
(1998) 09 DEL CK 0042
In the Delhi High Court
Case No : C.W. No. 3127 of 1993

Rajendra Kumar Mohatta

APPELLANT

Vs

New Delhi Municipal Committee and Another

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Citation : (1999) 1 AD 170 : (1998) 75 DLT 836

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Nidesh Gupta and Mr. Ajay Mehrotra, for the Appellant; Mr. S.S. Gautam, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner has challenged in this writ petition the order of the NDMC dated 16.6.1993, in which the petitioner was asked to stop further construction of the complex which was earlier permitted by the NDMC. The petitioner also seeks to quash the communication dated 18.6.1993 which is also to the same effect. In the context of the view taken by the NDMC, which is quite contrary to its earlier stand of sanctioning the plans, it has become necessary to set out the facts in some detail."

2. In July, 1984, the petitioner applied to the Land & Development Office for conversion so that the property could be developed in a multi-storeyed group housing complex. The petitioner also applied for the grant of exemption u/s 20 & 22 of the Urban Land (Ceiling & Regulations) Act, 1976. On the 1st of June, 1989, Government of India, Ministry of Urban Development, issued the following communication:

"With reference to your letter No. Nil dated the 26th July, 1984 on the above subject seeking permission for the construction of multi-storeyed group housing on the demised premises in terms of Clause 2(5) and 2(6) of the lease deed, I am to inform you that Lesser is willing to consider you request provided you are willing to comply with the following terms and conditions in full and advance:

i) Payment of Addl. premium Rs. 45,54,321 ii) Interest on Addl. premium Rs. 20,87,398 Premium @ 10% p.a. w.e.f. 26.10.84 to 25.5.89 and iii) thereafter @ Rs. 37,953/- p.m. w.e.f. 26.5.89 to the date of payment received in this office. iv) Revised ground rent @ Rs. 5,19,041 Rs. 3,02,153.50 p.a. w.e.f. 26.10.87 to 14.7.89 (after 3 years from the crucial dated 26.10.84 or from the date of completion of building whichever is earlier) v) Interest @ 10% p.a. w.e.f. Rs. 48,063 26.10.87 to 14.5.89 and thereafter @ Rs. 4326/- p.m. w.e.f. 15.5.89 to the date of payment received in this office. vi) Existing ground rent @ Rs.1,500 Rs. 300/- p.a. w.e.f. 15.7.84 to 14.7.89 vii) Interest on existing ground Rs. 337 rent w.e.f. 15.7.84 to 14.5.89 and thereafter @ Rs. 12.10 p.m. w.e.f. 15.5.89 to the date of payment received in this office. viii) Damage for unauthorised construction: (i) @ Rs. 849/- p.a. w.e.f. Rs. 605 15.7.84 to 31.3.85 (ii) @ Rs. 934/- p.a. w.e.f. Rs. 1,778 1.4.85 to 24.2.87 (Unauthorised construction 17"x4" up to one day before the inspection report dated 25.2.87 when this breach was reported removed) ix)(i) Damages @ Rs. 450/- p.a. Rs. 321 w.e.f. 15.7.84 to 31.3.85 (ii) Damages @ Rs. 495/- p.a. Rs. 943 w.e.f. 31.4.85 to 24.2.87 (Unauthorised construction 17"x4" up to one day before the inspection report dated 25.2.87 when this breach was reported removed) x) Damages @ Rs. 2891/- p.a. Rs. 6,891 w.e.f. 25.2.87 to 14.7.89 (Unauthorised fixed shed in the courtyard of servant quarter with Sh. R.L. Bajaj 5"-3"x4" from the date of inspection report dated 25.2.87). xi) Payment of cost and fee for Rs. 60 preparation of Suppl. Lease and Tripartite Agreement. xii) Furnishing an undertaking on a non-judicial stamp paper of Rs.2/- that you will pay the difference in rate of damages w.e.f. 1.4.87 onward at such rates as may be decided by the Government. xiii) Furnishing an undertaking on a nonjudicial stamp paper of Rs. 2/- agreeing to execute at your own cost a Supplementary Lease Deed which will provide for apart from the above and in addition to the existing covenants of the lease to the extent the same are modified or superseded by these terms the following: (i) Restricting the sale, transfer mortgage, assignment of the building, blocks, flats, or any part thereof without the prior permission of the Lesser and payment of earned increase in any of such events. (ii) Revision of addl. ground rent after every span of 10 years the ground so revised however will not exceed 25% of the ground rent prevailing at the time of each revision. (iii) Keeping a running strip of land measuring 13909.40 sq. ft. in front and rear or the demised premises free from all encumbrances, structure, construction and surrendering the same to the Lesser or his authorised agent as and when called upon to do so. xiv) Along with the Supplementary Lease Deed, executing Tripartite Agreement so as to facilitate the transfer of flat/ flats or lease hold right on pro-rata basis and the formation of a Co-operative Society of the flat owners for smooth running of the common amenities and common places etc., (Standard form of such tripartite agreement containing detailed stipulations and the draft of the Supplementary Lease Deed of which Tripartite Agreement will be an integral part, will be supplied later on).

xv) The construction of multi-storeyed commercial/group housing building will not be started until the exemption under Sections 20 and 21 of the Urban Land (Ceiling & Regulation) Act, 1976 is obtained and plans got sanctioned under Municipal Bye-laws from the Local Body and also got approved from the lesser under the terms of Lease Deed. B. The addl. premium can also be paid in 3 installments subject to payment of interest @ 14% p.a. on the outstanding amount of addl. premium as per detail given below:

i) 1st Installment of addl. Rs. 15,18,107 premium payable within 90 days from the date of receipt of this letter. ii) 2nd Installment of addl. Rs.15,18,107 premium payable on 1st anniversary of the date of issue of this letter. iii) Interest @ 14% p.a. of Rs. 4,25,069 Industrial Finance Corporation lending rate (If this rate is increased by IFC the difference of interest rate will be charged). iv) 3rd Installment of addl. Rs. 15,18,107 premium payable on 2nd anniversary of the date of receipt of this letter. v) Interest @ 14% p.a. Rs. 2,12,535 vi) In case there is default in payment of any instalment, an additional interest @ 2-1/2% p.a. over and above normal rate of interest shall be levied on the entire outstanding amount. In case you wish to avail of the facility of paying the addl. premium in installments, the charges mentioned against item Nos. A(iii) to A(xi) are payable in lumpsum with the 1st Installment of additional premium within 90 days from the date of receipt of this letter and irrevocable Bank Guarantees in favor of and acceptable to the Land & Development Officer are to be furnished by you for items No. A(ii) and for the remaining installments of addl. premium i.e. for 2nd and 3rd installments of addl. premium along with interest thereon as mentioned against item Nos. B(ii) to B(v) above within 180 days from the date of issue of this letter.

If the above terms and conditions are acceptable to you, the acceptance thereof may please be communicated to this office in writing together with Bank Draft covering the full amount payable in lumpsum, drawn in favor of the Land & Development Officer, within 90 days from the date of receipt of this letter along with necessary undertakings to pay the revised ground rent and to execute at your own cost a Supplementary Lease Deed. The requisite Bank Guarantees for the remaining installments of addl. premium together with interest thereon and for the amount of interest mentioned against item A(ii) above may be sent to this office within 180 days from the date of issue of this letter so that the terms and conditions of the proposed Supplemental Lease deed and the formal documents to be executed between the parties may be finalised and the draft of such Supplemental Lease Deed may be communicated to you. If your acceptance, the undertakings and the amount mentioned hereto are not received within 90 days from the date of receipt of this letter, the terms and conditions will automatically stand cancelled and withdrawn and further action under the terms of lease deed will be taken without any further reference in respect of the breach mentioned in item A(x). Interest will be paid up to the date of payment.

In case you have any point to clarify in connection with the above you may kindly

see the undersigned after prior appointment on Tele. No. 3019324 between 2 to 4 p.m. in the afternoon within a week of receipt of this letter."

The petitioner complied with the demands made.

3. Later on, by application dated 24.3.1998 the petitioner applied for sanctioning of the plans. The Chief Architect, by letter dated 27.9.1990, wrote to the petitioner stating that the NDMC had sanctioned the plans in its Resolution No. 33 dated 23.7.1990. The letter reads as under.

"With reference to your application/representation submitted vide Scheme No. 453 dated 24.3.88 for the grant of sanction, to erect/re-erect/add to/alts. in the building to carry out the development specified in the said application relating to Group Housing at 22, Feroz Shah Road, New Delhi. I have to state the same has been sanctioned vide Reso. No. 33 dated 23.7.90 by the NDMC and being released subject to the following conditions and corrections made on the plan:

1. The plans are valid up to 22.7.92.
2. The construction will be undertaken as per sanctioned plans only and no deviations from the bye-laws will be permitted without prior sanction. Any deviation done against the bye-laws is liable to be demolished and the supervising architect engaged on the job will run the risk of having license cancelled.
3. A notice in writing shall be sent to NDMC before commencement of the erection of the building as per bye-laws. Similar notice will be sent to NDMC when the building has reached up to plinth level.
4. The party shall not occupy or permit to occupy the building or use to permit to be used the building or any part thereof affected by any such work until occupancy certificate is issued by the authority.
5. NDMC will stand indemnified and kept harmless from all proceedings in Court and before other authorities of all expenses/losses/claims which the NDMC may incur or become liable to pay as a result or consequences of the sanction acceded by it to these building plan.
6. The door and window leaves shall be fixed in such a way that they shall not, when open, project on any street.
7. The party will not convert the building into more dwelling unit than sanctioned.
8. The building shall not be constructed within minimum distance as specified in Indian Electricity rules from voltage lines running on side of the site.
9. The land left open on consequences of the enforcement of the set back rule shall form part of the public street.
10. Violation of building bye-laws as described in Appendix Q of the Building bye-laws shall not be compounded.

11. It will be the duty of the owner of the plot and the Architect preparing the plans to ensure that the sanctioned plans are as per prevalent buildings bye-laws. If any infringement of byelaws remain unnoticed, the NDMC reserves the right to amend the plans as and when the infringement comes to its notice and NDMC will stand indemnified against any claim on this account.

12. The plans be got approved separately under the terms of lease from the lesser i.e. Land & Development Office.

13. That the Construction site shall be-properly screened off the main road(s) by erecting a screen wall not less than 8"-O" in height from the ground level and painted in white and green straps to avoid any unpleasant look from the road side.

14. The sanction will be void-abinitio if auxiliary conditions mentioned above are not complied.

15. Party should comply with the conditions of CFO issued vide letter No. F.6/DFS/MS/89/CGHS/721 dated 2.5.90.

16. Party shall sink tube well/wells within their own premises (clear of set-backs) in order to meet the water supply requirements of WCs/ Toilets.

17. Party shall start the construction work at site after obtaining extension of time for the construction of building from the Competent Authority, under ULCR Act, 1976."

. The NDMC wanted the petitioner to have extension of the permission granted by the Competent Authority under the Urban Land (Ceiling & Regulations) Act, 1976. The stand taken by the petitioner was that such an extension was not necessary. The petitioner was constrained to file the CWP 119/91 in this Court. On the 14th of May, 1991, this Court passed the following order:

"CW 119 & CM 169/91

Counsel for the Delhi Administration states that the petitioner will be required to pay extension charges as they are charged to other people similarly placed. He also raises the question as to how much is the excess vacant areas. Apart from these, the respondents have no objection to the petitioner starting the construction. These two questions can be decided in the Court. Counsel for the petitioner undertakes to abide by the decision in regard to these two questions raised by the respondents. Rule D.B.

On the undertaking given by the Counsel for the petitioner, he is permitted to start the construction subject, of course, to the orders to be passed by this Court in the WP."

This Court had noticed that the respondents had no objection to the commencement of the construction by the petitioner.

5. On the 27th of May, 1991, the petitioner informed the Chief Architect, NDMC

that the petitioner had started construction on the 21st of May, 1991.

The letter reads as under:

"The building plans for subject-Group Housing had been approved vide Reso. No. 33 dated 23rd July, 1990.

The condition was imposed to start the construction, after receiving extension of period of exemption u/Sec. 22 & 22 of U.L.C.R. Act, 1976.

The Hon''ble High Court vide its order Civil petition No. 119, dated 14th May, 1991, has allowed the construction. Photocopy of the order is enclosed for your reference.

In view of the above, we have now started the construction work at site on 21.5.91.

This is for your kind information and necessary records please."

6. The Authorities of the NDMC had been inspecting the site and watching the progress of the construction carried out by the petitioner. The period of two years mentioned in the letter dated 27.7.1990 was expiring in July, 1992 and, Therefore, on the 12th of May, 1992 the petitioner applied to the NDMC for revalidation of the plans to enable the petitioner to proceed further with the construction and complete the same. The Authorities of the NDMC inspected the premises in June, 1992. By letter dated 31.7.1992, the Chief Architect, NDMC wrote to the petitioner that by Resolution No. 30 dated 30.6.1992, the NDMC had revalidated the plans and the plans were valid up to 22.7.1993. The letter reads as under:

"With reference to your application/representation submitted vide Scheme No. 1353 dated 12.5.92 for the grant of sanction, to erect/re-erect/add to/ alts. in the buildings to carry out the development specified in the said application relating to revalidation of plans in respect of 22, Feroz Shah Road, New Delhi. I have to state the same has been revalidated vide Reso. No. 30 dated 30.6.92 by the NDMC and being released subject to the following conditions and corrections made on the plan:

1. The plans are valid up to 22.7.93.
2. The construction will be undertaken as per sanctioned plans only and no deviations from the bye-laws will be permitted without prior sanction. Any deviation done against the bye-laws is liable to be demolished and the supervising architect engaged on the job will run the risk of having license cancelled.
3. A notice in writing shall be sent to NDMC before commencement of the erection of the building as per bye-laws. Similar notice will be sent to NDMC when the building has reached up to plinth level.
4. The party shall not occupy or permit to occupy the building or use to permit to

be used the building or any part thereof affected by any such work until occupancy certificate is issued by the Authority.

5. NDMC will stand indemnified and kept harmless from all proceedings in Courts and before other authorities of all expenses/losses/claims which the NDMC may incur or become liable to pay as a result or consequences of the sanction accorded by it to these building plan.

6. The door and window leaves shall be fixed in such a way that they shall not, when open, project on any street.

7. The party will not convert the building into more dwelling unit than sanctioned.

8. The building shall not be constructed within minimum distance as specified in Indian Electricity rules from voltage lines running on side of the site.

9. The land left open on consequences of the enforcement of the set back rule shall form part of the public street.

10. Violation of building bye-laws as described in Appendix Q of the Building bye-laws shall not be compounded.

11. It will be the duty of the owner of the plot and the Architect preparing the plans to ensure that the sanctioned plans are as per prevalent buildings bye-laws. If any infringement of byelaws remain unnoticed, the NDMC reserves the right to amend the plans as and when the infringement comes to its notice and NDMC will stand indemnified against any claim on this account.

12. The plans be got approved separately under the terms of lease from the lesser i.e. Land & Development Office.

13. That the Construction site shall be properly screened off the main road (s) by erecting a screen wall not less than 8"-D" in height from the ground level and painted in white and green straps to avoid any unpleasant look from the road side.

14. The sanction will be void-abinitio if auxiliary conditions mentioned above are not complied."

7. The NDMC has placed on record the Resolution dated 27.3.1990 and also the Resolution dated 30.6.1992.

8. The Resolution dated 27.3.1990 reads as under:

"NEW DELHI MUNICIPAL COMMITTEE PALIKA KENDRA, NEW DELHI (BUILDING PLANS) MEETING NO. : 20/1990-91 DATED : 23.7.1990 TIME : 3.00 P.M PLACE : PALIKA KENDRA, N.DELHI PRESENT 1. Sh. Subhash Sharma, Administrator... in Chair. 2. Sh. S.S.K. Bhagat, CE(C), NDMC 3. Sh. J.N. Rohtagi, CE(E), NDMC 4. Sh. P.K. Khanna, Ex. Engineer (BP) MCD 5. Sh. R.C. Sharma, Dy. C.F.O. 6. Sh. I.D. Gupta, Building Officer, L&DO 7. Sh. H.S. Bindra, Dy. C.A. (BP) 8. Sh. A.K. Pathak, Chief Architect, NDMC S. No. ITEMS

PROCEEDINGS 33. Plans for Group Housing at BPC resolved and Adminis 22, Feroz Shah Road, New Delhi. -trator decided that plans be approved subject to the following. 1. Corrections in the plans with respect to area chart, parking, coloring etc.

2. Party shall sink tube well/wells within their own premises (clear of set-backs) in order to meet the water supply requirements of Wes/Tcilcts. They shall submit an undertaking to this effect.

3. Party shall furnish an undertaking that they shall start the construction work at site after obtaining extension of time for the construction of building from the Competent Authority, under ULCR Act, 1976".

9. The relevant portion of Resolution dates 30.6.1992 is as under:

NEW DELHI MUNICIPAL COMMITTEE PALIKA KENDRA, NEW DELHI (BUILDING PLANS) MEETING NO. : 3(A.P.C) 92-93 DATED : 30.6.1992 TIME : 3.00 P.M, PLACE : PALIKA KENDRA: N. DELHI PRESENT 1. Sh. Ramesh Chandra, Administrator 2. Sh. A.K. Pathak, C.A. 3. Sh. V.P. Chetal, CE(C), NDMC 4. Sh. V.P. Gupta, C.A., NDMC 5. Sh. R.N. Mathur, C.E. (E),NDMC 6. Sh. P.K. Khanna, S.E., MCD 7. Sh. C.P. Rastogi, Jt. Dir, DDA 8. Sh. H.S. Bindra, DCA 9. Sh. I.D. Gupta, Bldg. Officer, L&DO 10. Sh. R. C. Sharma, Dy. C.F.O. S. No. ITEMS PROCEEDINGS 33. Revalidation of BPC resolved and Administrator plans in r/o 22, decided that the plans be Feroz Shah Road, revalidated for a period of one New Delhi. year i.e. up to 22.7.93 subject to depositing of stacking charges of Rs. 18,040/-."

10. The petitioner was proceeding with the construction, when he was served with the letter dated 1.1.1993 purporting to be the show-cause notice u/s 195-B the Punjab Municipal Act, 1911 stating that the petitioner had violated the building byelaws. The letter reads as under:

"SHOW CAUSE NOTICE

The following unauthorised construction has been carried out by you in premises No. 22, Feroz Shah Road, New Delhi without obtaining approval from the NDMC, as required under the building Bye-Laws, on.....

1. Vertical shafts have been constructed at the corners outside the building profile.

2. Covering of recessed open space in front and rear as such front and rear elevators has been changed w.r.t. the sanctioned plans.

3. Staggering/projecting the different floors in the central courtyard and casting two No. circular columns to support the same which is not shown in the approved plans.

4. Constructing the bay windows on upper floors.

5. Internal partitions erected on the floors are not as per the sanctioned plans.

6. Most of the shafts have been closed as such ventilation of rooms and toilets have become defective.

7. The old structure occupied by the tenants still exists at site.

The unauthorised construction is liable to be sealed u/Sec. 195-B of the P.M. Act. You are, Therefore, required to show-cause notice within 24 hours as to why the proposed action should not be taken by the NDMC."

11. On the 2nd of January, 1993, the petitioner sent reply to the showcause notice which reads as under:

"This has reference to your letter No. D. 21/CH/SK dated January 1, 1993 received by us today.

We are astonished to read the contents of the same, particularly since the Building Plans were revalidated by NDMC in July, 1992. At that time, the building was already under construction and had reached up to the 4th floor level. All the points mentioned in your SHOW CAUSE NOTICE, were existing in site in July, 1992 -at the time of inspection by the NDMC.

In this respect, we wish to state and submit as under:

(A) Preliminary Objections:

1. At the outset, it is submitted that the time of 24 hours granted to reply to the notice is absolutely insufficient, particularly considering the fact that the notice is wholly vague and ambiguous and further having regard to the fact that today being Saturday, the offices are closed and for want of records, it is not possible for us to draft a proper and complete reply. Indeed, all our efforts to meet your concerned officers for seeking clarifications proved to be an exercise in futility as your office was also closed today. It would, Therefore, be seen that the notice under reference is in contravention of the provision of Section 214 of the Act of 1911 inasmuch as reasonable time has not been granted to respond to notice.

2. The provisions of Section 195-B of the Punjab Municipal Act, 1911 are not attracted to the facts of the present case. Section 195-B can be invoked either before or after invoking the provisions of Section 195-A and not independent of the said provisions. Where action for demolition is not permitted or possible under the law, the provisions of Section 195-B cannot be invoked. In the present case, admittedly no show cause was passed. The construction being made at the site is in consonance with the bye-laws and profile of the building plan. If any deviation is made outside the plan the same is permissible under the Building Bye-laws. The question of issuance of notice u/s 195-B, thus, does not arise.

(B) paradise Reply :

1. You have alleged in your letter about the vertical shafts constructed at the corners outside the buildings profile. The construction is being made absolutely as per the building profile. We shall be grateful if you could inform us as to what

provisions of building Bye-laws, the Punjab Municipal Act, 1911 or any other Notification have been relied upon. In any case, the shafts are constructed in open space. What has been built by us is a projection on the ground floor level.

2. In para 2 you have mentioned that recessed open space in front and rear has been covered by changing the elevators. This objection is incoherent and incomprehensible. Elevators have been planned to be installed within the building and elevators are being constructed with the building itself. Thus, it is obvious that in this para you are not referring to elevators but to something else. We shall be obliged if you could inform us as to what the real meaning of para 2 is.

3. You have objected to projections of buildings inside the courtyards. These projections inside the courtyards are shown in the sanctioned plan also. The courtyards exists today as was inspected by your officers in July, 1992. Please give us the measurements of the projections, if any projection are there. We shall be in a better position to file a more effective reply after your furnishing the same to us. You have further alleged that two circular columns have been provided in the building . Additional columns may be provided in order to improve the support of the structure of the building. We shall be grateful if provision of the law is furnished to us wherein we are restrained from building additional columns for the safety of the building.

4. The construction of bay windows is permitted as per the building bye-laws of NDMC. The same has been permitted by you in several other buildings in New Delhi area and we are prepared to abide by the same directions in this regards as have been imposed by you on others.

5. You have stated that internal partitions erected on the floors are not as per the sanctioned plan. Kindly specify what portions are being referred to in the same. In any case, this is without prejudice to our contention that shifting of internal partitions is within the bye-laws and is not in contravention of the building bye-laws, master plan etc.

6 In reply to para 6 it is stated that you have not mentioned which are the particular rooms and toilets where ventilation has become defective due to closed shafts. The shafts are as per the sanctioned plans. We have not closed any shaft meant for ventilation of rooms and toilets.

7. We have undertaken to demolish the old structure occupied by some tenants before applying for completion certificate. This is not in violations of any building bye-laws whatsoever. We understand that son of one of the old tenants, namely, Shri Rajiv Bajaj, has been asking for unreasonable consideration to vacate the premises and the present notice has been issued at his behest.

Since the time given to us is absolutely inadequate and the notice is vague we shall request you to kindly furnish the details to us so as to enable us to give more effective reply to your notice. Further, we could be obliged if you can allow us an immediate oral hearing/interview to explain the facts of our case and to

present necessary documents in this regard."

12. The petitioner instituted the Suit No. 33/93 in this Court praying for a decree of permanent injunction restraining the NDMC from sealing/demolishing any part of the building. On the 7th of January, 1993, notice was issued by this Court in Suit No. 33/93.

13. On the same date the petitioner was served with the order dated 6.1.93 cancelling the sanction of the building plans. The same reads as under.

"With reference to our show cause notice issued to your vide No. D-21/CA/ STC dated 1.1.1993, it is noted that you have deviated from the sanctioned plans which were approved by the DUAC and sanctioned vide our letter No. A-5617-18/ CA/BP dated 27.9.90. Your attention is also drawn to Clause No.12 of the aforesaid letter in which you were asked to get the plans approved separately under the terms of lease from the Lesser i.e. L & DO office. It is ascertained from L&DO office that the plans have not yet been got approved from the Lesser before starting the construction. Since this is also a violation of the terms of sanction of the plans, the plans sanctioned vide aforesaid letter are hereby cancelled and you are directed to stop the construction work immediately."

14. On the 7th of January, 1993, this Court in Suit No. 33/93 directed the parties to maintain the status quo. The order reads as under:

"IA No. 93/93

Mr. B.J. Nayar, Advocate appears for the NDMC and states that the defendant has been served only yesterday evening and as such he has not been in a position to file written statement and reply. However, he submits that there is no ground for grant of stay in this matter inasmuch as after the amendment of the Punjab Municipal Act, 1984 it is the Appellate Tribunal who is competent to deal with such matters. A show cause notice dated 1.1.93. was served on the plaintiff for unauthorised construction on premises No.22 Feroze Shah Road and reply dated 2.1.93 was also filed. According to Mr. Nayar, on 6.1.93 an intimation was sent to the applicant that the plans have not been got approved from the L&DO before start of construction and since it is also a violation of the sanction of plan, the plan sanctioned earlier by NDMC stands hereby cancelled and the applicant was asked to stop the construction work immediately. According to Mr. Nayar, if the applicant stops further construction on the site in dispute, the NDMC would not seal the premises and that the status quo would be maintained.

Mr. Arun Jaitely, Senior Advocate, however, states that issuance of this letter dated 6.1.93 is mala fide act on the part of the NDMC officials inasmuch as it was issued after the filing of the suit and receiving the notice of the suit. In the earlier show cause notice dated 1.1.93 it was not at all mentioned that the construction was started without getting the sanction from the L&DO. The defect pointed out do not amount to unauthorised construction. Moreover, the order of seal has not yet been passed. An appeal before the Tribunal lies only after the

sealing order is passed u/s 195 of the Act as amended. According to the learned Counsel it is a fit case where NDMC should be restrained from sealing the property in question. However, he would challenge the letter dated 6.1.93 before the Appropriate Authority in accordance with law.

Keeping in view the circumstances explained and the fact that the sanction regarding the plans has been cancelled by the defendant and Therefore, on prima facie ground it would be more appropriate if the plaintiff stops further construction at the site and the defendant would not seal the property. It would be in the interest of justice that status quo with respect to the property in dispute is maintained till 29.1.93. Meanwhile, defendant would file written statement/reply within 2 weeks with an advance copy to the plaintiff who would file replication/rejoinder within a week thereafter. This application for interim stay would be disposed of on that day."

15. Calling in question the order dated 6.2.1993, the petitioner filed CWP 169/93. In view of the filing of the writ petition, the petitioner withdrew the Suit No.33/93. On the 30th of March, 1993, a Division Bench of this Court, after hearing the learned Counsel for the parties, disposed of the writ petition with the following directions:

"CW 169 & CM 285 of 93

It is stated by the Counsel for respondent No.1 that what the NDMC is objecting to is the deviation from the sanctioned plan which are enumerated in para 21 of the petition. He further states that all these deviations can be regularised and are not contrary to the Building Bye-laws but a revised plan has to be filed.

Under these circumstances, the petitioner should file a revised plan within 8 weeks and the petitioner is allowed to resume construction at his own risk and costs.

Counsel for the respondent states that there is at present no violation of the Building Bye-laws the respondent will not seal the premises and the petitioner is, Therefore, allowed to commence construction but if any deviation from the Building Byelaws takes place or revised plan is not filed within the two months, then the respondent will be at liberty to fresh action for sealing. The revised plan will be furnished for the purposes of regularising the aforesaid deviations. Order revoking sanction on account of the aforesaid deviation will not be given effect to.

The writ petition is disposed of in the aforesaid terms."

16. As per the directions issued by the Division Bench of this Court, the petitioner submitted the revised plans.

17. The NDMC by letter dated 16.6.1993 informed the petitioner that the Committee vide its Resolution No. 7 had rejected the plans submitted for revalidation. The letter reads as under:

"With reference to your building application received vide Scheme No. 1605

dated 21.5.93 on the subject cited above, it is to inform you that the revised plans have been rejected by the Administrator vide Committee's Reso. No.7 dated 11.6.93 due to the following reasons:

- (1) The party has proposed the increase in area of the basement from 1246.346 sq. mts. sanctioned to 1591.51 sq. mts.
- (2) On the rear side some area is still to be constructed from basement to the upper floors.
- (3) Party has not given the parking calculations.
- (4) On SF, party has changed the position of ESS with respect to the sanctioned plans.
- (5) The area of staggering/projections in the central courtyard have not been taken in the ground floor coverage now. Where as as per the sanctioned plans the same were taken in the ground floor coverage. Therefore, ground floor coverage exceeds the permissible limit.
- (6) Party has constructed bay windows however, the same have been shown as balconies in the revised plans.
- (7) Beams and columns are running through the cut out being used from light and ventilation of kitchen as such light and ventilation of the kitchen have become defective.
- (8) The width of the rear lawn (Green belt) has been reduced to 91.4-1/2 against 98 sanctioned earlier.
- (9) Now the territorial jurisdiction of "Lutyen's Bungalow Zone" has been further clarified by Ministry of Urban Development, and this plot is a part of Lutyen's Bungalow Zone.
- (10) Plans need corrections.

A set of rejected plans is enclosed herewith."

18. By letter dated 18.6.1993, the NDMC directed the petitioner to stop construction. The letter reads as under.

"Please refer to this office letter No. B-341-43/CA/BP dated 16.6.93 wherein you have been informed that the revised plans for the construction of the Group Housing on the above mentioned plot have since been rejected.

As such there are no valid plans for the construction of the project. You are hereby informed that any further construction on the site shall be construed as unauthorised and necessary action shall be taken according to the Building Bye-laws and Punjab Municipal Act, 1911.

You are there fore, required to stop the construction immediately.

This correspondence is without prejudice to any rights of NDMC against you."

19. On the 22nd of June, 1993, the petitioner made a representation setting out the facts and requested the NDMC to consider the matter. The representation reads as under:

This is to acknowledge your letter Nos. B-341/43 CA/BP dated 16.6.90 and B/366/CA/BP dated 18.6.93. We have noted the contents of these letters with regret. We strongly assert that the rejection of plans by the NDMC is unreasonable and unjustified. We, Therefore, submit our clarifications to the reasons give by the NDMC for rejection of the plans, as under:

1. According to the approved zonal plan for "Hailey Road Area" basement is permitted with in the building envelope i.e. setback lines. The basement proposed by us is in accordance with the said zonal plans.
2. As we are constructing the building in phases, some portion of it, at the back is still unconstructed. We are unable to understand objections of NDMC to the phasing for the purpose of approval of building plans.
3. The parking calculations have been provided in Drawing No.SD-2. If any further clarification are desired, we can furnish.
4. The shifting of ESS has been necessitated due to site conditions and has been discussed with Electrical Department of NDMC.
5. The staggering of building in the Central Court does not amount to any increase in ground coverage. However, increase, if any, be included into F.A.R.

As regards staggering/projections of floors in the central courtyard this has already been accepted by the NDMC in the Court of Law on 30.3.1993, as being non-violative of any bye-laws and NDMC had undertaken to regularise the same. The reason for this objection at this stage is not understood.

We wish to reiterate that the total F.A.R. Being built by us as per the building bye-laws, it within the permissible limits.

6. The construction of bay window/balcony are permissible under bye-laws.
7. The cut-outs provided in the kitchen ensure clear and uninterrupted light and ventilation for the kitchen and columns or beams existing on the side do not cause any hindrance to this. This objection is thus not justified.
8. The width of the rear lawn (Green Belt) is according to the approved zonal plan of Hailey Road Area.
9. The territorial jurisdiction of Lutyen"s Bungalow Zone as far as the plans for the 22, Feroze Shah Road are concerned, is now irrelevant since the plans were approved by the DUAC/NDMC vide Resolution No.33 dated 23.7.90 and were revalidated by the NDMC vide Resolution No. 30 dated 30.6.92.

10. Any desired corrections may be made in the plans at the convenience of the NDMC.

Lastly, we wish to draw kind attention of the NDMC to the Hon''ble Court Order dated 30.3.93, rendered in the Civil Writ Petition No.169 of 1993 by Hon''ble Judges Mr. B.N. Kirpal and Mr. Arun B. Saharya.

The Hon''ble Judges had heard the objections of NDMC which have been stated in the NDMC s rejection letter of dated 16.6.93. It was the directive of the Hon''ble Court, as undertaken by the NDMC that all the objections will be regularised after receipt of revised plans, within eight weeks. The revised plans have been submitted by us in due time and we feel that the rejection of plans now by the NDMC is a violation of the aforesaid Court Order.

In view of the above facts, we request you to kindly review our case and convey the approval of the plans at your earliest.

20. The only point which the NDMC had taken to reject the revised plans is that the spot in which construction had been permitted comes within Lutyen''s Bungalow Zone. Regarding the building being in accordance with the revised plan, the NDMC never raised any dispute, as could be seen from the order passed by this Court.

21. The petitioner challenged the action of the NDMC and also of the Union of India in this writ petition. It is stated:

"The petitioner submits that the sole consideration, which weighed with the respondent Committee for rejection of the revised plans, as would clearly be evident from the contents of its impugned communication dated June 16, 1993, was that the limits of Lutyen''s Bungalow Zone have further been clarified and that the plot in question now allegedly falls within the said Zone. To this effect, it is the respectful submission of your petitioner, that the building plans in respect of the plot in question were sanctioned as early as July, 1990. Since then, the petitioner has been continuing with the construction for the last about 3 years. By spending an enormous amount of funds and resources, your petitioner has radically altered its position to its detriment. Consequently, the respondent Committee cannot be now heard, at this belated stage, saying that plot in question now falls within the Lutyen''s Bungalow Zone, and as such the construction would not be permitted.

The petitioner submits that the alleged clarifications to the Lutyen''s Bungalow Zone, being relied upon by the respondent Committee in rejection of the revised plans, cannot be given retrospective effect. In other words, the said clarifications, would govern future sanctions of building plans in the said zone. The revised plans submitted for regularising of permissible deviations, are not to be regulated or governed by the subsequent clarifications to the guidelines pertaining to the Lutyen''s Bungalow Zone. It is further submitted that the rejection of the revised plans by the respondent Committee is per-se arbitrary,

illegal, high handed and unreasonable. It is a settled law that subordinate legislation or policy matters can never have a retrospective character."

22. The petitioner also challenged the action of the NDMC in issuing notice u/s 195-B of the Punjab Municipal Act, 1911. According to the petitioner, the cancellation of the sanctioned plans u/s 195-B of the Act is illegal. The petitioner referred to the Bye law 6.7 of the Building Bye laws, 1983, which provides for revocation of permit. The same reads as under:

"Reservation of Permit - The Authority may revoke any building permit issued under the provisions of the bye-laws, wherever there has been any false statement suppression or any mis-representation of material facts in the application on which the building permit was based."

23. The petitioner has asserted that the plans stood revalidated up to July 22, 1993. In paragraph 42 of the writ petition, it is stated:

"The petitioner submits that the provisions of the Act of 1911, the Delhi Municipal Corporation Act, 1957 and the Building Byelaws, 1983 have to be harmoniously construed and ascertain where in the Punjab Municipal Act, 1911, any specific power of revocation of sanction exists. The Legislature has specifically conferred the power of revocation of sanction under Delhi Municipal Corporation Act, 1957 (Section 338 thereof) where as no such power has been conferred under the Punjab Municipal Act, 1911. This is a conscious omission by the Legislature which cannot be filled-up by judicial construction. The Building Bye-law No. 6.9, which provides for revocation of building permit, Therefore, must be read into the Building Bye-laws, 1983 confined to the Delhi Municipal Corporation Act, 1957 and not applicable to the Punjab Municipal Act, 1911."

24. The petitioner has given the details about the expenditure incurred. It is stated in paragraph 43 of the writ petition:

"It is the respectful submission of your petitioner that acting on the various sanctions and approvals, obtained by it from different departments and agencies of the Government, it has, till date, spent an amount to the tune of Rs. 3.0 crores (approx.) on this project. The respondent Committee cannot now be permitted to illegally, arbitrarily and unilaterally withdraw its sanction, much less on wholly flimsy, false and preposterous pretexts as it has sought to inter alia, on the doctrine of promissory estoppel. The details of the amount/expenditure incurred by the petitioner are as under:

(a) Amount of additional 45,54,321/- premium paid to the L&DO as conversion charges.

(b) On construction 2,50,00,000/-

(approximately)

25. The petitioner has also given the total area of construction in paragraph 44 of the writ petition. The said paragraph reads as under:

"It is submitted that the total permissible floor area ratio (FAR) in respect of the premises in question is 150%. Considering the total area of the plot, the total permissible construction that can be raised on the plot in question is 7641.409 sq. mts. However, the building plans were applied and sanctioned for the total construction of 6520.689 sq. mtrs. which comes to 128% of the FAR of the plot. Since the building is still under construction and even the permitted construction has not been achieved, the allegation regarding minor deviations, if at all, which do not at all add to the total covered area are wholly premature and indicative of the mala fides of the respondent Committee."

26. The petitioner has challenged the impugned orders passed by the NDMC on the ground that they violate the fundamental rights of the petitioner under the Constitution of India and it is a colourable exercise of power and the respondents had abused their authority. It is also stated that no authority, properly instructed in law, would take the decision that had been taken by the respondents.

27. The NDMC, the first respondent filed its counter-affidavit on the 28th of July, 1993. It is stated in paragraph 2 of the counter:

"Land and Development Officer/Delhi Development Authority also give No Objection at the time of sanction. Land and Development Officer is under the Ministry of Urban Development. No objection was filed by the Land and Development Officer or Ministry of Urban Development at the time of sanction that the plot in question was located in the Lutyen's Bungalow Zone."

It is stated that it is only by letters dated 15.7.1992/23.11.1992 that the Ministry of Urban Development clarified the position of the location of the plot. Reference is made in the counter to the guidelines issued by the Ministry of Urban Development on the 8th of February, 1988. The same is as under:

"Lutyen's Bungalow Zone: In order to maintain the present character of Lutyen's Delhi, which is still dominated by green areas and bungalows, there should be a separate set of norms for this Zone area. This area has been clearly demarcated. It will consist of the entire Lutyen's Delhi excluding: (i) the area lying between Baba Kharag Singh Marg on the South, Panchsheel Road on the north and the ridge on the west, (ii) the area between Baba Kharag Singh Marg, Ashok Road, Feroz Shah Road, Barakhamba Road and the Connaught Place, (iii) Mandi House, and (iv) the Institutional area where the Supreme Court is situated. It will, however, include the areas presently out of Lutyen's Delhi which consist of, (i) Nehru Park (ii) Yashwant Place, (iii) the area lying between Yashwant Place and the Railway line on the south, and (iv) the area lying between Nehru Park-Yashwant Place on the west and the boundary of Lutyen's Delhi on the western edge of Safdarjung Aerodrome and the Race Course. The demarcation has been high-lighted in "blue colour on the map" in the Lutyen's Bungalow Zone."

The road with which the petitioner is concerned namely, Ferozeshah Road is excluded from the zone. Assuming Ferozeshah Road comes within the zone, it has

not been explained as to why while sanctioning the plans this aspect was not considered by the NDMC or by the Ministry of Urban Development.

28. The other details about the coverage and the building not being in accordance with the sanctioned plans need not be referred to, in view of the orders passed by this Court earlier on the 30th of March, 1993.

29. The Union of India, the second respondent filed the reply on the 27th of October, 1993. It is stated in the reply that the matter was examined by the Government of India and the views of the Government of India were communicated to the NDMC by letters dated 15.7.1992, 24.8.1992 and 23.11.1992 stating that the NDMC had committed an error in approving the plans, violating the guidelines dated 8.2.1998. issued by the Government of India, and the NDMC had sanctioned the plans without correctly ascertaining the position, whether the property concerned was included in the Lutyen's Bungalow Zone, and directed the NDMC to fix the responsibility on the official/officials for doing wrong deeds. The Government of India had filed additional documents on the 13th of November, 1993. In the additional typed set, the Government of India filed the letter written by the Administrator, NDMC to the Government of India on the 10th of August, 1992 and also the letter dated the 9th of September, 1992 by the Administrator. The letter dated 23.8.1993 by the Government of India to the NDMC is also filed. The letter dated 18.11.1993 by the Government of India to the NDMC is also filed directing the NDMC to hand over the case to the Central Vigilance Commission.

30. A supplementary affidavit was filed by the NDMC in reply to the affidavit filed by the second respondent on the 27th of August, 1993.

31. The points that arise for consideration are:

(i) Whether the NDMC was right in approving the plans submitted by the petitioner?

(ii) Whether the Central Government could issue any direction to the NDMC to stop construction on the premise that the property in question comes within the Lutyen's Bungalow Zone and the notice issued u/s 195-B of the Punjab Municipal Act, 1911 by NDMC is valid in law?

32. Regarding the first question, the supplementary affidavit filed by the NDMC on the 24th of November, 1993 would provide complete answer. The supplementary affidavit filed by the NDMC reads as under:

"1. That the plan for the building in question (22, Ferozshah Road, New Delhi) was initially sanctioned by Building Plan Committee vide Resolution No. 33 dated 23.7.90 and subsequently revalidated vide Resolution No. 30 dated 30.6.92. It is important to mention that in both these meetings representative of the Ministry of Urban Development (Representative of Land and Development Office), Chief Fire Officer, representative of the MCD were present in none of these meetings any objection was raised by the said representatives.

2. Letter dated 15.7.92 from Ministry of Urban Development was received in the office of Administrator on dated 25.8.92 and same was received in the C.A Department on dated 26.8.92.

3. In face of the facts and circumstances, it will be incorrect on part of the Central Government (Ministry of Urban Development) state that they came to know of the sanction of the plan for the first time when the question came up before Lok Sabha on 6.5.92. Copy of the Resolution No. 30 dated 30.6.92 is enclosed for ready reference."

33. Having taken part in the Resolution dated 23.7.1990 of the Building Plan Committee of the NDMC and having taken part in the Resolution dated 30.6.1992, it is not open to the Central Government to take a contrary view more particularly, when in the meanwhile the petitioner had changed his position by spending considerable amount by commencing construction. The Administrator, NDMC had clearly explained the position in his letter dated the 10th of August, 1992 to the Government of India. The letter reads as under:

"Please refer to your D. O. letter No.-H-110016/27/92/-DDIB dated 15th July, 1992 regarding sanction of building plans at 22, Ferozeshah Road.

2. The sanction for building plans of the multi-storeyed structure at 22, Ferozeshah Road was accorded by the NDMC vide its Resolution No.33 dated 23.7.1990 after obtaining prior clearance from Delhi Urban Art Commission and after due consideration of the issues by the Building Plans Committee of the NDMC constituted for the purpose. The said Building Plans Committee had representatives from MCD, L&DO on it and the sanction for the multistoreyed structure was recommended after due consideration from all angles including instructions issued by the UDM vide their letter dated 8.2.1988. Guidelines dated 8.2.1988, of Ministry of Urban Development require that demarcation line of Lutyen's Bungalow Zone should not run along any prominent road but it provides that the said demarcation line can run along the first inner/outer road/lane from the prominent road through which the demarcation line is shown in the map. On one side of the Ferozeshah Road where Plot No. 22 is located, multi-storeyed structures have already been developed on plot Nos. 24,28,30 & 34 whereas on other side of the road there are single storeyed government bungalows. As such, considering ground realities, the interpretation to the instructions dated 8.2.1988 of the Ministry, the demarcation line ought to have run along the inner/outer road/lane from Ferozeshah Road. Since the area bounded by four roads as mentioned at (b) (ii) of the circular dated 8.2.88 from the Ministry of Urban Development was to be excluded from the Lutyen's Bungalow Zone, the interpretation by NDMC has been that the Lutyen's Bungalow Zone line will follow the outer lane from Ferozeshah Road, i.e. lane towards Government bungalows.

3. In this context, you may also refer to the discussions held with Shri R.V. Pillai, Additional Secretary, Ministry of Urban Development when you were also

present, were by it was agreed that the Ministry's instructions dated 8.2.88 are ambiguous and can be interpreted as the one given by the NDMC which has been duly approved by the DUAC and Building Plans Committee of the NDMC. The other interpretation can be the one given by you in your letter under reference dated 15.7.1992.

4. In view of the above, it is quite clear that the decision which was taken by the Building Plans Committee of NDMC was made in consultation with L&DO, DUAC and MCD etc. and was approved by the representative of DDA, subsequently, in the meeting held on 24.8.90. The meeting on 24.8.90 was attended by Shri H.S. Sikka, Deputy Director, DDA who had agreed to the recorded Minutes of Building Plans Committee Meeting held on 23.7.90 vide which plans were sanctioned.

5. It is, Therefore, inferred that NDMC has taken the decision in accordance with the guidelines given in the circular dated 8.2.88 of the Ministry of Urban Development and that there is no error in approving the plans for the Plot No. 22, Ferozeshah Road.

6. While I am endorsing a copy of this letter to the Ministry of Home Affairs, you may also like to apprise them the discussions held in the room of A.S. (UD) on the 7th of this month."

34. The Administrator clearly referred to the fact that the instructions dated 8.2.1988 are ambiguous and the view taken by the NDMC cannot be said to be wrong. Again by letter dated the 9th of September, 1992, the Administrator, NDMC explained the position and the same reads as under:

"I refer to your D.O. letter No. H-11016/27/92-DDIB dated 24 August, 1992 in regard to sanction of building plan at 22, Ferozeshah Road, New Delhi.

2. In this connection, I am to inform you that the view point mentioned in my earlier D.O.letter dated 10th August, 92 was endorsed by the experts in the Building Plan Committee of NDMC as well as those in the Delhi Urban Arts Commission, Delhi. Now if Ferozeshah Road is taken in its entirety (i.e. for Copernicus Chowk at Windsor Place), it may be taken as pre-dominantly bungalow like character but you will agree that the street picture is disturbed at a few point where tall structures have been built on one side of the road prior to 1998.

3. The building plans for 22, Ferozeshah Road were approved according to the guidelines issued by the Ministry of Urban Development under K-13011/17/86-DDIIA dated 8.2.1988. However, NDMC has not approved any plan for the multi-storeyed construction on Ferozeshah Road after publication of MPD-2001 on 1.8.90 which states "Lutyen's New Delhi comprises of large size plots and has a very pleasant environment. In fact, the area is unique in its continuing existing at low density in the heart of the city. While formulating the redevelopment plan of this area due care should be taken to ensure that its basic character is maintained." NDMC will like to get the redevelopment plans prepared by the

Appropriate Authority (DDA) so that there is no ambiguity in sanctioning the building plans in its jurisdiction of bungalow area as Ferozeshah Road is proposed to be included in new delineation of Lutyen's Bungalow Zone."

35. In the light of the above position, the action of the Central Government in issuing direction to the NDMC to stop construction and referring the matter to the Central Vigilance Commission is not at all permissible in law. It is an arbitrary exercise of power. The scope of the power of the public authorities in dealing with the rights of the citizens in countries, where rule of law reigning supreme, had been subject matter of decision by Courts for more than four centuries. The statement of law by the learned author in the Administrative Law (7th Edition), Sir William Wade, is instructive and the same is as follows:

"The characteristically legal conception of discretion just explained is firmly established and dates at least from the sixteenth century. *Rooke's Case*, referred to by Lord Halsbury, contains a well-known statement made in 1598 which has lost nothing of its accuracy in nearly 400 years. The Commissioners of Sewers had levied charges for repairing a river bank, but they had thrown the whole charge on one adjacent owner instead of apportioning it among all the owners benefited. In law they had power to levy charges in their discretion. But this charge was disallowed as inequitable and the report proceeds, in Coke's words:

.... and notwithstanding the words of the Commission give authority to the Commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their Wills and private affections; for as one saith, *talis discretio discretionem confundit*.

In a very similar case of 1609 the same doctrine is repeated; and it recurs elsewhere in Coke's works. In 1647 it is laid down that wheresoever a Commissioner or other person power given to do a thing at his discretion, it is to be understood of sound discretion and according to law, and that this Court hath power to redress things otherwise done by them.

To the same effect is a reporter's note of 1666, where the Court had granted *certiorari* against the Commissioners of Fens merely on an allegation "that they had proceeded unreasonably" for "this Court may judge whether they have pursued their powers."

An eighteenth-century illustration is the case of the paving Commissioners for Wapping, who had power to make alterations in streets "in such a manner as the Commissioners shall think fit". In order to give a regular incline to a certain street they raised part of it by six feet, thus obstructing the plaintiff's doors and windows. The Court held that "the Commissioners had grossly exceeded their powers, which may have a reasonable construction. Their discretion is not arbitrary, but must be limited by reason and law". These words clearly echo the

decisions of the previous century."

A repertory of similar statements of law is to be found in speeches of the learned Judges in *Roberts Vs. Hopwood* (1925) AC 578. The later decisions in England and India had followed the principles laid down in earlier cases.

36. In "*Padfield & Others Vs. Minister of Agriculture, Fisheries & Food and Others*" (1968) 1 All ER 694, the House of Lords had to consider the question of the power of the Minister to refer the matter to a Committee on a complaint given by milk producers under the Agricultural Market Act, 1958. A group of milk manufacturers, not being satisfied with the meeting it had with the Minister, made a complaint, as provided for in the Act for the examination of the complaint by a committee of investigation. The Minister refused to comply with the request. The Court observed:

"The Authority must not, as it has been said, allow itself to be influenced by something extraneous and extra-judicial which ought not have affected its decision."

37. About the scope of the judicial control over the exercise of discretion by the Minister, the Court observed:

"My Lords, on the basis principles of law to be applied there was no real difference of opinion, the great question being how they should be applied to this case. The Minister in exercising his powers and duties conferred on him by statute can only be controlled by a prerogative order which will only issue if he acts unlawfully. Unlawful behavior by the Minister may be stated with sufficient accuracy for the purpose of the present appeal (and here I adopt the classification of Lord Parker, C.J., in the Divisional Court); (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration. There is ample authority for these propositions which were not challenged in argument. In practice they merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings which I have mentioned."

38. The Supreme Court deal with the scope of the Article 14 of the Constitution of India in *E.P. Royappa Vs. State of Tamil Nadu and Another*, . With reference to exercise of power by public authorities, His Lordship, Justice Bhagwati, as he then was, observed":

"The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground it is really in substance and effect merely an aspect of the second ground based on violation of Arts. 14 and 16. Article 16 embodies the

fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Art. 14 is the genus while Art. 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, Therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pendant or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is Therefore vocative of Article 14, and if it affects any matter relating to public employment, it is also vocative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

The Constitution Bench held that if an authority had acted without considering the relevant facts, it is wholly unjustified, and it would come within the mischief of Article 14 of the Constitution of India.

39. The point was again considered by a Constitution Bench consisting of seven Judges of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . His Lordship, Justice Bhagwati, as he then was, had elaborately discussed the point dealt with in *E.P. Royappa's* case, observed in this case:

"Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in

this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, Therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa Vs. State of Tamil Nadu and Another*, namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is Therefore vocative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

How far natural justice is an essential element of procedure established by law."

His Lordship, Justice V.R. Krishna Iyer, delivering the concurring judgment, observed:

"I now skip Art. 14 since I agree fully with all that my learned Brother Bhagwati J. has said. That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory dictats. Equality is the antithesis of arbitrariness and *ex cathedra* *pse dixit* is the ally of demagogic authoritarianism. Only knight-errants of executive excesses-if we may use a current cliché- can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; By you ever so high, the law is above you."

What his Lordship Justice V.R. Krishna Iyer had observed, has to be remembered. The learned Judge held:

"A concluding caveat validating my detour. Our country, with all its hopes, all its tears and all its fears, must never forget that "freedom is recreated year by year, that "freedom is as freedom does", that we have gained a republic "if we can keep it" and that the watershed between a police state and a people's raj is located partly through its passport policy. Today, a poor man in this poor country despairs of getting a passport because of invariable police enquiry, insistence on property requirement and other avoidable procedural obstacles. And if a system

of secret informer, police dossiers, faceless whisperers and political tale-bearers, conceptualised and institutionalised "in public interest", comes to stay, civil liberty is legally constitutionalised a consummation constantly to be resisted. The merits of a particular case apart, the policing of a people's right of exit or entry is fraught with peril to liberty unless policy is precise, operationally respectful of recognised values and harassment proof. Bertrand Russell has called attention to a syndrome the administration will do well to note.

"We are all of us a mixture of good and bad impulses that prevail in an excited crowd. There is in most men an impulse to persecute whatever is felt to be "different". There is also a hatred of any claim to superiority, which makes the stupid many hostile to the intelligent few. A motive such as fear of communism affords what seems a decent moral excuse for a combination of the herd against everything in any way exceptional. This is a recurrent phenomenon in human history. Wherever it occurs, its results are horrible."

(Foreword by Bertrand Russell to *Freedom is as Freedom Does - Civil Liberties Today* - by Corliss Lamont, New York, 1956).

While interpreting and implementing the words of Arts. 14, 19 & 21, we may keep J.B. Priestley's caution:

"We do not imagine that we are the victims of plots that bad men are doing all this. It is the machinery of power that is getting out of sane control. Lost in its elaboration, even some men of goodwill begin to forget the essential humanity this machinery should be serving. They are now so busy testing, analysing, and reporting on bath water that they cannot remember having thrown the body out of the window."

(Introduction by H.H. Wilson, Associate Professor of Political Science, Princeton University to *Freedom is as Freedom Does* by Corliss Lamont, *ibid* p. xxi). I have divagated a great deal into travel constitutionality in the setting of the story of the human journey, even though such a diffusion is partly beyond the strict needs of this case. But judicial traveling, like other traveling, is almost like "talking with men of other centuries and countries".

40. The House of Lords laid down the principle in *Chief Constable of the North Wales Police Vs. Evans* (1982) 3 All ER 141. The Court observed:

"Other considerations arise when an administrative decision is attacked on the ground that it is vitiated by self-misdirection, by taking account of irrelevant factors or neglecting to take account of relevant factors, or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question, could reasonably have made such a decision: see the well known judgment of Lord Greene MR in *Associated Provincial Picture House Ltd. Vs. Wednesbury Corp.* (1947) 2 All ER 680 : (1948) 1 KB 223."

41. In *Council of Civil Service Unions & Others Vs. Minister for the Civil Service* (1984) 3 All ER 935, the House of Lords held:

"The Courts have already shown themselves ready to control by way of judicial review the actions of a Tribunal set up under the prerogative. *R Vs. Criminal Injuries Compensation Board, ex p Lain* (1967) 2 All ER 770 : (1967) 2 QB 864 was such a case. In that case Lord Parker, CJ, said (1967) 2 All ER 770 : (1967) 2 QB 864:

"I can see no reason either in principle or in authority why a Board, set up as this Board were set up, should not be a body of persons amenable to the jurisdiction of this Court. True the Boards are not set up by statute but the fact that they are set up by executive Government, i.e., under the prerogative, does not render their acts any the less lawful. Indeed, the writ of certiorari has been issued not only to Courts set up by statute but also to Courts whose authority was derived, *inter alia*, from the prerogative. Once the jurisdiction is extended, as it clearly has been, to Tribunals as opposed to Courts, there is no reason why the remedy by way of certiorari cannot be invoked to a body of persons set up under the prerogative."

That case was concerned with the actions of a Board or Tribunal exercising functions of a judicial character, but it is now established that certiorari is not limited to bodies performing judicial functions. In *R. Vs. Secretary of State for the Home Dept., exp Hosenball* (1977) 3 All ER 452 : (1977) 1 SLR 766, which was concerned with the actions of the Secretary of State himself in refusing to give information about the reasons for making a deportation order against an alien, the Divisional Court and the Court of Appeal refused to make an order of certiorari because the refusal had been based on grounds of national security but, if it had been made in what Lord Denning MR called an "ordinary case" [see (1977) 3 All ER 452 : (1977) 1 WLR 766], that is one in which national security was not involved, the position would have been different, Lord Denning MR said (1977) 3 All ER 452 : (1977) 1 WLR 766]:

".... if the body concerned, whether it be a Minister or Advisers, has acted unfairly, then the Courts can review their proceedings so as to ensure, as far as may be, that justice is done."

Lord Diplock in "*Council of Civil Service Unions & Others Vs. Minister for the Civil Service*" (1984) 3 All ER 935 laid down the principles for assessing:

"My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of

"proportionality" which is recognised in the administrative law of several of our Fellow Members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" [see *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corp.* (1947) 2 All ER 680 : (1948) 1 KB 223. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with out judicial system. To justify the Court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious Explanation in *Edwards (Inspector of Taxes) Vs. Bairstow* (1955) 3 All ER 48 : (1956) AC 14 of irrationality as a ground for a Court's reversal of a decision-maker. "Irrationality" by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.

My Lords, that a decision of which the ultimate source of power to make it is not a statute but the common law (whether or not the common law is for this purpose given the label of "the prerogative") may be the subject of judicial review on the ground of illegality is, I think, established by the case cited by my noble and learned friend Lord Roskill, and this extends to cases where the filed of law to which the decision relates is national security, as the decision of this House itself in *Burmah Oil Co. (Burma Trading) Ltd. Vs. Lord Advocate* (1964) 2 All ER 348 : (1965) AC 75 shows. While I see no a priori reason to rule out "irrationality" as a ground for judicial review of a ministerial decision taken in the exercise of "prerogative" powers, I find it difficult to envisage in any of the various fields in which the prerogative remains the only source of the relevant

decision-making power a decision of a kind that would be open to attack through the judicial process on this ground. Such decisions will generally involve the application of Government policy. The reasons for the decision-maker taking one course rather than another do not normally involve questions to which, if disputed, the judicial process is adapted to provide the right answer, by which I mean that the kind of evidence that is admissible under judicial procedures and the way in which it has to be adduced tend to exclude from the attention of the Court competing policy considerations which, if the executive discretion is to be wisely exercised, need to be weighed against one another, a balancing exercise which Judges by their upbringing and experience are ill qualified to perform. So I leave this as an open question to be dealt with on a case to case basis if, indeed, the case should ever arise.

As respects "procedural propriety", I see no reason why it should not be a ground for judicial review of a decision made under powers of which the ultimate source is the prerogative. Such, indeed, was one of the grounds that formed the subject matter of judicial review in *R. Vs. Criminal Injuries Compensation Board, exp Lain* (1967) 2 All ER 770 : (1967) 2 QB 864. Indeed, where the decision is one which does not alter rights or obligations enforceable in private law but only deprives a person of legitimate expectations, "procedural impropriety" will normally provide the only ground on which the decision is open to judicial review. But in any event what procedure will satisfy the public law requirement of procedural propriety depends on the subject matter of the decision, the executive functions of the decision-maker (if the decision is not that of an Administrative Tribunal) and the particular circumstances in which the decision came to be made."

42. In "*Wheeler & Others Vs. Leicester City Council*" (1985) 2 All ER 1106, the House of Lords had to consider the action of the Leicester City Council banning a club from using the recreation ground for a period of 12 months. The facts, as found in the head note, are as follows:

"A rugby club had a license to use a recreation ground administered by a local Council. In April, 1984 three members of the club were invited to join the English rugby football team selected to tour South Africa. The Council, which supported a Commonwealth agreement to withhold support for and discourage sporting links with South Africa, asked the club to endorse those views, condemn the tour and put pressure on its three members not to take part in the tour. The Council put to the club four questions to that effect and indicated that only affirmative answers to all four questions would be acceptable to the Council. The club stated that it agreed with the Council in condemning apartheid in South Africa but that the club's role in relation to its members was advisory and that it was not unlawful for a members to join the tour, nor was it contrary to the rules of the club or of the Rugby Football Union to do so. The three members took part in the tour between May and June, 1984. In August, the Council passed a resolution banning the club and its members from using the recreation ground for 12 months. The

club applied for, inter alia, an order of certiorari to quash the local authority's decision. The judge refused the application and the club appealed. The Court of Appeal dismissed the club's appeal, on the ground that under Sec. 71 of the Race Relations Act, 1976 the Council was entitled to take into account the need to promote good race relations when exercising its discretionary powers in relation to the recreation ground."

43. The club appealed to the House of Lords and that appeal was allowed. The Council projected the provision of Section 71 of the Race Relations Act, 1976 as main defense to the action. The House of Lords considered the defense of the Council and held:

"The Council's main defense rested on Sec.71 of the Race Relations Act, 1976. The section appears as the first section in Pt X of the Act under the cross-heading "supplemental". For case of reference I will set out the section in full:

"Without prejudice to their obligation to comply with any other provision of this Act, it shall be the duty of every local authority to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need - (a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity, and good relations, between persons of different racial groups."

My Lords, it was strenuously argued on behalf of the club that this section should be given what was called a "narrow" construction. It was suggested that the section was only concerned with the actions of the Council as regards its own internal behavior and was what was described as "inward looking". The section had no relevance to the general exercise by the Council or indeed of any local authority of their statutory functions, as for example in relation to the control of open spaces or in determining who should be entitled to use a recreation ground and on what terms. It was said that the section was expressed in terms of a "duty". But it did not impose any duty so as to compel the exercise by a local authority of other statutory functions in order to achieve the objectives of the 1976 Act.

My Lords, in respectful agreement with both Courts below, I unhesitatingly reject this argument. I think the whole purpose of this section is to see that in relation to matters other than those specifically dealt with, for example, in Pt II (employment) and in Pt.III (education) local authorities must in relation to "their various functions" make "appropriate arrangements" to secure that those functions are carried out "with due regard to the need" mentioned in the section.

It follows that I do not doubt that the Council were fully entitled in exercising their statutory discretion under, for example, the Open Spaces Act,1906 and the various Public Health Acts, which are all referred to in the judgments below, to pay regard to what they thought was in the best interests of race relations.

The only question is, Therefore, whether the action of the Council of which the

club complains is susceptible of attack by way of judicial review. It was forcibly argued by Counsel on behalf of the Council that once it was accepted, as I do accept, that Sec. 71 bears the construction for which the Council contended, the matter became one of political judgment only, and that my interfering the Courts would be trespassing across that line which divides a proper exercise of a statutory discretion based on a political judgment, in relation to which the Courts must not and will not interfere, from an improper exercise of such a discretion in relation to which the Courts will interfere.

My Lords, the House recently had to consider problems of this nature in *Council of Civil Service Unions Vs. Minister for the Civil Service* [1984] 3 All ER 935 : (1984) 3 WLR 1174. In his speech Lord Diplock (1984) 3 All ER 935 : (1984) 3 WLR 1174 classified three already well-established heads or sets of circumstances in which the Court will interfere. First, illegality, second, irrationality and third, procedural impropriety. If I may be forgiven for referring to my own speech in the case, a similar analysis appears herein (1984) 3 All ER 935 : (1984) 3 WLR 1174. Those three heads are not exhaustive, and as Lord Diplock pointed out, further grounds may hereafter required to be added. Nor are they necessarily mutually exclusive."

44. The Supreme Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, :

"The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi judicial exercise of power is liable to be quashed being violative of Art. 14 of the Constitution. As stated in *E.P. Royappa Vs. State of Tamil Nadu and Another*, "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the rule of law in a republic while the other to the whim and caprice of an absolute monarch." The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial. See *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, ; *Som Raj and others etc. Vs. State of Haryana and others*, ."

45. In *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, , dealing with reasonableness of the view taken by the public authorities, the Supreme Court fully endorsed the aforementioned view.

46. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, :

"It can no longer be doubted at this point of time that Art. 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See *Ramana Dayaram Shetty Vs.*

International Airport Authority of India and Others, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, . In Col. A.S. Sangwan Vs. Union of India (UOI) and Others, , while the discretion to change the policy in exercise of the executive power, when not trammled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Art. 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Art. 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose."

Following the dictum laid down by a Constitution Bench, it was observed:

"Almost a quarter century back, this Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others, , indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey - "Law of the Constitution" - Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J . in United States Vs. Wunderlick 1951 342 US 98 : 96 Law Ed 113, "when it has freed man from the unlimited discretion of some ruler.... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes 1770 98 ER 327, "means sound discretion guided by law. It must be governed by rule, not humour : it must not be arbitrary, vague and fanciful."

Following the principles laid down in Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, their Lordships observed:

"This appears to be also the trend of the recent English decisions. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere,

must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power."

47. In the light of the law laid down by the Supreme Court, we have no hesitation in coming to the conclusion that the view taken by the Central Government that the property comes within the Lutyen's Bungalow Zone and the view taken by the NDMC is wrong cannot be sustained in law. The Administrator, NDMC had clearly mentioned in his letter that the Authorities of the Central Government had participated in the Resolutions dated 23.7.1990 and 30.6.1992. On a reading of the guidelines issued in 1988 by the Government of India, one possible view had been taken by the NDMC and in taking the view, the NDMC had acted bona fide and without being influenced by any extraneous considerations. While considering the issue the Central Government, assuming it had power to issue any such direction, ought to have taken into account the two Resolutions of the Committee of the NDMC dated 23.7.90 and 30.6.1992, where the Central Government had participated, and whether there was any material to come to a prima facie view that the NDMC had deliberately acted in violation of the guidelines. We are of the view that the Government of India had allowed itself to be stirred by a question in the Parliament. The matter should have been placed before the Parliament and if there is any debate on the question and the legal position should have been explained to the Parliament. In the reply filed by the Government of India, nothing has been mentioned on these aspects. Therefore, we have no hesitation in coming to the conclusion that the direction issued by the Government of India, by letters dated 15.7.1992, 23.11.1992, is wholly arbitrary and the Government of India had assumed an attitude which is quite unreasonable.

48. On the facts and circumstances, there is no difficulty in arriving to the conclusion that the NDMC had considered the matter, while sanctioning the plans, in the light of the guidelines issued by the Government of India on the 8th of February, 1988, and the NDMC had acted in accordance with law.

49. On the second point, a survey into the relevant provision of the Act, mentioned by the NDMC in the notice and referred to by the learned Counsel for the NDMC, has to be made. The NDMC purported to issue the notice, which is impugned, u/s 195-B of the Punjab Municipal Act, 1911. Section 195-B of the Punjab Municipal Act 1911 reads as under:

"195-B. (1) It shall be lawful for the Committee, at any time, before or after delivering the notice to the owner or occupier of a building u/s 195 or Section 195-A, to make an order directing the sealing of such building, in the manner prescribed by rules, for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of erection or re-erection of such building.

(2) Where any building has been sealed, the Committee may, for the purpose of altering or demolishing such building, order the seal to be removed.

(3) No person shall remove such seal except -

(a) under an order made by the Committee under Sub-section (2); or

(b) under an order of the Appellate Tribunal or the Administrator of the Union Territory of Delhi, made in an appeal under this Act."

A reading of the section would show that action could be taken under this section after following the provisions of Section 195. Section 195 of the Punjab Municipal Act, 1911, as amended by the Punjab Municipal (New Delhi Amendment) Act, 1984 (No. 39 of 1984) by the Parliament, reads as under:

195. Penalty for disobedience - (1) Should a building be beg, unerected or re-erected -

(a) without sanction as required by Section 189(1); or

(b) without notice as required by Section 189(2); or

(c) when sanction has been refused.

the committee may by notice delivered to the owner or occupier of that building, require the building to be altered or demolished as it may deem necessary within the period specified in such notice; and should it begin or erected -

(d) in contravention of the terms of any sanction granted; or

(e) when the sanction has lapsed; or

(f) in contravention of any bye-law made u/s 190; or in the case of a building of which the erection has been deemed to be sanctioned u/s 193 (4), if it contravenes any scheme sanctioned u/s 192;

the Committee may by notice to be delivered to the owner within six months from the completion of the building require the building to be altered in such manner as it may deem necessary, within the period specified in such notice:

Provided that the Committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable:

Provided also that the Committee shall require a building to be demolished or altered so far as it necessary to avoid contravention of a building scheme drawn up u/s 192:

Provided further that if any notice is issued by the Executive Officer under this section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made u/s 190 the person to whom the notice is issued may, within

fifteen days from the date of service of such notice, appeal to the Committee, and subject to the provisions of Sections 224, 232 and 236, the decision of the Committee shall be final.

(2) Any person who begins, erects or re-erects any building as described in Sub-section (1), shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both."

50. When the NDMC had made it clear its view in the additional affidavit, it is not necessary to go into the validity of the notice because there is absolutely no basis for the issuance of notice u/s 195 or 195-B.

51. Consequently, the notice purported to have been issued u/s 195-B by the NDMC is liable to be quashed.

52. Mr. S.S. Gautam, learned Counsel for the NDMC, vehemently contended that the petitioner has got an effective alternative remedy by way of appeal u/s 225 (1)(b) of the Punjab Municipal Act, 1911. The Section 225 (1)(b) reads as under:

"[(b) by a notice from a Committee u/s 171 requiring a street to be drained, leveled, paved, flagged, metalled or provided with proper means of lighting, or declaring a street to be public street, or by a notice from the Executive Officer u/s 195 requiring the alteration or demolition of a building or]"

53. A reading of the section would show that if a notice u/s 195-B is issued in accordance with law with reference to an unauthorised construction, in that case the provision relating to appeal would be relevant. On the facts and circumstances of this case, we are not inclined to accept the submission of the learned Counsel for the NDMC, Mr. S.S. Gautam, about the availability of an effective alternative remedy to the petitioner.

54. There is no provision in the Punjab Municipal Act, 1911 enabling the Central Government to issue any direction to the NDMC to stop construction and refer the matter to the Central Vigilance Commission. In the reply the Government of India had not referred to any provision of law under which the Government of India could issue any such direction. Therefore, the direction issued by the Government of India on 15.7.1992, 23.11.1992 and 18.11.1993 are without any jurisdiction and they cannot at all be enforced in law. In our view, no officer of NDMC or officer of Central Government who participated in the two resolutions could be said to have committed any act warranting any action. The basic principle of law, if borne in mind, the present situation would not have come to pass. It is always possible that two reasonable persons can perfectly and reasonably come to opposite conclusions on the same sets of facts without forfeiting their title to be regarded as reasonable. Therefore, the view taken in the two Resolutions dated 23.7.1990 and 30.6.1992 by the officials of the NDMC and the officials of the Central Government cannot at all said to be contrary to law.

55. A Division Bench of this Court had permitted the petitioner to proceed with

the construction. Therefore, the action of the NDMC in permitting the construction and sanctioning the plans was in accordance with law.

56. For the foregoing reasons, the writ petition stands allowed. The letters dated 16.6.1993 and 18.6.1993 are quashed and the respondents are hereby directed to permit the petitioner to complete the construction in accordance with law. The respondents are also directed to render all assistance to the petitioner to proceed with and complete the construction without any further delay.

57. There shall be no order as to costs.