineering or other operations in regard to land, that is making layouts and making available plots for allotment to members of the public. It is authorised to acquire lands for execution of development schemes, prepare layouts and construct buildings, provide drainage, water supply and electricity, provide sanitary arrangements, form open spaces, lease, sell or transfer the plots/immovable properties. The area in which the BDA Act operates is totally different from the areas in which Part IX A of the Constitution and KMC Act which relate to local self-government operate.

32. From the paragraphs quoted as aforesaid from the judgment in Bondu Ramaswamy's case (supra) we find that Article 243ZF is a provision enabling continuance of any provision of law relating to municipalities despite such provision being inconsistent with the provisions of Part IXA of the Constitution of India for specific period of one year. It does not declare any provision of the statute to be inconsistent or to declare any statute to be invalid. The invalidity of

statute is declared by a Court when it finds a statute by its provision to be inconsistent with constitutional provision. Shri Ravi Kiran Jain has not addressed the Court on the legislative competence of the statutes under challenge.

33. Article 243-P (e) defines the word "Municipality" means an institution of self governance constituted under Article 243Q. Article 243Q refers to Nagar Panchayat for a transitional area, a Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. The Development Authority is not a Municipality referred to under Article 243ZE. It has no relevance to test the validity of any Act providing for the constitution of a Development Authority or any provision thereof. The 74th Amendment Act, 1992 inserting Part IXA strengthens the system of Municipality in urban areas. It provides to place them on a sound and effective footing and measures for regular and fair conduct of elections. Even before the insertion of Part IXA the municipal laws in the State of U.P. provide for regular and fair conduct of elections. However, there was no uniform or strong foundation, which has now been provided by amending the Constitution.

34. Part IXA, as held by the Supreme Court, seeks to strengthen the democratic political governance at the grass root level in urban areas by providing constitutional status to Municipalities and laying down minimum uniform norms, by ensuring regular and fair conduct of elections. The laws inconsistent with the provisions of Part IXA would cease to apply and for providing some time to amend the laws, Article 243ZF was inserted. The object is not to invalidate any laws. In the State of U.P. exhaustive amendments were made by U.P. Act No. 12 of 1993 and thereafter by U.P. Act No. 3 of 1996 for strengthening the laws relating to composition of Municipalities, constitution and composition of ward committees, reservation of seats for weaker Sections, duration of Municipalities, powers, authority, responsibilities, power to impose tax, proper superintendence, and centralised control of elections to Municipalities, constitution of committees for district planning and metropolitan planning. The State Government thus took an opportunity to amend the laws and to bring them in tune with Part IX A of the Constitution of India.

35. Article 243W authorises the State legislature to provide such powers and authorities as may be necessary by law to the Municipalities for preparation of plans in respect of the subjects, in the Twelfth Schedule of the Constitution of India. The purpose and object of the U.P. Urban Planning and Development Act, 1974 is for the development of the notified areas. The Municipalities are not concerned with nor entrusted with the functions similar to that of the Development Authorities. The Municipalities are concerned with overall economic development providing social justice, which includes urban poverty alleviation, slum improvements, regulating land use and constructions, providing roads, bridges, water supply, fire service, streetlight, parking, bus stops, licensing and regulation of dangerous and hazardous trade and occupations for providing public conveniences. The Municipalities are also entrusted with promoting

education and culture. Both the Acts providing for Development Authority and Municipal Corporation operate in different areas. There is no conflict or overlapping in their functions. The urban town planning or regulation of land use and the constructions, similar to the development as contemplated under U.P. Urban Planning and Development Act, is different than the object and purpose of the Municipal Corporation. As held by the Supreme Court, it cannot be said that the existence of the Municipal Corporation, provisions of which have been amended and brought in conformity in the State of U.P. in accordance with Part IXA of the Constitution, will nullify or render the U.P. Urban Planning and Development Act redundant.

36. The development areas as defined under the U.P. Urban Planning and Development Act are only for the purpose of development by way of building or engineering operations in over or under the land. The provision of draft development plan and the development plan for such development area is not in conflict with any of the provisions of the U.P. Municipalities Act or U.P. Municipal Corporation Act.

37. The U.P. District Planning Committees Act provides for constitution of District Planning Committees at district level, which take into consideration the development plans prepared by the Village Panchayats and Zila Panchayats. It has in its composition the representatives of all the elected bodies and provides for taking care of the aspirations of the people as well as the needs of the local areas. It is required to prepare a development plan to be implemented in the district. It cannot thus be said that the local aspiration of the people and the plans prepared by them for the local needs are not taken care at the time of preparing draft development plan and its implementation in the district.

38. The argument that "district" as defined in Article 243 (a) in Part XI and Article 243-P (b) in Part IXA is not a revenue district but has to be notified, taking into consideration the constitution of the Panchayat as defined under Article 243 (d) in Part IX and the Municipality under Article 243 P (e), does not merit consideration. The district in Article 243 (a) and Article 243P (b) means a district in a State. The reference is to a revenue district in a State and not to a unit comprised of and correlated with district panchayat or the municipality or metropolitan area. The word "district" defined in Article 243 (a) and Article 243 P (b) is for the purpose of Part IX and Part IXA of the Constitution of India and does not amount to redefining the revenue district. We are not persuaded to hold that the definition of "district" has any consequence to the development by the District Planning Committee or that any change has been made by Part IX and Part IXA of the Constitution of India in the development of the area.

39. We have also not been persuaded to hold that the provision of centralised services for the officers for administration, revenue, engineering, health, sanitation, water supply, and other services does in any way affect the powers and responsibilities of the elected representatives of the municipal bodies. The provision of centralised services provides for uniformity in the service conditions,

and the pay scales. They do not affect the duties of the petitioners and their responsibility towards general public to be discharged by them under the supervision of the elected representative. It is a hard fact that most of the Municipalities, the Municipal Corporations in the State of U.P. do not have sufficient funds and have to depend upon the allocation made by the State Government to them from time to time. The Municipalities and the Municipal Corporations have not yet attained the financial autonomy, which is envisaged under the Act. They are not able to realise all the tax, fees and cess. Instead of creating a revenue base for developmental activities, the Corporation gives and awards concessions and exemptions. It is unable to collect the dues in time. The payment of salaries of the officers and staff of centralised services as well as the staff of the local bodies is still dependent on the grants received from the State Government. It is of necessity that the centralised services are manned by officers, who are selected with requisite uniform qualifications and eligibility conditions, and do not serve under the central supervision of the elected representatives. As head of the department the Mukhya Nagar Adhikari (Municipal Commissioner) has to perform duties, which are not necessarily entrusted to the elected representatives. The model of parliamentary democracy is successfully working in the Municipalities and Municipal Corporations. The petitioners, who are serving as Chairpersons of these bodies have not placed any material before us, which may demonstrate that the officers of the centralised services are working contrary to the directions issued by them or are not serving to the satisfaction of the aspirations of the local people. The petitioners have to blame themselves for the non-implementation of the schemes and the utilisation of the grants, which the Municipal Corporations and Nagar Nigams receive from the State Government for various municipal activities.

40. For the aforesaid reasons, we do not find any good ground to grant prayers for striking down the Act of 1973 or the provisions of Centralised Services in the Municipalities and Municipal Corporations to be violative of any of the provisions of Part IX and Part IXA of the Constitution of India. All the writ petitions are consequently dismissed with no order as to costs.